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Debtor and Debtor-in-Possession

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

11  
12 In re:

13 XS RANCH FUND VI, L.P.,

14  
15 Debtor and  
16 Debtor-in-Possession.

Case No. 16-31367-RE-11

Chapter 11 Proceeding

**DEBTOR'S SECOND AMENDED  
CHAPTER 11 PLAN OF  
REORGANIZATION, AS MODIFIED**

**Confirmation Hearing:**

Date: March 22, 2018

Time: 10:00 a.m.

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

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1 I.

2 **INTRODUCTION**

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

13 II.

14 **DEFINITIONS AND RULES OF INTERPRETATION**

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

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

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

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

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

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

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

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

19 2.1.6 Allowed Amount means:

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

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

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

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

1           2.1.7 Allowed Claim(s) means except as otherwise provided in this Plan  
2 (including with respect to those Classes for which the amount of the Allowed Claims is  
3 specified by this Plan), a Claim to the extent of the Allowed Amount of such Claim.

4           2.1.8 Allowed Interest(s) means any Interest to the extent, and only to the extent,  
5 of the Allowed Amount of such Interest.

6           2.1.9 Allowed Secured Claim means an Allowed Claim secured by a valid and  
7 unavoidable Lien against property in which an Estate has an interest, or which is subject to  
8 setoff under Section 553 of the Bankruptcy Code, to the extent of the value, determined in  
9 accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of  
10 such Allowed Claim in the Estate's interest in such property, or to the extent of the  
11 amount subject to any setoff, as the case may be.

12           2.1.10 Assets means all assets that are property of the Debtor pursuant to  
13 Section 541 of the Bankruptcy Code, including but not limited to the Property.

14           2.1.11 Available Cash means the Cash deposited into the Distribution Account(s)  
15 on or after the Effective Date that is available for making Distributions under this Plan to  
16 Holders of Allowed Claims.

17           2.1.12 Avoidance Actions means any action or proceeding filed pursuant to the  
18 provisions of Sections 506, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 551 of the  
19 Bankruptcy Code, or any similar action or proceeding filed to recover property for or on  
20 behalf of the Estate or to avoid a Lien or transfer.

21           2.1.13 Avoidance Actions Recoveries means any Cash or other property received  
22 by the Debtor from all or any portion of an Avoidance Action(s), including, but not  
23 limited to, awards of damages, attorneys' fees and expenses, interest and punitive  
24 damages, whether recovered by way of settlement, execution on judgment or otherwise.

25           2.1.14 Bankruptcy Code means Title 11 of the United States Code, 11 U.S.C.  
26 §§ 101 *et seq.*, as applicable to the Case.

27           2.1.15 Bankruptcy Court means the United States Bankruptcy Court for the  
28 Northern District of California, having jurisdiction over the Case and, to the extent of any

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

5 2.1.16 Bankruptcy Rules means collectively, as now in effect or hereafter  
6 amended and as applicable to the Case, (i) the Federal Rules of Bankruptcy Procedure,  
7 and (ii) the Local Bankruptcy Rules and General Orders applicable to cases pending  
8 before the Bankruptcy Court.

9 2.1.17 Business Day means any day, other than a Saturday, a Sunday or a “legal  
10 holiday,” as defined in Bankruptcy Rule 9006(a).

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

13 2.1.21 Cash means currency of the United States of America and cash equivalents,  
14 including, but not limited to, bank deposits, immediately available or cleared checks,  
15 drafts, wire transfers and other similar forms of payment.

16 2.1.22 Causes of Action means any and all claims, demands, rights, actions, causes  
17 of action and suits of the Debtor or the Estate, of any kind or character whatsoever, known  
18 or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition  
19 Date, in contract or in tort, at law or in equity or under any other theory of law, that the  
20 Debtor or the Debtor’s Estate has or asserts, or may have or assert, against third parties,  
21 whether or not brought as of the Effective Date, and which have not been settled or  
22 otherwise resolved by Final Order as of the Effective Date, including but not limited to  
23 (a) rights of setoff, counterclaim or recoupment, (b) claims on contracts or for breaches of  
24 duties imposed by law, (c) rights to object to Claims or Interests, (d) such claims and  
25 defenses as fraud, mistake, duress or usury, (e) claims for tax refunds, (f) claims to recover  
26 accounts receivable, and (g) any other claims which may be asserted against third parties.

27 2.1.23 City means the city of Bastrop, Texas.  
28



1           2.1.24 Claim(s) means the broadest possible meaning under Section 101(5) of the  
2 Bankruptcy Code, and shall include (a) any right to payment from the Debtor, whether or  
3 not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,  
4 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (b) any right  
5 to an equitable remedy for breach of performance if such breach gives rise to a right of  
6 payment from the Debtor, whether or not such right to an equitable remedy is reduced to  
7 judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or  
8 unsecured.

9           2.1.25 Claims Bar Date means for any Claim other than an Administrative Claim,  
10 October 23, 2017, established by the Bankruptcy Court as the last date for Creditors to file  
11 Proof of Claims with the Bankruptcy Court in the Debtor's case. The exceptions to this  
12 Claims Bar Date are: (1) Claims arising from the rejection of executory contracts or  
13 unexpired leases; (2) Claims of "governmental units," as such term is defined in  
14 Section 101(27) of the Bankruptcy Code; and (3) Claims arising as the result of transfer  
15 avoidance pursuant to Chapter 5 of the Bankruptcy Code. For Claims arising from  
16 rejection of executory contracts or unexpired leases pursuant to 11 U.S.C. § 365, the last  
17 day to file a Proof of Claim is (a) 30 days after the date of entry of the order authorizing  
18 the rejection, or (b) 30 days after service of a bar date notice upon the Creditor asserting  
19 such Claim, whichever is later. For Claims of "governmental units," as that term is  
20 defined in 11 U.S.C. §101(27), Proofs of Claim are timely filed if filed: (a) before 180  
21 days after the Petition Date, or as otherwise provided in Rule 3002(c)(1) of the  
22 Bankruptcy Rules. *See* 11 U.S.C. §502(b)(9). For Claims arising from the avoidance of a  
23 transfer under chapter 5 of the Bankruptcy Code, the last day to file a Proof of Claim is 30  
24 days after the entry of judgment avoiding the transfer, or (b) 30 days after service of a bar  
25 date notice upon the Creditor asserting such Claim, whichever is later.

26           2.1.26 Class means each group of Claims or Interests classified in this Plan  
27 pursuant to Sections 1122 and 1123 of the Bankruptcy Code.  
28

1           2.1.27 Committee means the Official Committee of Creditors Holding General  
2 Unsecured Claims in this Case appointed by the U.S. Trustee.

3           2.1.28 Confirmation Date means the date on which the Confirmation Order is  
4 entered on the Bankruptcy Court's docket.

5           2.1.29 Confirmation Hearing Date means the date of the hearing on the Plan when  
6 the Bankruptcy Court confirms the Plan.

7           2.1.30 Confirmation Order means the order entered by the Bankruptcy Court  
8 confirming this Plan in accordance with the provisions of Chapter 11 of the Bankruptcy  
9 Code.

10          2.1.31 County means the Treasurer and Tax Collector of the county of Bastrop,  
11 Texas.

12          2.1.32 Creditor(s) means any Person who is the Holder of a Claim against the  
13 Debtor that arose or accrued or is deemed to have arisen or accrued or to have matured, or  
14 otherwise become due, owing, and payable on or before the Petition Date, including,  
15 without limitation, Claims of the kind specified in Sections 502(g), 502(h) or 502(i) of the  
16 Bankruptcy Code.

17          2.1.33 Crestline means Crestline Direct Finance, L.P. or one of its Affiliates as it  
18 may designate, as sole lead arranger, on behalf of investments funds managed by Crestline  
19 Management, L.P.

20          2.1.34 Debtor means XS Ranch Fund, VI, L.P., a Delaware limited partnership.  
21 For the purpose of this Plan, reference to "Debtor" shall include the Reorganized Debtor.

22          2.1.35 Default Notice means written notice by any member of a Class who asserts  
23 a default under this Plan, which must be made to the Notice Parties via e-mail and  
24 certified U.S. Mail.

25          2.1.36 DIP Financing means debtor in possession financing.

26          2.1.37 Disclosure Statement means the Debtor's Disclosure Statement in Support  
27 of the Debtor's Second Amended Chapter 11 Plan of Reorganization, as such may be  
28 further amended or modified.

