

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)
)
RICHARD D. VAN LUNEN) Case No. 17-14499 MER
CHARITABLE FOUNDATION) Chapter 11
EIN 52-1419025)
)
Debtor.)

DISCLOSURE STATEMENT

I. INTRODUCTION

Dated: September 29, 2017

On May 16, 2017, Richard D. Van Lunen Charitable Foundation (“Debtor”), filed its voluntary petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code. On September 13, 2017, the Debtor filed its Plan of Reorganization (the “Plan”).

A. REORGANIZATION AND DISCLOSURE. Chapter 11 is the principal reorganizational Chapter of the Bankruptcy Code. Pursuant to Chapter 11, a Debtor may continue to operate its business or liquidate its assets to pay its creditors. Attempts to collect pre-petition claims from the Debtor and any attempts to foreclose upon the Debtor’s Assets are stayed during the pendency of the bankruptcy proceeding. This Disclosure Statement is intended to provide the holders of claims adequate information about the Debtor and its proposed Plan so that creditors can make an informed judgment about the merits of approving the Plan. The Plan, if confirmed by the Bankruptcy Court, will bind the Debtor and the Debtor’s creditors with respect to the terms and conditions set forth therein even if creditors do not vote in favor of the Plan.

B. Adequate information. “Adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor and the condition of the Debtor’s books and records, including a discussion of the potential material Federal tax consequences of the Plan to the Debtor, any successor to the Debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the Plan, but adequate information need not include such information about any other possible or proposed Plan. In determining whether the Plan provides adequate information, the Court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest and the cost of providing additional information.

An “investor typical of holders of claims or interests of the relevant class” means investors having a claim or interest of the relevant class; such a relationship with the Debtor as the holders of other claims or interests of such class generally have; and, such ability to obtain such information from sources other than the disclosure required by §1125 of the Bankruptcy Code (11 U.S.C. §1125) as holders of claims or interests in such class generally have.

C. YOU ARE ENCOURAGED TO READ THE PLAN AND TO CONSULT WITH YOUR COUNSEL ABOUT IT. CERTAIN CAPITALIZED TERMS USED HEREIN ARE DEFINED IN THE PLAN OR IN THE BANKRUPTCY CODE. THE PLAN HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, AND THE COMMISSION HAS NOT RENDERED AN OPINION UPON THE ACCURACY OR ADEQUACY OF ANY STATEMENTS CONTAINED IN THE PLAN.

APPROVAL OF THE DISCLOSURE STATEMENT BY THE COURT AS CONTAINING ADEQUATE INFORMATION DOES NOT IMPLY COURT APPROVAL OF THE PLAN. IN THE EVENT THE DEBTOR MODIFIES ITS PLAN BEFORE CONFIRMATION, THE PLAN AS MODIFIED SHALL BECOME THE PLAN FOR PURPOSES OF CONFIRMATION. AS SUCH, PREVIOUS VERSIONS OF THE PLAN SHOULD BE DISREGARDED BY CREDITORS.

D. VOTING ON THE PLAN. The Debtor is proposing a Plan as a means to pay its creditors in an orderly fashion while continuing to operate its non-profit business. A vote on the Plan is important. The Debtor can implement the Plan only if it is confirmed by the Bankruptcy Court. The Plan can be confirmed only if, among other things, it is accepted by the holders of two-thirds in amount and more than one-half in number of the claims which actually vote on the Plan. At least one “impaired class” must vote to accept the Plan. In the event the requisite acceptances are not obtained from the impaired classes, the Court may nevertheless confirm the Plan if the Court finds that it is fair and equitable to the class or classes rejecting the Plan. Under the Debtor’s proposed Plan, Classes 1 and 2 are impaired and therefore are entitled to vote on the Plan. Class 3 is not impaired under the Plan and cannot vote on the Debtor’s Plan.

“Impaired” is defined by §1124 of the Bankruptcy Code. Impaired means that Debtor’s Plan alters the legal, equitable or contractual rights to which such classes or interest entitles the holder of such claims or interest. The holders of impaired claims which are also allowed claims (as defined in Article I, ¶ 1.4 of the Plan), or the holders in those classes of disputed claims which the Bankruptcy Court has temporarily allowed for voting purposes only are entitled to vote on the Debtor’s Plan.

