

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re:

COCOPAH NURSERIES OF ARIZONA, INC.,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11 Cases  
Case No. 0:12-bk-15292-EWH  
(Jointly Administered)

**DISCLOSURE STATEMENT CONCERNING THE DEBTORS' FIRST AMENDED JOINT  
PLAN OF REORGANIZATION**

**IMPORTANT DATES:**

Deadline for Confirmation Objections: \_\_\_\_\_, **2013**

Miscellaneous Secured Creditor Election Notice Deadline: \_\_\_\_\_, **2013**

Ballot Submission Deadline: \_\_\_\_\_, **2013**

Evidentiary Hearing on Plan Confirmation: \_\_\_\_\_, **March 21, 2013**

Craig D. Hansen (AZ Bar No. 007405) [craig.hansen@squiresanders.com](mailto:craig.hansen@squiresanders.com)

Brian M. McQuaid (AZ Bar No. 019541) [brian.mcquaid@squiresanders.com](mailto:brian.mcquaid@squiresanders.com)

Bradley A. Cosman (AZ Bar No. 026223) [bradley.cosman@squiresanders.com](mailto:bradley.cosman@squiresanders.com)

**SQUIRE SANDERS (US) LLP**

4One East Washington Street, Suite 2700

Phoenix, Arizona 85004-2256

(602) 528-4000

Counsel to Debtors and Debtors-In-Possession

DATED: ~~December 18, 2012~~ February 7, 2013

<sup>1</sup> The Debtors, together with the last four digits of each debtor's federal tax identification are: Cocopah Nurseries of Arizona, Inc. (6117) ("Cocopah AZ"); Wm. D. Young & Sons, Inc. (0907) ("WDY"); Cocopah Nurseries, Inc. (2955) ("Cocopah CA"); William Dale Young & Sons Trucking and Nursery (1652) ("Trucking"); and The Young Family Trust Established August 26, 1987 (9675) ("Young Trust").

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**EXHIBIT** ~~S~~ [S](#)

1. Debtors' Plan of Reorganization
2. [Liquidation Analysis](#)
3. [Feasibility Analysis](#)

## I. INTRODUCTION & SUMMARY

### A. Overview

The above-captioned debtors and debtors-in-possession (the “**Debtors**”) submit this *Disclosure Statement Concerning the Debtors’ Joint Plan of Reorganization* (the “**Disclosure Statement**”) [D.E. \_\_\_] pursuant to Section 1125 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) for use in the solicitation of votes on the *Debtors’ Joint Plan of Reorganization* (attached as Exhibit 1 to this Disclosure Statement, the “**Plan**”) [D.E. \_\_\_] proposed by the Debtors. The Plan was filed with the United States Bankruptcy Court for the District of Arizona (the “**Bankruptcy Court**”), on ~~December 18, 2012~~February 7, 2013. In addition, the Debtors filed will file a supplement to the Plan (the “**Plan Supplement**”) ~~[D.E. \_\_\_]~~ which includes exhibits, plan documents and information necessary and appropriate to implement terms of the Plan. Copies of the Plan Supplement can be obtained upon by: (a) written request to Squire Sanders (US) LLP, 4One East Washington, Suite 2700, Phoenix, Arizona 85004 (Attn: Kimberly A. Hutchison); (b) by email to kimberly.hutchison@squiresanders.com; or (c) accessing the website for the United States Bankruptcy Court for the District of Arizona ([www.azb.uscourts.gov/](http://www.azb.uscourts.gov/)). The Plan supersedes the previous plan filed by the Debtors on December 18, 2012.

The following introduction and summary is a general overview only and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information and financial statements and notes thereto appearing elsewhere in this Disclosure Statement and the Plan. This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, the need to seek chapter 11 protection, significant events that have occurred during the chapter 11 case, and the anticipated organization and operations of the reorganized debtors. This Disclosure Statement also describes terms and provisions of the Plan, including certain alternatives to the Plan, certain effects of confirmation of the Plan, and certain risk factors associated with implementation of the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that holders of Claims and Equity Interests must follow for their votes to be counted. Certain provisions of the Plan, and thus the descriptions and summaries contained herein, may be the subject of continuing negotiations among the Debtors and various parties, may not have been finally agreed upon, and may be modified. Such modifications, however, will not have a material effect on the distributions contemplated by the Plan.