1           2.1.38 Disputed Claim(s) means all or any part of a Claim other than any Allowed  
2 Amount thereof as to which any one of the following applies: (i) no Proof of Claim has  
3 been filed with respect to such Claim, and either (a) the Claim is not listed in the  
4 Schedules; or (b) the Claim is listed in the Schedules as unliquidated, disputed, contingent,  
5 unknown or in a zero amount, (ii) the Claim is the subject (a) to an Avoidance Action;  
6 (b) of offset by an Avoidance Action; (c) to a timely objection that has not been resolved  
7 by a Final Order; or (d) to a request for estimation in accordance with the Bankruptcy  
8 Code, the Bankruptcy Rules, any applicable order of the Bankruptcy Court, or this Plan  
9 which is Filed on or before the Claims Objection Deadline, which adversary proceeding,  
10 objection, or request for estimation has not been dismissed, withdrawn or determined by a  
11 Final Order; or (iii) the Claim is otherwise treated as a “Disputed Claim” pursuant to this  
12 Plan.

13           2.1.39 Disputed Lien(s) means an asserted lien(s) against Assets of the Debtor that  
14 is either subject to a Disputed Claim, not duly perfected, or subject to an Avoidance Action  
15 or subject to an action pursuant to Bankruptcy Code Sections 510(c)(2) and/or 506(d).

16           2.1.40 Distribution(s) means payments to Holders of Allowed Claims and  
17 Interests provided for under this Plan.

18           2.1.41 Distribution Account(s) means account(s) to be established for the Property  
19 by the Debtor or the Plan Agent at a bank into which the Debtor’s Available Cash shall be  
20 deposited.

21           2.1.42 Distribution Date means with respect to any Allowed Claim or Allowed  
22 Interest, the date on which a Distribution is required to be made under this Plan.

23           2.1.43 Effective Date means the tenth Business Day of the first full month after  
24 entry of the Confirmation Order.

25           2.1.44 Estate means the bankruptcy estate of the Debtor created pursuant to  
26 Section 541 of the Bankruptcy Code.

27           2.1.45 Event of Default means the Debtor’s failure to cure within the Grace Period  
28 a payment required to be made under this Plan pursuant to the terms herein.

1           2.1.46 Exit Financing means the \$30 million of exit financing agreed to be  
2 provided by Crestline, as described in and pursuant to the Commitment Letter dated  
3 December 15, 2017 attached hereto as **Exhibit 3**.

4           2.1.47 Fee Application(s) means applications of Professional Persons under  
5 Sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and  
6 reimbursement of expenses in the Case.

7           2.1.48 Filed means delivered to, received by and entered upon the legal docket by  
8 the Clerk of the Bankruptcy Court. “File” shall have a correlative meaning.

9           2.1.49 Final Order means an order or judgment of the Bankruptcy Court or other  
10 applicable court, as entered on the applicable docket, that has not been reversed, stayed,  
11 modified or amended, and as to which the time to appeal, petition for certiorari, or move  
12 for reargument or rehearing has expired and as to which no appeal, petition for certiorari,  
13 or other proceedings for reargument or to obtain a rehearing shall then be pending or as to  
14 which any right to appeal, petition for certiorari, reargue, or obtain a rehearing shall have  
15 been waived in writing in form and substance satisfactory to the Debtor or, in the event  
16 that an appeal, writ of certiorari, or proceeding for reargument or rehearing of such order  
17 or judgment has been sought, such order or judgment shall have been affirmed by the  
18 highest court to which such order or judgment was appealed, or certiorari has been denied,  
19 or from which reargument or rehearing was sought, and the time to take any further  
20 appeal, petition for certiorari or move for reargument or rehearing shall have expired, or  
21 such appeal has become moot.

22           2.1.50 Financial Projections means the financial projections prepared by the  
23 management of the Debtor, attached to the Disclosure Statement as **Exhibit 1**.

24           2.1.51 First Purchased Property means that certain 6,836.838 acres of real  
25 property located in Bastrop County, Texas and purchased by the Debtor from Steiner.

26           2.1.52 General Unsecured Claim(s) means a Claim against the Debtor that is not  
27 (a) a Secured Claim, (b) an Administrative Claim, (c) a Tax Claim, (d) a Priority Claim, or  
28 (e) a Subordinated Claim.

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

2.1.54 Gross Rental Income means all rents, issues and profits generated by the Property.

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

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

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

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

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

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

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

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

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

2.1.64 Option Agreement(s) means the Repurchase Option Agreements entered 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 to  
4 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 Plan means the Debtor's Second Amended Chapter 11 Plan of  
21 Reorganization, including, without limitation, all exhibits, supplements, appendices, and  
22 schedules hereto, either in its present form or as it may be altered, amended, or modified  
23 from time to time.

24 2.1.72 Plan Agent means the Person that is responsible to administer the Plan and  
25 to make Distributions under the Plan, which is expected to be Michael VanderLey of  
26 Force 10, or such other Person selected as may be selected by the Debtor.

27 2.1.73 Plan Proponent means the Debtor, which is the party-in-interest that is  
28 proposing this Plan.

1           2.1.74 Post-Closing Equity means \$10 million of equity capital that must be raised  
2 by the Debtor post-confirmation pursuant to the terms of Exit Financing to be provided by  
3 Crestline.

4           2.1.75 Post-Confirmation Expense(s) means the fees and expenses incurred by the  
5 Debtor and its professionals following the Confirmation Date (including the fees and costs  
6 of Professionals) for the purpose of (i) prosecuting and liquidating the Avoidance Actions;  
7 (ii) objecting to and resolving Disputed Claims and Disputed Liens; (iii) selling or  
8 otherwise liquidating the Assets; (iv) effectuating Distributions under this Plan; and  
9 (v) otherwise consummating this Plan and closing the Debtor's Chapter 11 Case.

10           2.1.76 Priority Claim(s) means any Claim, other than an Administrative Claim or  
11 a Tax Claim, to the extent entitled to priority under Section 507(a) of the Bankruptcy  
12 Code.

13           2.1.77 Pro Rata means the proportionate share of an Allowed Interest held by a  
14 member of Class 7 relative to the total Allowed Interests held by members of Class 7. The  
15 Pro Rata formula is calculated as follows:

$$\begin{array}{c} \textbf{PRO RATA FOR CLASS 7:} \\ \hline \text{Allowed Interest of a member of Class 7} \\ \hline \text{Total Allowed Interests of all members of} \\ \text{Class 7} \end{array}$$

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19           2.1.78 Professional means a Person (a) employed by the Debtor pursuant to a  
20 Final Order in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be  
21 compensated for services rendered prior to the Effective Date, pursuant to Sections 327,  
22 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and  
23 reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b) of  
24 the Bankruptcy Code.

25           2.1.79 Professional Fees means all Allowed Claims for compensation and for  
26 reimbursement of expenses under Sections 328, 330 and/or 503(b) of the Bankruptcy  
27 Code.  
28

1           2.1.80 Property means the First Purchased Property, Second Purchased Property,  
2 and Additional Purchased Property, which collectively constitutes approximately 8,740  
3 acres of real property located in Bastrop, Texas.

4           2.1.81 Reorganized Debtor means the Debtor, as reorganized under the terms of  
5 this Plan on and after the Effective Date, and any successors thereto by merger,  
6 consolidation, acquisition, or otherwise.

7           2.1.82 Rescission Claimants means the Petitioning Creditors and other Persons  
8 who, at the time, were limited partners who filed a Demand for Arbitration with JAMS,  
9 entitled *Dr. Hasso Plattner, et al. v. XS Ranch Fund VI, L.P., et al., JAMS Ref. No.*  
10 *1120012347*, and entered into the Rescission Claimants Settlement. For convenience, a  
11 copy of the list of Rescission Claimants is attached as **Exhibit 5** to the Disclosure  
12 Statement.

13           2.1.83 Rescission Claimants Settlement means that certain Agreement of  
14 Settlement and Mutual General Release, which *inter alia* provided for a stipulation for  
15 entry of arbitration award and the rescission of limited partners' purchase of the limited  
16 partnership interests and restitution for their capital contributions in the collective amount  
17 of \$28,575,001.

18           2.1.84 Schedules means the schedules of assets and liabilities and list of equity  
19 security holders Filed by the Debtor, as required by Section 521 of the Bankruptcy Code,  
20 Bankruptcy Rules 1007(a)(3) and (b)(1), and Official Bankruptcy Form No. 6, as amended  
21 from time to time.

22           2.1.85 Second Purchased Property means that certain 1,922.597 acres of real  
23 property located in Bastrop County, Texas and purchased by the Debtor from Steiner.

24           2.1.86 Secured Claim(s) means any Claim, including interest, fees, costs, and  
25 charges to the extent allowable pursuant to Bankruptcy Code Section 506, that is secured  
26 by a valid and unavoidable lien on the Debtor's Assets.