You are not required to vote on the Plan, but only those votes actually received by Debtor's counsel on or before 5:00 p.m. MST/MDT on the date set forth in the Court's Order or Notice accompanying this Plan will be counted either for or against the Plan. You should either fax, mail or e-mail a completed ballot to the Debtor's counsel by 5:00 p.m. MST/MDT on the date established by the Court in its Order or Notice which accompanies this Plan. Please fill out your ballot completely to insure that your vote with respect to the Plan is properly counted. Ballots can be mailed, faxed or e-mailed to the Debtor's counsel at the following address, fax number, or e-mail address:

Weinman & Associates, P.C.
730 17th Street, Suite 240
Denver, CO 80202-3506
Facsimile: (303) 572-1011
jweinman@epitrustee.com

Ballots will be counted as long as they are received by the Debtor's counsel by 5:00 p.m. MST/MDT on the date established by the Court in its Order or Notice accompanying this Plan.

The Court will hold a hearing on confirmation of the Plan and will, among other things, determine the result of the vote on the Plan. The Debtor will prepare a ballot report which it will present to the Court at the confirmation hearing. The date and time of the Court's hearing on confirmation and important deadlines are set forth in the Court's Order or Notice enclosed with this Disclosure Statement and the Plan.

E. Objecting to the adequacy of the information contained in the Disclosure Statement or to confirmation of the Plan. The Court will set a deadline for filing written objections to the adequacy of the information contained in the Disclosure Statement. If no objections are filed with the Court, the approval of the information contained in the Disclosure Statement

may become final. Any objection or request to modify the information contained in the Disclosure Statement will be considered by the Court at the hearing set by the Court on the adequacy of the Disclosure Statement.

In addition to voting on the Plan, creditors may also object to confirmation of the Plan by filing and serving written objections to confirmation of the Plan as required by the Bankruptcy Rules of Procedure and the Local Bankruptcy Rules of the Court. The Court has set a deadline for filing written objections in its Order or Notice which accompanies this Plan. If you wish to object to confirmation of the Debtor's Plan, you must file a written objection. Filing a ballot rejecting the Plan will not be considered an objection to confirmation of the Plan by the Court.

F. Bar Date. The Court set a deadline ("Bar Date") of August 14, 2017, by which creditors were to file Proofs of Claim in the Debtor's Chapter 11 bankruptcy proceeding. The Bar Date was previously mailed to you during the pendency of the Debtor's Chapter 11 bankruptcy proceeding. It may have been important that you filed a Proof of Claim with the Clerk of the Bankruptcy Court on or before the Bar Date or your claim may not be allowed and you may not be able to participate as a creditor in the Debtor's Chapter 11 bankruptcy proceeding. However, if you agree with the way the Debtor has listed your claim on its bankruptcy Schedules, and your claim was not listed as "disputed", "contingent", or "unliquidated", it was not necessary for you to have filed a Proof of Claim in order to have your claim allowed for purposes of voting on the Plan and receiving payment or other treatment of your claim under a confirmed Plan of Reorganization.

II. PRE-BANKRUPTCY HISTORY OF THE DEBTOR

The Richard D. VanLunen Foundation was formed in 1985 by Mr. VanLunen to be a vehicle whereby the bulk of his estate could be placed to support Christian organizations. During his lifetime Mr. VanLunen funded and directed all contributions.

In 1996, Mr. VanLunen passed away. In his will, he appointed Mr. Jim Ellis to fill his position. Mr. Gordon VanderBrug and Jim Achterhof were existing trustees ("Trustees"). Mr. Bob Burns was the personal representative for his estate. Mr. VanLunen had a complicated estate with holdings in 14 states ("Estate"). The bulk of the Estate was designated for the Foundation. However, funds were provided for his spouse which are managed by Mr. Burns. Upon her death, the equity in Mrs. VanLunen's estate will be donated to the Foundation.

As Mr. Achterhof at the time of Mr. VanLunen's death was living in Saudi Arabia and since at that time the Foundation had minimal funds, strategic planning for the Foundation did not begin until 1998. The Foundation hired consultants to assist the Trustees in deciding the direction the Foundation should take. The decision was made that the prime emphasis of the Foundation would be Christian education. The Foundation gave funds to Christian schools for capital improvements. A major emphasis was placed on minority schools, but not exclusively. Some \$20 million was given out as grants.

In 2001, Mr. Achterhof took over the day to day running of the Foundation as managing director. At that time, the Foundation was converted from a Maryland trust to a Delaware corporation.

In 2006, the Trustees decided to create a Center for Executive Management of

Christian Schools at Calvin College. The Trustees, in visiting schools to consider grants, discovered that most top administrators had come up through the education system and had no business experience or training. These heads of schools needed to learn the skills of management, such as, budgeting, fund development strategic planning, marketing and governance. The Center has been in existence for ten years and has been highly successful with over 200 graduates. The trustees have continued to be deeply involved with the running of the Center.