The Debtors are proponents of the Plan within the meaning of Section 1129 of the Bankruptcy Code. The Plan contains separate Classes and proposes recoveries for holders of Claims against, and Equity Interests in, the Debtors. After careful review of the Debtors’ current business operations, estimated recoveries in a liquidation scenario, and the prospects of ongoing business, the Debtors have concluded that their business and assets have significant value that would not be realized in a liquidation scenario and, as a result, the recovery to the Debtors’ Creditors will be maximized by a reorganization of the Debtors as contemplated by the Plan. **Therefore, the Debtors recommend that you vote in favor of the Plan.**

### B. Notice to Holders of Claims and Equity Interests

This Disclosure Statement is being transmitted to certain holders of Claims and Equity Interests for the purpose of soliciting votes on the Plan, and to others for informational purposes. The purpose of this Disclosure Statement is to provide adequate information to enable the holder of a Claim against or Equity Interest in the Debtors to make a reasonably informed decision with respect to the Plan prior to exercising the right to vote on the Plan.

By order entered on [REDACTED], 2013, the Bankruptcy Court approved this Disclosure Statement, authorized the Debtors to commence a solicitation of votes with respect to the Plan and set an evidentiary hearing for [REDACTED], March 21, 2013, at which time the Bankruptcy Court will consider confirmation of the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

THIS DISCLOSURE STATEMENT AND THE OTHER MATERIALS INCLUDED IN THE SOLICITATION PACKAGE ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtors or the Plan other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN, AND THE PLAN SUPPLEMENT IS, BY ITS NATURE, FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL OR FUTURE RESULTS. These estimates, assumptions, projections of future operating results and the like contained in this Disclosure Statement are statements that the Debtors believe constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements often include the words "may," "could," "would," "should," "believes," "expects," "anticipates," "estimates," "intends," "plans," "targets," "potentially," "probably," "projects," "outlook," or similar expressions. Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause the actual results, performance or achievements of reorganized debtors to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Such risks, uncertainties and other important factors include, among others: general economic and business conditions; the availability, terms and deployment of capital; residential, retail and commercial development activity; the market for palm tree sales; and any other factors referenced in this Disclosure Statement or otherwise.

Except with respect to the Liquidation Analysis and the Feasibility Analysis (collectively, the "**Projections**"), and except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. The Debtors do not intend to update the Projections for the purposes hereof; thus, the Projections will not reflect the impact of any subsequent events not already accounted for in the assumptions underlying the Projections. Further, the Debtors do not anticipate that any amendments or supplements to this Disclosure Statement will be distributed to reflect such occurrences. Accordingly, the delivery of this Disclosure Statement does not under any circumstance imply that the information herein is correct or complete as of any time subsequent to the date hereof.

EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND MAY NOT HAVE BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN OF REORGANIZATION OF THE ABOVE-CAPTIONED DEBTORS, AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY



INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS AND INTEREST HOLDERS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE PLAN. IN THE EVENT OF ANY CONFLICT BETWEEN THE DESCRIPTIONS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN WILL GOVERN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OF THE DEBTORS AND AFFILIATES SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASES, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT WILL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR WILL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR CHAPTER 11 INTERESTS IN, THE DEBTORS.

### C. Rules of Interpretation

The following rules for interpretation and construction will apply to the Disclosure Statement: (1) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender will include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference in the Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (3) unless otherwise specified, any reference in the Disclosure Statement to an existing document, schedule, exhibit, statute, regulation, order, rule of the court, or the like, will mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented from time to time; (4) any reference to an entity as a holder of a Claim or Equity Interest includes that entity's successors and assigns; (5) unless otherwise specified, all references in the Disclosure Statement to Articles and Exhibits are references to Articles and Exhibits of the Disclosure Statement; (6) the words "herein," "hereof," and "hereto" refer to the Disclosure Statement in its entirety rather than to a particular portion of the Disclosure Statement; (7) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Disclosure Statement; (8) unless otherwise set forth in the Disclosure Statement, the rules of construction set forth in Section 102 of the Bankruptcy Code will apply; (9) in computing any period of time prescribed or allowed, the provisions of Bankruptcy Rule 9006(a) will apply, and if the date on which a transaction may occur pursuant to the Disclosure Statement will occur on a day that is not a Business Day, then such transaction will instead occur on the next succeeding Business Day; and (10) unless otherwise specified, all references in the Disclosure Statement to monetary figures will refer to currency of the United States of America.