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



1                   2.1.88 Secured Real Property Tax Claim(s) means claim(s) held by the County  
2 secured by liens on the Property owned by the Debtor.

3                   2.1.89 S&S means S&S Investments, LLC, an Affiliate of Steiner.

4                   2.1.90 Steiner means Steiner & Sons, Ltd.

5                   2.1.91 Steiner 1<sup>st</sup> Claim means the Allowed Claim of Steiner based on Steiner's  
6 rights arising from the Steiner 1<sup>st</sup> Loan as represented by the Proof of Claim filed by  
7 Steiner on 10/17/17 (Claim #71), which is stipulated as accurate and Allowed.

8                   2.1.92 Steiner 1<sup>st</sup> Loan means that certain seller carryback loan made by Steiner in  
9 the amount of \$10,000,000, as part of the purchase price paid by the Debtor to Steiner for  
10 the First Purchased Property, as evidenced by the promissory notes and Deed of Security  
11 Agreement and Financing Statement entered into on December 19, 2006.

12                   2.1.93 Steiner 2<sup>nd</sup> Claim means the Allowed Claim of Steiner based on Steiner's  
13 rights arising from the Steiner 2<sup>nd</sup> Loan as represented by the Proof of Claim Filed by  
14 Steiner on 10/17/17 (Claim #71), which is stipulated as accurate and Allowed.

15                   2.1.94 Steiner 2<sup>nd</sup> Loan means that certain loan made by Steiner in the amount of  
16 \$1,500,000, as evidenced by the promissory notes and Deed of Security Agreement and  
17 Financing Statement entered into on September 6, 2013.

18                   2.1.95 Steiner Loan Documents means the promissory notes dated December 19,  
19 2006 and September 6, 2013, and all security agreements, loan modifications, and all other  
20 loan documents related thereto.

21                   2.1.96 Steiner Maturity Date means the respective maturity date provided for in  
22 each of the respective Steiner Loan Documents, which are as follows:

23

<b>LOAN</b>	<b>MATURITY DATE</b>
Steiner 1 <sup>st</sup> Loan	June 19, 2023
Steiner 2 <sup>nd</sup> Loan	June 19, 2023

24

25                   2.1.97 Steiner New Maturity Date means the first Business Day following the one  
26 year anniversary of the Steiner Maturity Date.  
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1           2.1.98 Subordination Litigation means the Estate's efforts through adversary,  
2 motion, or otherwise, to subordinate, pursuant to Section 510 of the Bankruptcy Code, the  
3 Claim(s) held by the Rescission Claimants.

4           2.1.99 Tax means any tax, charge, fee, levy, impost or other assessment by any  
5 federal, state, local or foreign taxing authority, including, without limitation, income,  
6 excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad  
7 valorem, estimated, severance, stamp, occupation and withholding tax. "Tax" shall  
8 include any interest or additions attributable to, or imposed on or with respect to such  
9 assessments.

10           2.1.100 Tax Claim(s) means any Claim for any Tax to the extent that it is entitled  
11 to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

12           2.1.101 Transferred Property means the 2,430 acres of the Property transferred to  
13 Steiner and S&S pursuant to three Purchase Agreements.

14           2.1.102 Unclaimed Property means any Distribution of Cash that is returned to the  
15 Plan Agent as undeliverable or the Distribution check is not negotiated within 90 days of  
16 mailing.

17           2.1.103 XS Water means XS Water Company, LLC, a Texas limited liability  
18 company and wholly owned subsidiary of the Debtor.

19           **2.2 Rules of Construction.** For purposes of this Plan and the Disclosure Statement,  
20 unless otherwise provided herein or in the Disclosure Statement, (a) whenever from the context it  
21 is appropriate, each term, whether stated in the singular or the plural, will include both the  
22 singular and the plural; (b) each pronoun stated in the masculine, feminine or neuter includes the  
23 masculine, feminine and neuter; (c) any reference in this Plan or the Disclosure Statement to an  
24 existing document or schedule Filed or to be Filed means such document or schedule, as it may  
25 have been or may be amended, modified or supplemented; (d) any reference to an entity as a  
26 Holder of a Claim or Interest includes that entity's successors and assigns; (e) except as otherwise  
27 indicated herein all references in this Plan or the Disclosure Statement to Sections and Articles are  
28 references to Sections and Articles of or to this Plan; (f) the words "therein," "thereunder" and

1 “thereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; and  
2 (g) unless otherwise provided in this Plan or the Disclosure Statement, any reference in this Plan  
3 or the Disclosure Statement to a contract, instrument, release, indenture, agreement, or other  
4 document being in a particular form or on particular terms and conditions means that such  
5 document shall be substantially and materially in such form or substantially and materially on  
6 such terms and conditions; and (h) the rules of construction set forth in Section 102 of the  
7 Bankruptcy Code shall apply to the extent such rules are not inconsistent with the express terms  
8 of this Plan or the Disclosure Statement or any other provision in this Section.

### 9 III.

#### 10 **TREATMENT OF UNCLASSIFIED CLAIMS**

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

17 **3.1 Treatment of Allowed Administrative Claims.** The Bankruptcy Code requires  
18 that all Allowed Administrative Claims be paid on the Effective Date of this Plan, unless a  
19 particular Holder agrees to a different treatment. The treatment of Allowed Administrative  
20 Claims is as described below. However, such Administrative Claims are continuing to be  
21 incurred. The Debtor shall be liable for the payment of the Allowed Administrative Claims, and  
22 the Allowed Administrative Claims shall be paid from any of the Distribution Account(s) in  
23 which funds exist.

24 (a) **Payment of Allowed Administrative Claims.** Except to the extent that the  
25 Holder of an Allowed Administrative Claim agrees to a different treatment and subject to  
26 the Administrative Claims Bar Date set forth herein, the Plan Agent shall pay each  
27 Allowed Administrative Claim in full, in Cash, on the later of (i) the Effective Date,  
28 (ii) within ten (10) Business Days after the date such Administrative Claim becomes an

1 Allowed Administrative Claim, or (iii) the date such Allowed Administrative Claim  
2 becomes due according to its terms. Notwithstanding the foregoing, any Allowed  
3 Administrative Claim representing obligations incurred in the ordinary course of post-  
4 petition business by the Debtor (including without limitation post-petition trade  
5 obligations) shall be paid in full or performed by the Debtor in the ordinary course of  
6 business, in accordance with the terms of the particular obligation.

7 (b) Administrative Claims Bar Date.

8 (i) General Administrative Claims Bar Date. All applications for final  
9 compensation of Professionals for services rendered and for reimbursement of  
10 expenses incurred on or before the Effective Date and all other requests for  
11 payment of Administrative Claims incurred before the Effective Date under  
12 Sections 507(a)(2) or 507(b) of the Bankruptcy Code (except only for (i) post-  
13 petition, ordinary course trade obligations incurred in the ordinary course of the  
14 Debtor's post-petition business, for which no bar date shall apply, and (ii) post-  
15 petition tax obligations, for which the bar date described in the following Section  
16 shall apply) shall be Filed with the Bankruptcy Court and served upon the Debtor  
17 no later than the General Administrative Claims Bar Date, unless such date is  
18 extended by the Bankruptcy Court after notice to the Debtor. Any such request for  
19 payment of an Administrative Claim that is subject to the General Administrative  
20 Claims Bar Date and that is not Filed and served on or before the General  
21 Administrative Claims Bar Date shall be forever barred; any party that seeks  
22 payment of Administrative Claims that (i) is required to file a request for payment  
23 of such Administrative Claims and (ii) does not file such a request by the deadline  
24 established herein shall be forever barred from asserting such Administrative  
25 Claims against the Debtor, its estate, or any of its property.

26 (ii) Administrative Tax Claims Bar Date. Except with respect to the  
27 County, all requests for payment of Administrative Claims by a governmental unit  
28 for Taxes (and for interest and/or penalties related to such Taxes) for any tax year

1 or period, all or any portion of which occurs or falls within the period from and  
2 including the Petition Date through and including the Effective Date (“Tax  
3 Administrative Claims”) and for which no bar date has otherwise previously been  
4 established, must be filed and served on the Debtor on or before the later of (i)  
5 sixty (60) days following the Effective Date; and (ii) 180 days following the filing  
6 of the tax return for such taxes for such tax year or period with the applicable  
7 governmental unit. Any Holder of any Tax Administrative Claims that is required  
8 to file a request for payment of such taxes and does not file and properly serve  
9 such a request by the applicable bar date shall be forever barred from asserting any  
10 such Tax Administrative Claims against the Debtor.