A problem from the beginning for the Estate and eventually the Foundation was Mr. VanLunen's biggest asset, the Digi-Data Corporation. This was the company that provided the funds for all of Mr. VanLunen's other investments. The Estate hired consultants on whether to keep the company running or to close it. Mr. Burns requested the Foundation's input. The Foundation engaged consultants in early 2000 and again in 2005 who recommended that the company should not be closed. The Estate, working with the Foundation, attempted to sell the company and hire investment bankers to do so. Sale of the company looked promising several times, but fell through late in the process. The value put on the company by the investment bankers in early 2000 was \$25-\$40 million.

In 2008, the Trustees had high expectations that the company would be sold within the following two to three years and thus sought funds to support the Foundation and keep Digi-Data running until it could be sold. The Foundation approached M&I bank which agreed to provide some \$14 million secured by a mortgage on Florida property held by V&H Partnership which had been transferred from the Estate to the Foundation which guaranteed the loan. The Trustees had decided in February of 2006 to sell some of this property because the price had risen. But the Foundation was some six months to a year

too late. Several high value sales had been initiated but the collapse of the land market in Florida in 2007 prevented completion of these sales. M&I had valued the land in late 2008, even after some 18 months following the market collapse, at \$41 million. Neither the bank nor the Trustees believed the deterioration in the value of the property would continue or that Digi-Data's value would also fall.

M&I, which became BMO, worked with the Foundation to try and find a way to resolve the mortgage payment problem resulting from the inability to sell the Florida real estate. Buyers were interested in purchasing the land, but BMO decided to sell their problem debt in bulk to Monty and not individually which would have brought a much better price.

In 2012, Digi-Data, was told by Verizon (who provided 80% of Digi-Data's revenue) that their contract would not be renewed. This loss of revenue made the company, in essence, worthless. Nevertheless, the Foundation received an offer to purchase for some \$6.5 million and the assets of Digi-Data were sold. The funds in the Debtor-in-Possession Account are the residual from the sale of Digi-Data assets.

Since 2011, almost all of the funds received by the Foundation have been used to fund the litigation with Monty Titling Trust I ("Monty"), which sued it on the guaranty it had signed for the V&H Partnership mortgage.

The Foundation has continued to work to support Christian education but in recent years without making any major grants due to the litigation with Monty. The Trustees have been working primarily in two areas: working to fund, and continuing to improve the Center for Executive Management of Christian schools. Several million dollars have been raised by the Trustees from individuals and foundations to continue this important and valuable

program. The Trustees also have been working to build a new school, gym and ministry center in Zuni, New Mexico on the Zuni Indian reservation. This more than \$10 million project is almost complete with all bills paid and a more than \$1 million in endowment funded after starting with nothing. The Foundation has been told that without its work, the project would never have been started or completed. A Christian school in Gallup, New Mexico serving primarily the Navajo tribe which might otherwise have closed several years earlier, is building a new high school (in part due to the efforts of the Foundation). The Foundation has not been able to contribute funds for the high school, but has in the past contributed to a new middle school and also a new Gym. The director of the DeVos Foundation (which gives multi-million dollars annually in grants) told the Foundation Trustees, "I envy you, that even without funds you are able to work with these organizations and help provide them the skills to make them successful."

III. EXPECTED POST-CONFIRMATION OPERATION OF REORGANIZED DEBTOR

Following confirmation of the Plan, the Reorganized Debtor will continue to operate its business and pay its pre-petition creditors with Allowed Claims pursuant to the terms of the Plan from its Cash determined as of the Effective Date of the Plan. James Achterhof and Gordon VanderBrug will remain as Trustees. Mr. Achterhof will remain as Managing Trustee and Director. The Trustees will determine the amount that they will be compensated for services provided to the Reorganized Debtor after consummation of the Plan.

IV. DESCRIPTION OF DEBTOR'S REAL AND PERSONAL PROPERTY ASSETS

As of the date of the filing of the bankruptcy petition, the Debtor's Assets consist of personal property assets. The Debtor has no real property assets.

The Debtor's personal property consists of cash and cash equivalents. The Debtor estimates that its Cash will total approximately \$2,723,351 as of the Effective Date of the Plan. A pre-petition balance sheet is attached hereto as Exhibit "A". A current balance sheet setting forth the Debtor's post-petition assets is attached hereto as Exhibit "B".

V. STATUS DURING CHAPTER 11 BANKRUPTCY PROCEEDING PENDING PRE-PETITION AND POST-PETITION LITIGATION AND PREFERENCE AND/OR FRAUDULENT CONVEYANCE CLAIMS

A. STATUS DURING CHAPTER 11. The Debtor has been managing its financial affairs and operating its business under Chapter 11 as a Debtor-in-Possession since it filed for bankruptcy relief.

A representative of the Debtor attended an Initial Debtor Interview (IDI) conducted by the Office of the U.S. Trustee, and attended a §341 Meeting of Creditors. The Debtor has filed its Monthly Operating Reports as required.