### D. Summary of Treatment of Claims and Equity Interests under the Plan

The obligations and distributions made under the Plan are in full and final settlement, release and compromise of any and all Claims against and Equity Interests in the Debtors.

The Plan contains separate classes for holders of Claims against, and Equity Interests in, the Debtors. The table below summarizes the classification and treatment of the principal prepetition Claims and Equity Interests under the Plan. The classification and treatment for all Classes are described in more detail in Article II through IV of the Plan.

THE DEBTORS, RABOBANK, WELLS FARGO, COMMITTEE, AND CERTAIN OTHER PARTIES-IN-INTEREST ENTERED INTO THE ALL-ENCOMPASSING TRANSITION AGREEMENT WHICH WAS APPROVED BY THE BANKRUPTCY COURT ON JANUARY 29, 2013. UNDER THE TRANSITION AGREEMENT, SUBSTANTIAL PORTIONS OF THE DEBTORS' ASSETS (REFERRED TO AS "TRANSFERRED PROPERTY" UNDER THE TRANSITION AGREEMENT) WILL BE SOLD FOR THE BENEFIT OF RABOBANK AND WELLS FARGO. THE DEBTORS' REMAINING ASSETS (REFERRED TO AS "EXCLUDED PROPERTY" UNDER THE TRANSITION AGREEMENT) WILL SERVE AS THE BASIS TO REORGANIZE AND RECONSTITUTE THE DEBTORS AND PROVIDE DISTRIBUTIONS TO CREDITORS OTHER THAN RABOBANK AND WELLS FARGO. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN, ON THE ONE HAND, AND THE TRANSITION AGREEMENT OR THE TRANSITION AGREEMENT ORDER (AS DEFINED BELOW), ON THE OTHER HAND, THE TRANSITION AGREEMENT OR TRANSITION AGREEMENT ORDER WILL GOVERN.

FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISK AND OTHER FACTORS PERTAINING TO THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST AND

INTERESTS IN THE DEBTORS, PLEASE SEE THE PLAN SUMMARY AND RISKS SECTIONS OF THIS DISCLOSURE STATEMENT.

Class	Class Description	Plan Treatment
1	<p><b>Other Priority Claims</b></p> <p><i>Unimpaired; deemed to accept</i></p>	<p>Upon the occurrence of the Effective Date, each holder of an Allowed Other Priority Claim will receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Priority Claim: (a) Cash in an amount equal to the amount of such Allowed Other Priority Claim; or (b) such other treatment as to which TreeCo and such Claim holder will have agreed upon in writing, provided that such treatment is not more favorable than the treatment in clause (a) above.</p>
2	<p><b>Secured Real Property Tax Claims</b></p> <p><i>Unimpaired; deemed to accept</i></p>	<p>In exchange for full satisfaction, settlement, release, and discharge, Allowed Secured Real Property Tax Claims will be treated as follows:</p> <p>(i) Allowed Secured Real Property Tax Claims arising from real property that is Collateral and subject to an Asset Sale under the Transition Agreement will be satisfied as provided for in the Transition Agreement.</p> <p>(ii) Allowed Secured Real Property Tax Claims arising from any real property retained by TreeCo will be paid in full in Cash by the Debtors and/or TreeCo as such Claims become due in accordance with applicable law.</p> <p>(iii) <u>Allowed Secured Real Property Tax Claims arising from</u> real property that is Collateral returned to a holder of a Miscellaneous Secured Claim <del>will</del><u>shall</u> remain <del>subject</del><u>attached</u> to <u>such real property and be satisfied in accordance with applicable law by the holder of the applicable Miscellaneous Secured Claim. Neither the Debtors nor TreeCo will be liable for any and all Liens securing Allowed Secured Real Property Tax Claims <u>arising from real property that is Collateral returned to a holder of a Miscellaneous Secured Claim.</u></u></p>