11 **3.2 Treatment of Tax Claims.** Tax Claims are certain unsecured income,  
12 employment and other taxes described by Code Section 507(a)(8). The Code requires that each  
13 holder of such a Section 507(a)(8) priority tax claim receive the present value of such Claim in  
14 deferred cash payments, over a period not exceeding five (5) years from the Petition Date and that  
15 such treatment not be less favorable than the treatment accorded to nonpriority unsecured  
16 creditors.

17 At the election of the Debtor, the Holder of each Allowed Tax Claim shall be entitled to  
18 receive, on account of such Claim, (i) equal cash payments on the last Business Day of each  
19 three-month period following the Effective Date, during a period not to exceed five (5) years after  
20 the Petition Date, totaling the principal amount of such Claim plus simple interest on any unpaid  
21 balance from the Effective Date, calculated at the interest rate available on ninety (90) day United  
22 States Treasuries on the Effective Date, (ii) such other treatment agreed to by the Holder of the  
23 Allowed Tax Claim and the Debtor, provided such treatment is on more favorable terms to the  
24 Debtor than the treatment set forth in clause (i) hereof, or (iii) payment of the full Allowed Tax  
25 Claim in Cash on the Effective Date.

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1 IV.

2 **CLASSIFICATION OF CLAIMS AND INTERESTS**

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

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

14 **CLASSIFICATION OF CLAIMS AND INTERESTS**

15 <b>Class</b>	<b>Claimant</b>	<b>Collateral</b>	<b>Estimated Claim/Interest</b>	<b>Impaired Status</b>
16 1	Governmental Units	n/a	\$0	Unimpaired
17 2.1	Steiner	First Purchased Property	10,656,000	Impaired
18 2.2	Steiner	First Purchased Property	1,600,000	Impaired
19 3	Mechanics Lien Creditors	Property	764,289	Impaired
20 4	Priority Unsecured Creditors	n/a	0	Unimpaired
21 5	General Unsecured Creditors	n/a	5,657,000 <sup>2</sup>	Impaired
22 6	Subordinated Rescission Claimants	Property	28,575,001	Impaired
23 7	Equity Interest Holders	n/a	25,700,000	Unimpaired

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28 <sup>2</sup> 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.

V.

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

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

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

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

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

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

5.2.1 Lien. Steiner shall retain its first priority lien against the First Purchased Property (subject only to ad valorem tax liens accruing on or after the Effective Date) to secure the amounts owing under the Steiner 1<sup>st</sup> Loan and the Steiner 2<sup>nd</sup> Loan. Debtor agrees and stipulates that the Allowed Steiner 1<sup>st</sup> Loan Claim and the Allowed Steiner 2<sup>nd</sup> Loan Claim are in the amounts described on **Exhibit 4** attached hereto and incorporated herein. Post-Petition amounts owed to Steiner and detailed on **Exhibit 4** shall be paid to

1 Steiner on or before the Effective Date. Post-Petition attorneys' fees and expenses  
2 incurred by Steiner shall be provided to Debtor prior to the Effective Date and shall be  
3 paid on the Effective Date;

4 5.2.2 Steiner Loan Documents. Except as modified by this paragraph, the  
5 Steiner Loan Documents, including but not limited to all deeds of trust, security  
6 agreements, notes, loan agreements and related documents, shall remain in full force and  
7 effect and unmodified, and Steiner shall retain all of its rights under the Steiner Loan  
8 Documents. The sole modification to the Steiner Loan Documents shall be that the  
9 maturity date of the Steiner 1<sup>st</sup> Claim note and the Steiner 2<sup>nd</sup> Claim note shall be extended  
10 until June 19, 2023. No other provisions of the Steiner Loan Documents shall be modified  
11 in any manner.

12 5.2.3 Default. In the event of default under the Steiner Loan Documents, Steiner  
13 shall not be required to provide a Default Notice, or any notice of default or opportunity to  
14 cure that is not included in the Steiner Loan Documents, and the Grace Period shall not be  
15 applicable to Steiner under the Plan. In the event that there is a post confirmation default  
16 under the Steiner Loan Documents, Steiner may pursue all rights and remedies against the  
17 Property and under the Steiner Loan Documents pursuant to applicable Texas law.

18 5.2.4 Allowance and Payment. In addition to the foregoing, Steiner's Claims  
19 shall be treated as fully secured Allowed Claims in the Allowed Amounts, and shall be  
20 paid as set forth below:

21 <b>Class</b>	22 <b>Claim</b>	23 <b>Estimated Allowed Claim<sup>3</sup></b>	24 <b>Payments</b>
25 2.1	26 Steiner 1 <sup>st</sup> Claim	27 10,656,000	28 The Debtor shall cure all arrearages due and owing to Steiner on account of the Steiner 1 <sup>st</sup> Claim as of the Effective Date, as reflected on Exhibit 4. The Debtor will make quarterly payments to Steiner on account of the Steiner 1 <sup>st</sup> Claim, each in the amount \$225,000, commencing on the first (1 <sup>st</sup> ) Business Day of the third (3 <sup>rd</sup> ) full month following the Effective Date, and payments due to be paid every three months thereafter until the Steiner New Maturity Date. The Debtor shall pay the principal balance, which is currently \$10,000,000, on the Steiner New Maturity Date for the Steiner 1 <sup>st</sup> Loan.

<sup>3</sup> Estimated as of the Petition Date.



1 2 3 4 5	2.2 Steiner 2 <sup>nd</sup> Claim	1,600,000	The Debtor shall cure all arrearages due and owing to Steiner on account of the Steiner 2 <sup>nd</sup> Claim as of the Effective Date, as reflected on Exhibit 4. The Debtor will make quarterly payments to Steiner on account of the Steiner 2 <sup>nd</sup> Claim, each in the amount \$33,750, commencing on the first (1 <sup>st</sup> ) Business Day of the third (3 <sup>rd</sup> ) full month following the Effective Date, and payments due to be paid every three months thereafter until the Steiner New Maturity Date. The Debtor shall pay the principal balance, which is currently \$1,500,000, on the Steiner New Maturity Date for the Steiner 2 <sup>nd</sup> Loan.
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5.2.5 Claims Release. All claims against Steiner, S&S, and their officers, directors, members, partners, limited partners, employees, attorneys, agents and affiliates, of any kind and character, including but limited to claims related to the Option Agreements, the exercise of the Option Agreements and under Chapter 5 of the Bankruptcy Code and any state fraudulent transfer law, are fully and completely released.

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

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5.3.1 Allowance of Secured Claim. The member of Class 3 shall be allowed a Secured Claim to the extent of the value of such Creditor's Claim and interest in the Estate's interest in such property, which shall be based on Fair Market Value of the property (or such other value as agreed to between the Debtor and any member of Class 3), securing such Creditor's Claim in Class 3. Based on the value of the Collateral and the Debtor's awareness of members of this Class, the Debtor believes there is only one member of this Class (Longaro & Clarke, L.P.), who shall have an Allowed Secured Claim in the amount of \$764,289, plus applicable interest, and costs, if appropriate.

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5.3.2 Payment of Allowed Secured Claim. The member of Class 3 shall be paid in full, or \$764,289, within thirty days of the Effective Date.

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5.4 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 satisfaction of the Allowed Claim of the members of this Class, one lump sum payment within

1 thirty days of the Effective Date, equal to the Holder's Allowed Claim, plus interest accruing after  
2 the Petition Date at the federal judgment rate as of the Petition Date<sup>4</sup>.

3 **5.5 Class 5: Allowed General Unsecured Claims**

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

11 **5.6 Class 6: Allowed Subordinated Rescission Claims.** Class consists of any  
12 Allowed Claim of the Rescission Claimants. Class 6 is impaired and deemed to reject the Plan  
13 because members of this Class will receive no Distribution in this Case.

14 Based on the Bankruptcy Court's order subordinating the Rescission Claimants' Claims  
15 below equity pursuant to Section 510(b) of the Bankruptcy Code, the Holders of Allowed Claims  
16 in Class 6 will receive no Distributions in this Case and their Liens will be void. Consistent with  
17 the Bankruptcy Court's ruling on subordination, the value of the Rescission Claimants' interests  
18 in the Debtor's assets is \$0 for purposes of Section 506(a)(1) of the Bankruptcy Code, and thus,  
19 such Liens are void by operation of law pursuant to Section 506(d) of the Bankruptcy Code. The  
20 Rescission Claimants assert that, notwithstanding the Bankruptcy Court's ruling that the  
21 rescission claims shall be subordinated below equity, they are entitled to a distribution. The  
22 Debtor disputes the Rescission Claimants' assertion. The Rescission Claimants may appeal this  
23 issue. If the Rescission Claimants were ultimately successful on the appeal(s), the effect of such  
24 ruling is uncertain and speculative.