The U.S. Trustee has not appointed a creditors' committee in this Chapter 11 bankruptcy proceeding.

B. PRE-PETITION LITIGATION. Prior to Debtor filing its bankruptcy petition, the Debtor was involved in the following state court proceeding: Monty Titling Trust I v. Defendant and Third-Party Plaintiff Digi-Data Corp. v. Third Party Defendants: The Richard D. Van Lunen Charitable Foundation and V&H LLC, Case No. 2014CV030076, District

Court, Broomfield County, Colorado. This proceeding was stayed by the filing of the Debtor's Chapter 11 bankruptcy proceeding.

C. POST-PETITION. Since the filing of its bankruptcy petition, the Debtor has been involved in the following litigation, contested and non-contested matters and hearings before the Bankruptcy Court:

1. The Debtor, through its representative, attended a Section 341 Meeting of Creditors.
2. The Debtor obtained authority to employ the law firm of Weinman & Associates, P.C. to represent it as bankruptcy counsel in the Chapter 11 proceeding.
3. The Debtor obtained authority to employ the law firm of Allen Vellone Wolf Helfrich & Factor, P.C. as special counsel to represent it in its Chapter 11 proceeding.
4. The Debtor obtained authority to hire UHY Advisors Mid-Atlantic MD, Inc. as an accountant for the estate.
5. The Debtor commenced an Adversary Proceeding naming Monty Titling Trust I as Defendant. The Debtor has asserted claims for declaratory relief and equitable subordination of any allowed claim of Monty Titling Trust I.
6. Monty Titling Trust I has filed a Motion to Appoint a Chapter 11 Trustee for the Estate. The Debtor believes the Motion to be without merit and will file a timely response. The Court will set a hearing to resolve this matter.

D. PREFERENCE AND/OR FRAUDULENT CONVEYANCE CLAIMS. The Reorganized Debtor shall continue to investigate such claims and, if appropriate,

commence appropriate legal proceedings to pursue such claims. The Debtor knows of no such claims at the present time. In the event the Reorganized Debtor commences any such legal proceedings and receives an award of damages arising as a result of such legal proceedings, the Reorganized Debtor will utilize such net proceeds to pay allowed Chapter 11 administrative expenses or allowed unsecured claims as may be appropriate under the Debtor's Plan.

VI. EFFECTIVE DATE

The "Effective Date" with respect to allowed claims is defined in the Plan to mean that date which is not greater than sixty (60) days after entry of the Confirmation Order. With respect to any disputed claim, the Effective Date means that date which is not greater than sixty (60) days following entry of a Final Order allowing such claim. The Debtor estimates that the Effective Date of its Plan for allowed claims will be January 1, 2018. The Effective Date of the Debtor's Plan may occur either sooner or later than the estimated date which will effect the date of certain payments and the occurrence of other events under the Debtor's Plan.

VII. CLASSIFICATION OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS AND IMPAIRMENT OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS

A. CLASSIFICATION OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS AND IMPAIRMENT OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS.

(1) Classification. Pursuant to the requirements of 11 U.S.C. §1123 of the Bankruptcy Code, the Debtor has classified the claims of its creditors under its Plan. The Debtor has made this classification pursuant to the requirements of the Bankruptcy Code. Each class of claims which has been established under the Plan

consists of claims which are substantially similar and with respect to each claim contained in each class, the Plan provides for the same treatment for each class or interest of each particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of its particular claim or interest.

(2) Impairment. As required pursuant to 11 U.S.C. §1123 of the Bankruptcy Code, the Debtor has identified in its Plan those classes of claimants which are impaired under the Plan.

B. CREDITOR CLAIMS AND EQUITABLE INTERESTS IN THE DEBTOR ARE CLASSIFIED AND IMPAIRED IN THE PLAN AS FOLLOWS:

(1) Class 1 consists of the disputed unsecured claim of Monty Titling Trust I. Class 1 is Impaired under the Plan and can vote on the Plan if and when the Class 1 claim is determined to be an allowed unsecured claim.

(2) Class 2 consists of the holders of allowed unsecured claims other than the Class 1 creditor. Class 2 is Impaired under the plan and can vote on the Plan.

(3) Class 3 consists of the holders of pre-petition equitable interests in the Debtor, if any. Class 3 has no members.

VIII. TREATMENT OF CLASSES OF CREDITOR CLAIMS AND EQUITABLE INTERESTS UNDER THE DEBTOR'S PLAN

Provision for payment or treatment of creditor classes and equitable interests under the Plan is set forth below. There are no creditors with secured claims in the Debtor's Bankruptcy Estate.