Class	Class Description	Plan Treatment
3	<b>Wells Fargo Claims</b>  <i>Impaired; entitled to vote</i>	<del>Treatment of</del> The Allowed Wells Fargo Secured Claims in Class 3.A <u>will be deemed satisfied by the transfer of the Transferred Property pursuant to the Asset Sales and treatment of the Transition Agreement.</u> The Allowed Wells Fargo General Unsecured Deficiency Claims in Class 3.B will be <del>governed by</del> <u>deemed satisfied in exchange for the Transition Agreement Lender Notes and Deficiency Notes to be approved</u> issued by <del>the Bankruptcy Court no later than TreeCo pursuant to the Transition Agreement Deadline. If the Transition Agreement is not approved by the Bankruptcy Court by the Transition Agreement Deadline, or if Wells Fargo votes to reject the Plan, the Debtors will implement the Liquidation Alternative, in accordance with the provisions set forth in Section 6.2 of the Plan..</del>
4	<b>Rabobank Claims</b>  <i>Impaired; entitled to vote</i>	<del>Treatment of</del> The Allowed Rabobank Secured Claims in Class 4.A <u>will be deemed satisfied by the transfer of the Transferred Property pursuant to the Asset Sales and treatment of the Transition Agreement.</u> The Allowed Rabobank General Unsecured Deficiency Claims in Class 4.B will be <del>governed by</del> <u>deemed satisfied in exchange for the Transition Agreement Lender Notes and Deficiency Notes to be approved</u> issued by <del>the Bankruptcy Court no later than TreeCo pursuant to the Transition Agreement Deadline. If the Transition Agreement is not approved by the Bankruptcy Court by the Transition Agreement Deadline, or if Rabobank votes to reject the Plan, the Debtors will implement the Liquidation Alternative, in accordance with the provisions set forth in Section 6.2 of the Plan.</del>

Class	Class Description	Plan Treatment
5	<b>Miscellaneous Secured Claims</b>  <i>Impaired; entitled to vote</i>	<p>In full settlement, release and discharge of Allowed Miscellaneous Secured Claims <u>in subclasses 5.A through 5.F</u>, holders of Allowed Miscellaneous Secured Claims <u>in subclasses 5.A through 5.F</u> will either: (A) be paid on terms that are: (i) agreed to by such holders and TreeCo to the extent TreeCo retains the Collateral subject to a Lien in favor of such Miscellaneous Secured Claim; or (ii) determined by the Bankruptcy Court; or (B) satisfied in full by a return to such holder of the Collateral securing such Allowed Miscellaneous Secured Claim.</p> <p><u>No later than five days before the Voting Deadline, the Debtors will notify each holder of Miscellaneous Secured Claims in subclasses 5.A through 5.F of which treatment option from Article 4.5.B of the Plan is applicable to their particular claim.</u></p> <p>To the extent that TreeCo retains Collateral subject to a Lien in favor of the holder of an Allowed Miscellaneous Secured Claim, TreeCo will grant to the holder of such Allowed Miscellaneous Secured Claim senior, perfected and valid first-priority Liens on such Collateral.</p>
6	<b>General Unsecured Claims</b>  <i>Impaired; entitled to vote</i>	<p>On the Effective Date, each holder of an Allowed General Unsecured Claim will receive a Pro Rata beneficial interest in the <u>FreeCo Note vested in the Unsecured Creditors' Trust, which will be vested with the Trust Assets, including the GUC Note.</u></p>
7	<b>Equity Interests and Equity Related Claims</b>  <i>Impaired; entitled to vote</i>	<p>On the Effective Date, <u>each holder the holders of an Allowed Equity InterestInterests will provide or cause their Affiliates to provide, the Affiliate New Equity Funding. In consideration therefor, the holders of Allowed Equity Interests</u> will receive <u>its Pro Rata distribution of or retain, as applicable, the TreeCo MembershipEquity Interests of TreeCo</u>, subject to the terms of the <u>FreeCo Operating Agreement and TreeCo Articles of Organization. Equity Related Claims will not be entitled to any recovery under the PlanRestated Governance Documents.</u></p>

**E. General Voting Procedures, Ballots, and Voting Deadline**

Under the Bankruptcy Code, impaired classes of claims and interests are entitled to vote on a plan of reorganization. A class that is not impaired under a plan is deemed to have accepted the plan and does not vote. A class is “impaired” under the Bankruptcy Code unless the legal, equitable, and contractual rights of the holders of claims or interests in that class are not modified or altered. For purposes of the Plan, holders of Claims in Classes 3, 4, 5, 6 and 7 are “impaired” and are entitled to vote on the Plan. Classes 1 and 2 are unimpaired under the Plan and deemed to have accepted the Plan without voting pursuant to Section 1126(f) of the Bankruptcy Code. Pursuant to Article 4.5.C of the Plan, holders of

Miscellaneous Secured Claims in subclasses 5.A through 5.F will receive a notice of election of treatment no later than five days prior to the Voting Deadline.