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26 <sup>4</sup> Under 28 U.S.C. § 1961, the federal judgment rate is the rate equal to the weekly average 1-year constant maturity  
27 Treasury yield, as published by the Board of Governors of the Federal Reserve System. Since the petition was filed  
28 on December 23, 2016, the applicable rate is 0.85%, which is the last published rate on December 30, 2016. See,  
<https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yieldYear&year=2016>.

<sup>5</sup> See footnote 4.



1 accelerate the Claim upon certain kinds of defaults. In this case, the Debtor believes that Classes  
2 2.1, 2.2, 3, 5 and 6 are impaired.

3 **6.6 Who Is Not Entitled to Vote.** The following four types of Claims are not entitled  
4 to vote: (1) Claims that have been disallowed; (2) Claims in unimpaired Classes; (3) Claims  
5 entitled to priority pursuant to Bankruptcy Code Sections 507(a)(2), (a)(3) and (a)(8) and (4)  
6 Claims in Classes that do not receive or retain any value under this Plan. Claims in unimpaired  
7 Classes are not entitled to vote because such Classes are deemed to have accepted this Plan.  
8 Claims entitled to priority pursuant to Bankruptcy Code Section 507(a)(2), (a)(3) and (a)(8) are  
9 not entitled to vote because such Claims are not placed in Classes and they are required to receive  
10 certain treatment specified by the Bankruptcy Code. Claims in Classes that do not receive or  
11 retain any property under this Plan do not vote because such Classes are deemed to have rejected  
12 this Plan. Accordingly, The Debtor believes that only Classes 2.1, 2.2, 3 and 5 are entitled to  
13 vote.

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

16 **6.7 Who Can Vote in More than One Class.** A creditor whose Claim has been  
17 Allowed in part as a Secured Claim and in part as an Unsecured Claim is entitled to accept or  
18 reject a Plan in both capacities by casting one ballot for the secured part of the Claim and another  
19 ballot for the Unsecured Claim. Also, a Creditor may otherwise hold Claims in more than one  
20 Class and may vote the Claims held in each Class.

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

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1	Credit Facility	\$30,000,000
2	Commitment	(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.
3	Expiration	
4	Initial Funding Date	
5	Maturity Date	3 years after the Initial Funding Date
6	Interest Rate	Current/Cash Pay rate: 7% fixed rate per annum, payable quarterly
7		Deferred Rate: 7% fixed per annum, simple interest, due and payable on the Maturity Date
8		Default Rate: 4% in addition to the Current Pay Rate plus the Deferred Rate payable on demand
9	Warrants	Crestline shall be granted warrants equal to 20% of the number of shares of stock at closing on a fully diluted basis
10	Facility Fee	2% of the total facility amount
11	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
12	Liens	(i) First lien on all tangible and intangible assets of the Debtor and (ii) first lien on all tangible and intangible assets and equity interests of the Guarantors; (iii) second lien on 4,372 acres of land securing the Steiner 1 <sup>st</sup> Claim and Steiner 2 <sup>nd</sup> Claim.
13	Conditions	(i) Bankruptcy Court shall have entered the Confirmation Order; (ii) the principal balance owing on the Steiner 1 <sup>st</sup> Claim and Steiner 2 <sup>nd</sup> Claim shall not become due until after the maturity date of the Exit Financing; (iii) Debtor's delivery of a detailed budget of planned expenditures and sequence of work to be performed acceptable to Crestline; (iv) Delivery to Crestline of an updated Phase I environmental report; and (v) other satisfactory due diligence.
14	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.
15		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.
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1           **7.3     Management of the Debtor and Retention of Professionals After Effective**

2 **Date.** After the Effective Date, it is anticipated that the Debtor's business affairs will be managed  
3 by a committee consisting of the Debtor's current general partner, the Plan Agent, and such other  
4 persons that may be appointed by the Debtor, the Plan Agent, and/or sources of additional exit  
5 financing provided post-confirmation. The Plan Agent or the Debtor shall be entitled to retain,  
6 employ and compensate Professionals, in order to assist with the Debtor's obligations and rights  
7 under the terms of the Plan. The Plan Agent or the Debtor may also employ or contract with  
8 other persons or entities to perform the obligations created under the Plan. Any Professional  
9 employed by the Plan Agent or the Debtor after the Effective Date, shall be entitled to obtain  
10 from the Debtor payment of the Professional's fees and costs, in the ordinary course, without any  
11 need to give notice to Creditors or other parties-in-interest or to obtain any approval of the  
12 Bankruptcy Court. Notwithstanding the foregoing, if the Debtor or the Plan Agent should fail to  
13 pay any post-Effective Date fees and costs of a Professional entitled to such payment, within  
14 thirty (30) days after the Professional's rendering of its billing statement, the Professional shall be  
15 entitled to seek, by application filed in accordance with the Bankruptcy Rules, an order of the  
16 Bankruptcy Court requiring the Debtor or the Plan Agent to forthwith pay to the Professional its  
17 fees and costs.

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

27           **7.5     Representative of the Estate.** Except as provided expressly to the contrary herein,  
28 the Plan Agent shall be, and hereby is, appointed as the representative of the Estate pursuant to

1 sections 1123(a)(5), 1123(a)(7) and 1123(b)(3)(B) of the Bankruptcy Code and, as such, shall be  
2 vested with the authority and power, subject to the provisions of the Plan, to take, among others,  
3 the following acts on behalf of the Debtor: (a) manage, administer and dispose of the Assets for  
4 the benefit of holders of Allowed Claims; (b) file, litigate, prosecute, settle, adjust, retain, enforce,  
5 collect and abandon any Causes of Action in the name of, and for the benefit of, the Estate; (c)  
6 make all Distributions provided for by the Plan; and (d) such other acts as may be appropriate to  
7 administer, wind-down, and close the Case. Except as provided expressly to the contrary by the  
8 Plan, as the representative of the Estate, the Plan Agent shall succeed to all of the rights and  
9 powers of the Debtor and the Estate with respect to all Causes of Action, and shall be substituted  
10 for, and shall replace, the Debtor and the Estate as the party-in-interest in all such litigation  
11 pending as of the Effective Date.

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

20       **7.7    Collection of Avoidance Actions Recoveries.** All Avoidance Actions Recoveries  
21 realized or obtained by the Debtor or the Plan Agent shall be promptly deposited into the  
22 applicable Distribution Account(s). Except as otherwise provided in the Plan and the  
23 Confirmation Order, the Avoidance Actions Recoveries shall be free and clear of all claims and  
24 liens and shall only be expended in accordance with the provisions of the Plan.

25   **VIII.**

26    **DISTRIBUTIONS**

27       **8.1    Plan Agent.** The Plan Agent may employ one or more sub-agents on such terms  
28 and conditions as it may agree in its discretion and pay such sub-agent as a Post-Confirmation



1 Expense from the Distribution Accounts. The Plan Agent shall not be required to provide any  
2 bond in connection with the making of any Distributions pursuant to this Plan.

3 **8.2 Distributions**

4 (a) Dates of Distributions. Any distribution required to be made on the  
5 Effective Date shall be deemed timely if made as soon as practicable after such date and,  
6 in any event, within thirty (30) days after such date. Any distribution required to be made  
7 upon a Disputed Claim becoming an Allowed Claim and no longer being a Disputed  
8 Claim shall be deemed timely if made as soon as practicable thereafter.

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

17 **8.3 Old Instruments and Securities**

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

24 (b) Cancellation of Liens. Except as may otherwise be provided in this Plan,  
25 any lien securing any Secured Claim shall be deemed released and discharged, and the  
26 Person holding such Secured Claim shall be authorized and directed to release any  
27 collateral or other property of the Debtor (including, without limitation, any cash  
28 collateral) held by such Person and to take such actions as may be requested by the Debtor

1 to evidence the release of such lien, including, without limitation, the execution, delivery  
2 and Filing or recording of such releases as may be requested by the Debtor.

3 **8.4 De Minimis Distributions and Fractional Shares.** No Cash payment of less than  
4 fifty dollars (\$50.00) shall be made to any Holder of Claims unless a request therefore is made in  
5 writing to the Plan Agent. Whenever payment of a fraction of a cent would otherwise be called  
6 for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.  
7 Any Cash or other property that is not distributed as a consequence of this Section shall, after the  
8 last distribution on account of Allowed Claims in the applicable Class, be treated as Unclaimed  
9 Property under this Plan.