(1) Class 1. Monty Titling Trust I. Class 1 is impaired under the Plan. Class 1 consists of the disputed unsecured claim of Monty Titling Trust I. The Class 1 creditor cannot vote on the Plan unless its disputed unsecured claim is determined to be an allowed unsecured claim. The Debtor will pursue its Adversary Proceeding against the Class 1 creditor asserting claims for declaratory relief and equitable subordination of any allowed claim. The Class 1 creditor has filed a Proof of Claim in the total amount of approximately \$6,455,791.00. The alleged claim consists of a note guaranty of V&H, LLC's loan from Monty Titling Trust I. The Class 1 creditor's claim was secured by real property owned by V&H, LLC. If the Claim of the Class 1 creditor is disallowed in the Adversary Proceeding, the Class 1 creditor will receive no payment on account of its claim. Any allowed unsecured claim of the Class 1 creditor will be paid a Pro Rata share of the Debtor's Net Cash on the Effective Date for Disputed Claim. Pending resolution of the Class 1 creditor's claim, the Debtor will escrow the Class 1 creditor's Pro Rata portion of Net Cash. The Debtor estimates that its Net Cash will be approximately \$2,688,501 on the Effective Date. The Class 1 creditor's Pro Rata share is estimated to be approximately \$1,802,205, or approximately 28% of its claim if allowed, in the amount of \$6,455,791.00. In the event the claim of the Class 1 creditor is subordinated, the claim of the Class 1 creditor shall not be paid until the allowed claims of the Debtor's other unsecured creditors and the allowed Chapter 11 administrative expenses are paid in full as provided for under this Plan. Any payment made to the Class 1 creditor shall be in full and final satisfaction of the Class 1 creditor's pre-petition claim.

(2) Class 2. Allowed Unsecured Claims Other Than Class 1. Class 2 is impaired under the Plan. Class 2 consists of the holders of allowed general unsecured claims in the

approximate total amount of \$3,171,030. Class 2 unsecured creditors shall be paid a Pro Rata share of the Debtor's Net Cash on the Effective Date of the Plan. The Debtor estimates its Net Cash will be approximately \$2,688,501 on the Effective Date and each member of Class 2 will receive approximately 28% of their allowed unsecured claim. Attached hereto as Exhibit "C" is a list of Class 2 unsecured creditors with allowed unsecured claims and the estimated Pro Rata Distribution of their allowed unsecured claim.

(3) Class 3. Equity Interests. Class 3 is not impaired under the Plan. The Debtor is a non-profit corporation. There are no holders of equitable interests in the Debtor.

IX. PAYMENT OF UNCLASSIFIED ALLOWED CHAPTER 11 ADMINISTRATIVE EXPENSES AND ALLOWED UNSECURED PRIORITY CLAIMS

Payment of allowed Chapter 11 Administrative Expenses and allowed Unsecured Priority Claims not classified under the Plan will be paid as follows under the Debtor's proposed Plan:

Administrative Expenses. Chapter 11 Administrative Expenses are identified as follows:

- (a) Counsel (Weinman & Associates, P.C.) employed to represent the Debtor in the within bankruptcy proceeding;
- (b) Special Counsel (Allen Vellone Wolf Helfrich & Factor, P.C.) employed to represent the Debtor in the within bankruptcy proceeding;
- (c) Accountant (UHY Advisors Mid-Atlantic MD, Inc.) employed to provide accounting services to the Debtor in the within bankruptcy proceeding;

- (d) Fees required to be paid to the U.S. Trustee pursuant to 28 U.S.C. §1930; and
- (e) Post-petition fees and expenses, including taxes, incurred by the Debtor's bankruptcy estate in the ordinary operation and management of the Debtor's business and/or financial affairs.

The holders of allowed expenses in Paragraphs (a), (b) and (c) shall submit their request for payment to the Court and the Debtor shall pay such Allowed Chapter 11 Administrative Expenses only upon approval by and in the amount allowed by the Court. The Debtor estimates that it may owe these claimants the following amounts for services performed through the conclusion of the Chapter 11 case:

- (1) Weinman & Associates, P.C. - \$5,000¹;
- (2) Allen Vellone Wolf Helfrich & Factor, P.C. - \$5,000²;
- (3) UHY Advisors Mid-Atlantic MD, Inc. - \$5,000.

The holders of allowed expenses in Paragraphs (a), (b) and (c) above shall be paid the allowed amount of their unpaid Chapter 11 Administrative Expenses on the Effective Date of the Plan provided the Court has entered final, non-appealable orders allowing such Administrative Expenses or as may be otherwise agreed to by these Administrative Claimants and the Debtor.

U.S. Trustee fees required to be paid pursuant to 28 U.S.C. §1930 identified in Paragraph (d) above shall be timely paid until such time as the within Chapter 11 case is

¹Paid a \$25,000 pre-petition retainer.

²Paid a \$25,000 pre-petition retainer.

dismissed, converted or closed by order of the Bankruptcy Court. The Debtor estimates that it may owe the U.S. Trustee \$9,750 for unpaid quarterly fees calculated based upon its previous Distributions to its unsecured creditors with allowed claims.

Fees and other expenses identified in Paragraph (e) above (ordinary course expenses) shall be paid pursuant to the terms of any agreement and/or in the ordinary course of the Debtor's business and/or financial affairs according to ordinary business terms. Any unpaid post-petition taxes owing by the Debtor's bankruptcy estate will be paid in full on or before the Effective Date of the Plan.

Allowed Unsecured Priority Claims of Taxing Authorities

Any Allowed Unsecured Priority Claim of any taxing authority will be paid in full to such taxing authority with appropriate interest on the Effective Date. The IRS has filed a Proof of Claim asserting an Unsecured Priority Claim in the amount of \$100.00.

X. MEANS FOR IMPLEMENTATION OF THE PLAN

Upon confirmation of the Plan, the Reorganized Debtor will implement its Plan as follows:

- (a) Upon entry of the Confirmation Order, the Estate's Assets shall be transferred to the Reorganized Debtor.
- (b) The Reorganized Debtor shall operate its non-profit business following the entry of the Confirmation Order and shall pay its creditors from its Net Cash as provided for in this Plan.
- (c) The Reorganized Debtor will pay creditor classes established under the Plan.

The Debtor understands that certain creditors in Class 2 may waive their

right to Distributions under the Debtor's Plan. If this occurs, these amounts will be retained by the Reorganized Debtor which in turn will use such funds to make future grants.

(d) The Reorganized Debtor will pay the holders of allowed Chapter 11 Administrative Expenses, except for the U.S. Trustee, on the Effective Date of the Plan unless otherwise agreed to between these parties and the Reorganized Debtor, or as otherwise provided for in the Plan.

(e) The Debtor will pursue its Adversary Proceeding against Monty Titling Trust I.

(f) Objections to Claims:

(1) The Reorganized Debtor shall object, when appropriate to any administrative expense, secured or unsecured claim; and

(2) The Reorganized Debtor shall bring any preference or fraudulent conveyance claims as appropriate.

(3) The Reorganized Debtor will review all Proofs of Claim filed in its case and may or may not object to the allowability of such claims.

(g) Payment of Allowed Claims and Administrative Expenses Under the Plan.

The Reorganized Debtor shall make payments to creditors and administrative expense claimants as provided for under the terms of the Plan. Payments under the Plan shall be made by check and shall be mailed to each creditor and/or administrative expense claimant with an allowed claim at the address set forth in the Debtor's Statements and Schedules filed with the Court or as

set forth in any Proof of Claim, other pleading or change of address notification, etc. filed with the Court.

- (h) Unclaimed Distributions. For a period of six (6) months following the date a payment is due under the Plan, the Reorganized Debtor shall retain in a reserve account for issuance any unclaimed distributions for the benefit of the holders of allowed claims and/or administrative expenses which have failed to claim such distributions. Following the six (6) month period after such distributions are due, the holders of allowed claims or allowed administrative expenses theretofore entitled to such distributions held in such reserve account shall become property of the Reorganized Debtor. To the extent any creditor executes a Waiver, such waived Distributions shall become the property of the Reorganized Debtor. To the extent the Class 1 creditor's claim is disallowed, such Distribution to which it would have been entitled shall be distributed Pro Rata to Class 2 creditors.

XI. UNEXPIRED EXECUTORY CONTRACTS AND LEASES

Unexpired Executory Contracts and Leases:

- (a) To the extent that they constitute unexpired executory contracts and/or leases, the following shall be assumed by the Reorganized Debtor upon the entry of the Confirmation Order: None.
- (b) All unexpired executory contracts and/or leases of the Debtor neither assumed pursuant to the Plan nor pursuant to an order of the Court prior to confirmation of the Plan shall be deemed to have been rejected upon

confirmation of the Plan. These unexpired executory contracts and/or leases are at this time identified as follows: None.

XII. MISCELLANEOUS PROVISIONS OF THE DEBTOR'S PLAN

Procedures for Resolving Contested Matters:

- (a) The Reorganized Debtor's objections to claims shall be filed with the Court and shall be served on the holder of each of the claims to which objections are filed by no later than sixty (60) days after the Effective Date. The Reorganized Debtor shall litigate to judgment, settle or withdraw objections to all such Disputed Claims; and
- (b) No payments or distributions shall be made under the Confirmed Plan with respect to all or any portion of a Disputed Claim or Administrative Expense unless and until all objections to such Disputed Claim or Administrative Expense have been determined by Final Order of the Court. Payments and distributions to holders of Disputed Claims or Administrative Expenses under the Confirmed Plan, to the extent such become Allowed Claims or Administrative Expenses, shall be made in accordance with the provisions of this Plan.