10 **8.5 Delivery of Distributions.** Except as provided in this Plan with respect to  
11 Unclaimed Property, distributions to Holders of Allowed Claims and Allowed Administrative  
12 Claims shall be distributed by mail as follows: (1) with respect to each Holder of an Allowed  
13 Claim that has filed a Proof of Claim, at the address for such Holder as maintained by the official  
14 claims agent for the Debtor; (2) with respect to each Holder of an Allowed Claim that has not  
15 filed a Proof of Claim, at the address reflected on the Schedules filed by the Debtor, provided,  
16 however, that if the Plan Agent has received a written notice of a change of address for such  
17 Holder, the address set forth in such notice shall be used; or (3) with respect to each Holder of an  
18 Allowed Administrative Claim, at such address as the Holder may specify in writing.

19 **8.6 Undeliverable Distributions.** No further distribution of Unclaimed Property shall  
20 be made to a Holder of any Allowed Claim unless and until the Plan Agent is notified in writing  
21 of such Holder's then current address. Subject to the remainder of this Section and the following  
22 Section, Unclaimed Property shall remain in the possession of the Plan Agent pursuant to this  
23 Section, and shall be set aside and (in the case of Cash) held in a segregated interest bearing  
24 account (as to Cash Unclaimed Property) to be maintained by the Plan Agent until such time as  
25 the subject Distribution becomes deliverable. Nothing contained in this Plan shall require the  
26 Plan Agent or any other Person to attempt to locate such Person.

27 **8.7 Disposition of Unclaimed Property.** If the Person entitled thereto notifies the  
28 Plan Agent of such Person's Claim to a Distribution of Unclaimed Property within ninety (90)

1 days following such Person's initial Distribution Date, the Unclaimed Property distributable to  
2 such Person, together with any interest or dividends earned thereon, shall be paid or distributed to  
3 such Person as soon as practicable. Any Holder of an Allowed Claim that does not assert a Claim  
4 in writing for Unclaimed Property held by the Plan Agent within ninety (90) days after the  
5 Holder's initial Distribution Date shall no longer have any Claim to or Interest in such Unclaimed  
6 Property, and shall be forever barred from receiving any distributions under this Plan or otherwise  
7 from the Plan Agent. In such cases, any property held for Distribution on account of such Claims  
8 shall become Available Cash and deposited into the Distribution Account.

9 **IX.**

10 **OBJECTIONS TO CLAIMS AND DISPUTED CLAIMS**

11 **9.1 Standing for Objections to Claims.** The Debtor or the Plan Agent shall have the  
12 sole and exclusive right to file, prosecute and resolve objections to Claims. Any objection to a  
13 Claim shall be Filed with the Bankruptcy Court and served on the Person holding such Claim, or  
14 counsel to such person.

15 **9.2 Treatment of Disputed Claims and Disputed Liens.**

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

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

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1 X.

2 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

3 **10.1 Executory Contracts Being Assumed.** Effective as of, and conditioned on, the  
4 occurrence of the Effective Date, the Debtor hereby assumes all of the executory contracts and  
5 unexpired leases of the Debtor, as set forth on **Exhibit 1**.

6 The Debtors may amend **Exhibit 1** to add thereto any executory contract or unexpired  
7 leases, or to remove therefrom any executory contract or lease, up to and including the  
8 Confirmation Hearing Date. If, however, any amendments are made to **Exhibit 1** less than  
9 twenty-four (24) days before the Confirmation Hearing Date, the affected contract or lease parties  
10 shall have fifteen (15) days from the date of service of notice of such amendments within which  
11 to serve on the Debtor a written objection to the same. Upon receipt of any such objection, the  
12 Debtor shall promptly set a hearing on the same, and the assumption or rejection of the affected  
13 contract or lease shall be delayed until the Bankruptcy Court makes a determination on this issue  
14 (such determination may be made after the Confirmation Hearing Date, without delaying the  
15 confirmation of this Plan). To the extent that an executory contract or unexpired lease has been  
16 assumed prior to the Effective Date by the Debtor pursuant to an order of the Bankruptcy Court,  
17 such assumption shall not be affected by this Plan. The assumption of any contract or lease  
18 pursuant to the provisions of this Section 10.1 shall be only to the extent that such assumed  
19 contract or lease constitutes an executory contract or unexpired lease within the meaning of  
20 Section 365 of the Bankruptcy Code. Inclusion of an agreement in **Exhibit 1** does not constitute  
21 an admission by the Debtor or the Reorganized Debtor that (i) such agreement is an executory  
22 contract or unexpired lease within the meaning of Section 365 of the Bankruptcy Code, (ii) the  
23 Debtor must assume such agreement in order to continue to receive or retain rights, benefits, or  
24 performance thereunder or that any Claim under such agreement must be paid or default cured, or  
25 (iii) such agreement is a valid contract or lease. Any contract or lease assumed pursuant to this  
26 Plan shall be assumed as previously amended or otherwise modified by the parties thereto,  
27 whether before or after the Petition Date.  
28

1           **10.2    Cure Claims.** Any objection to the amount of any Cure Claim set forth on  
2 **Exhibit 1** shall be filed and served upon counsel for the Debtor on or before the fourteenth  
3 (14<sup>th</sup>) day prior to the Confirmation Hearing Date. In the event that any such objection to the  
4 amount stated for a Cure Claim in **Exhibit 1** is not filed and served as set forth herein, the amount  
5 of the Creditor's Cure Claim shall be deemed forever to be the amount set forth in **Exhibit 1**, and  
6 any Cure Claim in excess of the amount set forth in **Exhibit 1** shall be waived and shall be  
7 forever barred in the Case, without further notice. If the Debtor cannot resolve any such  
8 objections with the Creditor, the Debtor may either (i) elect to reject the executory contract or  
9 unexpired lease at the Plan confirmation hearing, or (ii) have the Bankruptcy Court determine the  
10 merits of the objection on or after the Confirmation Hearing Date (without delaying the  
11 confirmation of this Plan). Any amount of Cure Claim payable upon the assumption of an  
12 executory contract or unexpired lease shall be due and payable on or before the fifteenth  
13 (15<sup>th</sup>) day after the entry of a Final Order fixing the amount of the Cure Claim and then only in  
14 the amount fixed by such Final Order.

15           **10.3    Payment of Cure Claims.** The Debtor shall be liable and responsible for the  
16 payment of all Allowed Cure Claims pursuant to Section 365(b) of the Bankruptcy Code as set  
17 forth on **Exhibit 1** if an executory contract is assumed pursuant to this Plan.

18           **10.4    Executory Contracts Being Rejected.** The Debtor is not aware of any remaining  
19 executory contracts and unexpired leases that have not already been assumed, rejected or  
20 otherwise identified on **Exhibit 1**. If the Debtor becomes aware of any executory contracts or  
21 unexpired leases not yet assumed or rejected or on **Exhibit 1**, the Debtor reserves the right to file  
22 an amendment to **Exhibit 2** to identify any such contracts for clarification. If any amendment to  
23 **Exhibit 2** is filed later than twenty-four (24) days before the Confirmation Hearing Date, the  
24 affected contract or lease parties shall have fifteen (15) days from the date of service of notice of  
25 such amendments within which to serve on the Debtor a written objection to the same. Upon  
26 receipt of any such objection, the Debtor shall promptly set a hearing on the same, and the  
27 rejection of the affected contract or lease shall be delayed until the Bankruptcy Court makes a  
28 determination on this issue (such determination may be made after the Confirmation Hearing

1 Date, without delaying the confirmation of this Plan). To the extent that an executory contract or  
2 unexpired lease has been rejected by the Debtor prior to the Confirmation Hearing Date pursuant  
3 to an order of the Bankruptcy Court, such rejection shall not be affected by this Plan.

4 **10.5 Retention of Property Rights by Reorganized Debtor.** To the extent that an  
5 agreement that provides the Debtor with property rights does not constitute an executory contract  
6 or unexpired lease, or the Debtor has obtained property rights under the executed portion of an  
7 executory contract or unexpired lease, rejection of such agreement shall not constitute an  
8 abandonment by the Debtor of any such property rights.

9 **10.6 Bar Date for Rejection Damages.** Any Claim arising out of the rejection of an  
10 executory contract or unexpired lease shall be forever barred and shall not be enforceable against  
11 the Debtor, its Affiliates, its successors, or the Property, and shall not be entitled to any  
12 Distribution under this Plan, unless a Proof of Claim for such Claim is filed and served on the  
13 Debtor within thirty (30) days after service of a notice of the rejection of any contract or lease.

## 14 XI.

### 15 LIMITATION OF LIABILITY

16 **11.1 No Liability for Solicitation or Participation.** As specified in Section 1125(e) of  
17 the Bankruptcy Code, entities that solicit acceptances or rejections of this Plan and/or that  
18 participate in the offer, issuance, sale, or purchase of securities offered or sold under this 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 this Plan or the offer,  
22 issuance, sale, or purchase of securities.