Compromise and Settlement of Claims and/or Disputes: The Reorganized Debtor shall be authorized to compromise and settle any claim and/or dispute which it may have against any entity or which may have been brought by any entity against the Debtor. Any such compromise or settlement shall be subject to approval by the Bankruptcy Court after notice

and opportunity for hearing as provided for pursuant to Rule 9013 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Colorado, unless otherwise ordered by the Court.

Provisions for Execution and Supervision of the Plan: Retention of Jurisdiction:

The Court shall retain and have exclusive jurisdiction over the Chapter 11 case for the following purposes to the extent authorized by the Bankruptcy Code (“Code”):

- (1) To determine any and all objections to the allowance of claims;
- (2) To determine any and all applications for allowances of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Code or the Plan;
- (3) To determine any applications pending on the Effective Date of the Plan for the rejection or assumption of executory contracts or unexpired leases for the assumption and assignment, as the case may be, of those executory contracts or unexpired leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear and determine, and if need be, to liquidate any and all claims arising therefrom;
- (4) To determine any and all applications, adversary proceedings and contested or litigated matters that may be pending on the Effective Date of the Plan;
- (5) To consider any modifications of the Plan, remedy any defect or omission or reconcile any inconsistency in any Order of the Bankruptcy Court, including the Confirmation Order;

- (6) To determine all controversies, suits and disputes that may arise in connection with or interpretation, enforcement or consummation of the Plan;
- (7) To consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor's Estate;
- (8) To resolve any pending disputes regarding the Debtor's interest in its Assets;
- (9) To issue orders in aid of execution of the Plan to the extent authorized by 11 U.S.C. §1142 of the Code; and
- (10) To determine such other matters as may be set forth in the Confirmation Order or as may arise in connection with the Plan or the Confirmation Order.

The Plan may be amended by the Debtor and/or the Reorganized Debtor before or after the Confirmation Date as provided in 11 U.S.C. §1127 of the Code.

Payment of Fees Pursuant to 11 U.S.C. §1129(12): All fees required to be paid by 28 U.S.C. §1930 will be paid as required therein until such time as the within Chapter 11 case is dismissed, converted or closed by order of the Bankruptcy Court. The Reorganized Debtor shall file quarterly post-confirmation reports until the case is closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

Modification of Payment Terms: The treatment of any Allowed Claim may be modified or reduced at any time after the Confirmation Date upon the consent of the creditor whose Allowed Claim treatment is being modified.

Retention of Liens: Except as may be otherwise provided for in this Plan, creditors whose allowed claims are secured by lien(s) against the Debtor's Assets or otherwise claim an interest in such Assets shall retain such liens to the extent of its allowed secured claims and in the same priority as its pre-petition liens or, shall retain its interest in such Assets to the same extent and in the same priority as its pre-petition interests in such Assets.

Debtor's Assets: Except as provided for in the Plan or in the Confirmation Order, upon Confirmation of the Plan, the Reorganized Debtor shall be vested with full ownership of and dominion over its Remaining Assets plus the proceeds from the sale of the Purchased Assets free and clear of all claims, liens, charges and other interests of creditors arising prior to the filing of the bankruptcy petition and except as otherwise provided in the Plan.

Final Report: The Reorganized Debtor will file a Final Report and seek to obtain a Final Decree administratively closing its Chapter 11 proceeding within 180 days of the Effective Date.

Default: In the event of a default by the Reorganized Debtor with respect to payments to creditors under its Plan, such creditors shall be entitled to take action to collect the amount owed under the Plan with whatever collection remedies it normally would have available when payments to such creditors are not made as scheduled were this case not in bankruptcy. The creditors shall give the Reorganized Debtor written notice of any default and the Reorganized Debtor shall have ten (10) calendar days to cure such default. Any failure to act on any default or acceptance of late payments will not act as a waiver by the creditor to act on further defaults.

XIII. RISK FACTORS

Several factors could adversely affect the Debtor following confirmation which in turn could impact the Debtor's performance under its Plan. These factors may include the following:

(1) The Bankruptcy Court may deny confirmation of the proposed Plan.

(2) The Bankruptcy Court may not confirm the Debtor's Plan as projected and the Effective Dates of the Plan may not occur as estimated by the Debtor, which could delay the distributions to the various creditor classes under the Plan.

(3) The amount of the Debtor's Net Cash may be less on the Effective Date of the Plan than estimated by the Debtor. Allowed Administrative Expenses may be greater than estimated by the Debtor, which in turn, may reduce the amount of Net Cash on the Effective Date.

(4) The Debtor may not be successful in its Adversary Proceeding disputing the unsecured claim of Monty Titling Trust I. However, the estimated Pro Rata Distribution to the Class 1 creditor assumes that the Adversary Proceeding will be unsuccessful. If Debtor prevails, the Distribution to Class 2 creditors will be substantially higher, perhaps as much as 84.8% of allowed Class 2 claims.

(5) The Court may grant Monty Titling Trust I's Motion to Appoint a Chapter 11 Trustee, which could result in such appointed trustee filing a different plan or liquidating the Debtor's Estate.

XIV. EFFECT OF CONFIRMATION OF THE PLAN ON DEBTOR AND CREDITORS

The terms of the confirmed Plan will bind the Reorganized Debtor and all of its creditors with respect to the re-payment of claims provided for in the Plan whether or not the holders of such claims vote to accept the Plan.

XV. COMPARISON OF PLAN TO LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

The Debtor projects that under its Plan, the Debtor's general unsecured creditors (with allowed unsecured claims) in Class 2 will realize a return of approximately 28% of their allowed unsecured claims³. The Debtor estimates that liquidation under Chapter 7 of the Bankruptcy Code would result in a payment of approximately 27% to general unsecured creditors with allowed unsecured claims.⁴

Under Chapter 7 of the Bankruptcy Code, a trustee would be appointed to liquidate Debtor's Assets. The Debtor believes that unsecured creditors will receive more on their allowed unsecured claims through the Debtor's Plan than if the Debtor's case is converted to Chapter 7. In addition, if the Debtor's Plan is confirmed, the Reorganized Debtor will be able to continue its charitable work. A liquidation analysis is attached hereto as Exhibit "D".

³Includes disputed claim of Monty Titling Trust I.

⁴Includes disputed claim of Monty Titling Trust I.

XVI. BEST INTEREST OF CREDITORS

The Bankruptcy Code provides that in order to confirm its Plan of Reorganization, Debtor must satisfy the “best interest of creditors test”. Simply stated, this test requires that each holder of an impaired claim or interest must either vote to accept Debtor’s Plan or receive what such holder would receive in a hypothetical Chapter 7 liquidation under the Bankruptcy Code.

Debtor’s proposed Plan meets this requirement of the Bankruptcy Code since each creditor of the Debtor will receive at least as much, if not more (unsecured creditors projected to receive approximately 28% of claims) than they would receive in a Chapter 7 liquidation case (where unsecured creditors are projected to receive approximately 27% of allowed unsecured claims).

XVII. CRAMDOWN UNDER THE PLAN

If an impaired class does not accept the Plan, the Plan can be “crammed down” or forced on such class upon a showing that the Plan is “fair and equitable”. The concept of cramdown of Debtor’s Plan is best summarized as follows: If a holder of a secured claim objects to confirmation of the Plan, the Plan may be confirmed over such objection if: (1) the creditor retains the lien on the collateral to the extent of the value of the collateral and (2) the creditor is paid with interest over the life of the Plan the amount of the allowed secured claim. However, the Debtor has no secured creditors.

If an unsecured creditor objects to the Plan, the Plan may be confirmed over that objection if: (1) the unsecured creditor is receiving under the Plan at least what it would

receive in a Chapter 7 liquidation, and (2) the holders of any claims or interest junior to the unsecured creditor (i.e., equitable interests in the Debtor), will receive nothing until unsecured creditors are paid in full. This rule is known as the “absolute priority rule” in bankruptcy. It is the opinion of the Debtor that with respect to Debtor’s unsecured creditors, Debtor believes that it will meet the fair and equitable test because the Plan does not violate the absolute priority rule. It is estimated by the Debtor that unsecured creditors will receive approximately 28% repayment on their allowed unsecured claims. However, there are no holders of equitable interests in the Debtor. Accordingly, it is not factually possible for equity to receive more than unsecured creditors since there is no equity class.

XVIII. FEDERAL TAX CONSEQUENCES OF THE CONFIRMED PLAN

The Debtor knows of no adverse federal tax consequences which will occur upon confirmation of the Debtor’s Plan. However, creditors should consult with their own tax advisor concerning the effect of confirmation of the Plan on its individual circumstances.

XIX. RECOMMENDATION

The Debtor urges you to complete and sign the enclosed ballot, and vote in favor of its Plan before the deadline established by the Court in its Order or Notice which is enclosed with this Plan.

DEBTOR-IN-POSSESSION
Richard D. Van Lunen Charitable Foundation

/s/ James M. Achterhof
James M. Achterhof
Managing Trustee and Director

Respectfully submitted,

WEINMAN & ASSOCIATES, P.C.

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