23 **11.2 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, nor the Debtor, nor their respective  
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 this Plan, the Disclosure Statement, the

1 consummation of this Plan, the administration of this Plan, the Case or the property to be  
2 distributed under this 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 this 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 respective Affiliates, and each of their respective  
6 officers, directors, employees and other agents, advisors, attorneys and accountants shall be  
7 entitled to rely, in every respect, upon the advice of counsel with respect to their duties and  
8 responsibilities under or with respect to this Plan.

9 **XII.**

10 **CONDITIONS TO EFFECTIVENESS OF THIS PLAN**

11 **12.1 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 12.1.1 The Confirmation Order shall be entered by the Bankruptcy Court  
14 and be in form and substance reasonably satisfactory to the Debtor;

15 12.1.2 All agreements, instruments and other acts contemplated by, or to  
16 be entered into, or completed pursuant to, or in order to facilitate the  
17 implementation of, this Plan, as determined by the Debtor, including, without  
18 limitation, any and all debtor and/or equity financing agreements, purchase  
19 agreements, and related closing documents shall have been duly and validly  
20 executed and delivered by the parties thereto and completed, and all conditions to  
21 their effectiveness shall have been satisfied or waived, except only for the entry of  
22 the Confirmation Order, and all funding necessary to pay the Creditors pursuant to  
23 the terms of the Plan shall have been effected.

24 **12.2 Waiver of Conditions.**

25 The conditions set forth in Section 12.1 hereof may be waived by the Debtor without  
26 notice, leave or order of the Bankruptcy Court, and without any formal action other than  
27 proceeding to obtain the Confirmation Order .  
28

1 **XIII.**

2 **RETENTION OF JURISDICTION**

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

6 **XIV.**

7 **MODIFICATION OR WITHDRAWAL OF PLAN**

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

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

18 **XV.**

19 **EFFECT OF CONFIRMATION OF THIS PLAN**

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



1 of the kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not:  
2 (a) a proof of claim based on such debt is Filed or deemed Filed pursuant to Section 501 of the  
3 Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to Section 502 of the  
4 Bankruptcy Code or (c) the holder of a Claim based on such debt has accepted the Plan; and  
5 (ii) all Persons shall be precluded from asserting against the Debtor, its successors, or their assets  
6 or properties any other or further Claims based upon any act or omission, transaction, or other  
7 activity of any kind or nature that occurred prior to the Confirmation Date. Except as otherwise  
8 provided in the Plan or the Confirmation Order, the Confirmation Order shall act as a discharge of  
9 any and all Claims against and all debts and liabilities of the Debtor, as provided in Sections 524  
10 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment against the Debtor  
11 at any time obtained to the extent that it relates to a Claim discharged.

12 **15.2 Injunction.** Except as otherwise provided in this Plan or the Confirmation Order,  
13 on and after the Effective Date, all Persons who have held, currently hold or may hold a Claim or  
14 Interest discharged pursuant to the terms of this Plan (including, but not limited to, states and  
15 other governmental units, and any state official, employee, or other entity acting in an individual  
16 or official capacity on behalf of any state or other governmental units) are permanently enjoined  
17 from taking any of the following actions on account of any such discharged Claim or Interest:  
18 (1) commencing or continuing in any manner any action or other proceeding against the Debtor,  
19 its successors, or their respective property; (2) enforcing, attaching, collecting or recovering in  
20 any manner any judgment, award, decree or order against the Debtor, its successors, or their  
21 respective property; (3) creating, perfecting or enforcing any lien or encumbrance against the  
22 Debtor, its successors, or their respective property; (4) asserting any setoff, right of subrogation or  
23 recoupment of any kind against any obligation due to any of the Debtor, its successors or their  
24 respective property; and (5) commencing or continuing any action, in any manner, in any place  
25 that does not comply with or is inconsistent with the provisions of this Plan or the Confirmation  
26 Order. Any Person injured by any willful violation of such injunction shall recover actual  
27 damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover  
28 punitive damages, from the willful violator.

1 XVI.

2 MISCELLANEOUS

3 **16.1 Payment of Statutory Fees.** All quarterly fees due and payable to the Office of  
4 the United States Trustee pursuant to Section 1930(a)(6) of title 28 of the United States Code  
5 shall be paid in full on or before the Effective Date, or, to the extent such quarterly fees are  
6 disputed, an adequate reserve shall have been established and set aside for payment in full thereof,  
7 as required by Section 1129(a)(12) of the Bankruptcy Code. The Debtor shall remain responsible  
8 for timely payment of quarterly fees due and payable after the Effective Date and until the  
9 Debtor's Case is closed, to the extent required by Section 1930 of title 28 of the United States  
10 Code.

11 **16.2 Payment Dates.** Whenever any payment or distribution to be made under this Plan  
12 shall be due on a day other than a Business Day, such payment or distribution shall instead be  
13 made, without interest, on the immediately following Business Day.

14 **16.3 Headings.** The headings used in the Disclosure Statement and in this Plan are  
15 inserted for convenience only and neither constitutes a portion of the Disclosure Statement or this  
16 Plan nor in any manner affect the construction of the provisions of the Disclosure Statement or  
17 this Plan.

18 **16.4 Other Documents and Actions.** The Debtor may execute such other documents  
19 and take such other actions as may be necessary or appropriate to effectuate the transactions  
20 contemplated under this Plan.

21 **16.5 Notices.** All notices and requests in connection with the Disclosure Statement and  
22 this Plan shall be in writing and shall be hand delivered or sent by mail, facsimile or email  
23 addressed to:

24 Garrick A. Hollander  
25 Winthrop Couchot Golubow Hollander, LLP  
26 660 Newport Center Drive, Suite 400  
27 Newport Beach, CA 92660  
28 Facsimile: (949) 720-4151  
Email: ghollander@wcvhlaw.com

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

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

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

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

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

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

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

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

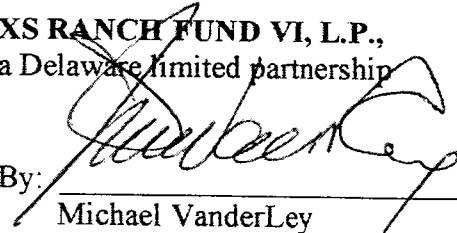
15           **16.13 Post-Confirmation Status Report.** Within 180 days following the entry of the  
16 Confirmation Order, the Debtor shall file a status report with the Bankruptcy Court explaining  
17 what progress has been made toward consummation of the confirmed Plan. The status report  
18 shall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

21           **16.14 Post-Confirmation Conversion/Dismissal.** A creditor or party in interest may  
22 bring a motion to convert or dismiss the case under Section 1112(b) of the Bankruptcy Code,  
23 after this Plan is confirmed, if there is a default in performing this Plan. The Debtor reserves  
24 the right to object to any motion for conversion or dismissal. If the Bankruptcy Court orders the  
25 Case converted to Chapter 7 after this Plan is confirmed, then all property that had been  
26 property of the Chapter 11 Estate, and that has not been disbursed pursuant to this Plan, will  
27 revert in the Chapter 7 estate.  
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**16.15 Final Decree.** Once the Estate has been fully administered, as referred to in Bankruptcy Rule 3022, the Debtor, or other parties as the Bankruptcy Court shall designate in the Confirmation Order, shall file a motion with the Bankruptcy Court to obtain a final decree to close the Debtor's Case.

Date: February 5, 2018

**XS RANCH FUND VI, L.P.,**  
a Delaware limited partnership  
  
By: \_\_\_\_\_  
Michael VanderLey  
Its: Chief Restructuring Officer

**SUBMITTED BY:**  
**WINTHROP COUCHOT**  
**GOLUBOW HOLLANDER, LLP**  
By: /s/ Garrick A. Hollander  
Garrick A. Hollander  
General Insolvency Counsel for XS Ranch  
Fund VI, L.P., debtor and debtor-in-possession

# Exhibit 1

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**EXHIBIT 1**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES BEING ASSUMED<sup>6</sup>**

<b>Non-Debtor Contracting Party</b>	<b>Nature of Contract</b>	<b>Cure Claim</b>
City of Bastrop	Development Agreement	\$0.00
Clayton Williams Ranch Company	Grazing Lease	\$0.00
Dream Finders Home, LLC	Homebuilder Contract	\$0.00
Steiner Ranches, LLC	Grazing Lease	\$0.00
WCHB Holdco, LLC	Homebuilder Contract	\$0.00
State of Texas, acting by and through the Commissioner of the General Land Office	Easement	\$0.00
ACI Consulting, a division of ACI Group, LLC	Professional Services Agreement	\$0.00
Department of the Army, Fort Worth District, Corps of Engineer	Work Permit	\$0.00
Lower Colorado River Authority	Construction and Service Agreement	\$0.00
Aqua Water Supply Corporation; XS Ranch Municipal Utility District	Water Supply Agreement	\$0.00
Texas Commission on Environmental Quality	Permit to Discharge Waste	\$0.00

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<sup>6</sup> Inclusion of an agreement in this Exhibit 1 does not constitute an admission by the Debtor or the Reorganized Debtor that (i) such agreement is an executory contract or unexpired lease within the meaning of Section 365 of the Bankruptcy Code, (ii) the Debtor must assume such agreement in order to continue to receive or retain rights, benefits, or performance thereunder or that any Claim under such agreement must be paid or default cured, or (iii) such agreement is a valid contract or lease. Any contract or lease assumed pursuant to this Plan, and as identified in this Exhibit 1, shall be assumed as previously amended or otherwise modified by the parties thereto, whether before or after the Petition Date.

# Exhibit 2



**EXHIBIT 2**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES BEING REJECTED**

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# Exhibit 3

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

**PRIVATE AND CONFIDENTIAL**

**December 19, 2017**

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

**Attention: Michael VanderLey**

Commitment Letter

Ladies and Gentlemen:

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

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

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

XS Ranch Fund VI, L.P.

December 19, 2017

Page 2

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

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

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

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

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

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

XS Ranch Fund VI, L.P.

December 19, 2017

Page 3

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

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

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

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

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

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

*[Remainder of page intentionally left blank]*

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

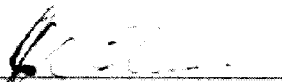
Please confirm that the foregoing is in accordance with your understanding by signing and returning to CDF the enclosed copy of this Commitment Letter, whereupon this Commitment Letter shall become a binding agreement between us. We look forward to working with you on this assignment.

Very truly yours,

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

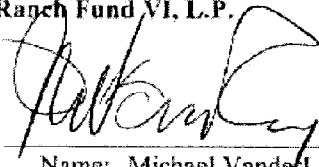
By: Crestline Direct Finance (GP), L.L.C., its general partner

By: Crestline Investors, Inc., its manager

By:   
Name: John S. Cochran  
Title: Vice-President

**ACCEPTED AS OF THE DATE ABOVE:**

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

By:   
Name: Michael VandeLey  
Title: Chief Restructuring Officer

Annex A

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

Annex A-1

NY\876033.4



Annex B



**INDICATIVE TERM SHEET**

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

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

ANNEX B-1

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

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

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

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

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

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

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

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

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

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

**Amortization:** None.

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

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

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

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

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

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

ANNEX B-2

NY\876033.4

**Conditions Precedent:**

1. The U.S. Bankruptcy Court shall have entered a final order (such order, the “**Confirmation Order**”) confirming a Chapter 11 plan of reorganization for the Debtors in accordance with Section 1129 of the Bankruptcy Code.
2. Steiner Debt shall continue to mature post the Maturity Date.
3. Company’s delivery of a detailed budget of planned expenditures in amount and sequence of work to be performed acceptable to Agent (the “**Budget**”).

**Post-Closing Equity:**

Post the Initial Funding Date the Borrower shall be granted a period of nine months to raise \$10,000,000 of equity capital in cash (the “**Minimum Equity Expiration Date**”) to fund working capital and critical infrastructure in accordance with the Budget. Any equity capital raised (either within this nine month period or beyond) greater than \$10,000,000 shall be subject to the Mandatory Prepayment provisions above.

In the event the Borrower is unable to raise the \$10,000,000 of equity capital, the chief restructuring officer (under the confirmed plan of reorganization) shall appoint a third party marketing firm (to be approved by the Lender) to conduct an orderly liquidation of all assets of the Borrower (the “**Sale Process**”).

The mechanics of the Sale Process shall be documented within the Chapter 11 plan of reorganization subject to the Confirmation Order and shall include but not be limited to the following concepts.

- The Sale Process shall be concluded (with bids presented to creditors) within 12 months from the Minimum Equity Expiration Date.
- In the event the offers received under the Sale Process are insufficient to repay the Credit Facility (including any accrued and unpaid interest or payments under Yield Maintenance provisions) the Lenders shall preserve their right to bid the amount of the Credit Facility as a credit bid, i.e. not a cash bid.

**Financial Covenants:** Customary and appropriate for Crestline transactions, including without limitation, financial covenants (measured monthly), to be determined.

**Affirmative Covenants:** Customary and appropriate for Crestline transactions including without limitation, delivery of financial statements and other information, maintenance of existence, payment of taxes and claims, maintenance of properties and insurance, inspections, lender meetings, compliance with laws, and compliance with contractual obligations.

**Negative Covenants:** Customary and appropriate for Crestline transactions including without limitation, limitations on indebtedness (including public improvement district financing without Lender approval), liens, guarantees, negative pledges, restricted payments, subsidiary distributions, investments, fundamental changes, disposition of assets, acquisitions, disposal of subsidiary interests, sale and lease-backs, transactions with affiliates, conduct of business, changes to material contracts, and deposit accounts.

**Representations and Warranties, Events of Default, and Indemnification:** Customary and appropriate for Crestline transactions.

ANNEX B-3

NY\876033.4

**Other Conditions and Requirements:**

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

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

**Choice Of Law:**

State of Texas

**Expense Reimbursement:**

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

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

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

ANNEX B-4

NY\876033.4

# Exhibit 4

Fill in this information to identify the case:

Debtor 1 XS Ranch Fund VI, L.P.  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Northern District of California, San Francisco  
Case number 16-31367-RE-11

## Official Form 410

# Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

### Part 1: Identify the Claim

1. Who is the current creditor?	<u>Steiner &amp; Sons, Ltd.</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?  <u>Eric J. Taube</u> Name <u>100 Congress Ave., Suite 1800</u> Number Street <u>Austin TX 78701</u> City State ZIP Code Contact phone <u>512.685.6400</u> Contact email <u>eric.taube@wallerlaw.com</u>  Uniform claim Identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different)  _____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 12,256,245.73 Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  
sale of real estate and loan for purchase price

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.

**Nature of property:**

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

Motor vehicle

Other. Describe: \_\_\_\_\_

**Basis for perfection:** lien

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ 18,873,845.00

Amount of the claim that is secured: \$ 12,256,245.73

Amount of the claim that is unsecured: \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ \_\_\_\_\_

Annual Interest Rate (when case was filed) 9.00 %

Fixed

Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 167, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 10/06/2017  
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name Robert Lee Steiner  
First name Middle name Last name

Title Manager of Steiner GP, LLC, General Partner of Steiner & Sons, Ltd.

Company Steiner & Sons, Ltd.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 820 Caslano Cove  
Number Street

Austin Tx 78732  
City State ZIP Code

Contact phone 512 633-1741 Email xsranch@gmail.com



**INTEREST CALCULATIONS AS OF MARCH 19, 2018**

<u>Description</u>	<u>Principal Amount</u>	<u>Due Date of Quarterly Interest Only Payments</u>	<u>Interest Rate</u>	<u>Interest Only Payment</u>	<u>Dates for Computing Interest</u>	<u>Interest Payment Days</u>	<u>Penalty Interest %</u>	<u>Penalty Interest Payment</u>	<u>Total Due</u>
\$10,000,000 Note	\$10,000,000	3/19/2017	9.00%	\$225,000	3/20/17 - 3/19/18	365	18.00%	\$40,500	\$265,500
		6/19/2017	9.00%	\$225,000	6/20/17 - 3/19/18	273	18.00%	\$30,292	\$255,292
		9/19/2017	9.00%						
		12/19/2017	9.00%						
		3/19/2018	9.00%	\$225,000					\$225,000
Note Subtotal	\$10,000,000								\$745,792
<hr/>									
\$1,500,000 Note	\$1,500,000	3/19/2017	9.00%	\$33,750	3/20/17 - 3/19/18	365	18.00%	\$6,075	\$39,825
		6/19/2017	9.00%	\$33,750	6/20/17 - 3/19/18	273	18.00%	\$4,544	\$38,294
		9/19/2017	9.00%						
		12/19/2017	9.00%						
		3/19/2018	9.00%	\$33,750					\$33,750
Note Subtotal	\$1,500,000								\$111,869

\$857,661

Total Interest on Both Loans

Ad Valorem Taxes - Steiner & Sons, Ltd.

Taxes		\$48,106.00	
	Taxes paid from closing stmts 9-27-17	<u>-\$17,008.23</u>	
			\$31,097.77
Interest			
	Per Diem Interest Rate @ 18% = \$15.336 x 273 days	<u>\$4,186.73</u>	
			\$35,284.50