1. Voting of Disputed Claims or Equity Interests. If a claim for which a proof of claim has been timely filed is marked as contingent, unliquidated, or disputed on its face, or the claim for which a proof of claim has been timely filed is listed as contingent, unliquidated, or disputed on the Schedules, either in whole or in part, such claim is temporarily allowed for voting purposes at the lesser amount of: (1) the amount stated in the proof of claim, irrespective of any designation as contingent, unliquidated, or disputed; (2) the amount stated for such claim in the Schedules, irrespective of any designation as contingent, unliquidated, or disputed; or (3) an amount set forth in a stipulation, approved by an order of the Bankruptcy Court, between the holder of such claim and the Debtors.

If a claim has been made subject to a pending estimation motion or otherwise estimated or allowed for voting purposes by order of the Bankruptcy Court prior to the Voting Deadline, such claim is temporarily allowed in the amount proposed to be estimated or so estimated or allowed by the Bankruptcy Court.

If a claim has been made subject to a pending objection by the Debtors or any other party-in-interest under Bankruptcy Code § 502(a) and Bankruptcy Rule 3007, where such objection remains unresolved as of the Voting Deadline, such claim is temporarily disallowed for voting purposes under the Plan.

If a claim is listed in the Schedules as contingent, unliquidated, or disputed and a proof of claim was not timely filed, such claim is temporarily disallowed for voting purposes under the Plan.

2. Voting Procedure and Instructions. Accompanying this Disclosure Statement are, among other things, copies of (1) the Plan (Exhibit 1 hereto); (2) the notice of, among other things, the time for submitting Ballots to accept or reject the Plan; the date, time and place of the evidentiary hearing to consider the confirmation of the Plan and related matters, and the time for filing objections to the confirmation of the Plan; and (3) if you are entitled to vote, one or more Ballots (and return envelopes) to be used by you in voting to accept or to reject the Plan.

After carefully reviewing the Plan, this Disclosure Statement (including the Plan Supplement), and (if you are entitled to vote) the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by checking the appropriate box on the enclosed Ballot. Please complete and sign your original Ballot (copies will not be accepted) and return it in the envelope provided. You must provide all of the information requested by the appropriate Ballot. Failure to do so may result in the disqualification of your vote on such Ballot. Each Ballot has been coded to reflect the class of Claims or Equity Interest it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement.

**The Bankruptcy Court has set 5:00 p.m. (MST/Arizona Time) on [REDACTED], 2013, as the Voting Deadline.** The Deadline is the date for the determination of record holders of Claims and ~~or~~ Equity Interests entitled to receive a copy of this Disclosure Statement and vote, using appropriate Ballots, to accept or reject the Plan. All Ballots must be actually received by **Squire Sanders (US) LLP, Attn: Karen Graves**, 1 East Washington, Suite 2700, Phoenix, Arizona 85004 by the Voting Deadline, unless the Bankruptcy Court extends such date before such time. Ballots returned by facsimile or email are not valid and will not be counted.

**Ballots received after the Voting Deadline will not be counted. Ballots should not be delivered directly to the Bankruptcy Court or the Office of the United States Trustee.**

## Questions About Voting Procedures

If you have any questions about the procedure for voting your Claim or Equity Interest, the packet of materials that you have received, or the amount of your Claim; or you wish to obtain an additional copy of the Plan, this Disclosure Statement, the Plan Supplement, or any exhibits to such documents please contact:

### **SQUIRE SANDERS (US) LLP**

Attention: Karen Graves  
1 East Washington, Suite 2700  
Phoenix, Arizona 85004  
602.528.4810  
[karen.graves@squiresanders.com](mailto:karen.graves@squiresanders.com)

### **F. Acceptance or Rejection of a Plan**

Under the Bankruptcy Code, a voting class of claims is deemed to have accepted a plan if it is accepted by creditors in such class who vote on the plan and who hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class- [that have actually voted on the plan](#). A voting class of interests is deemed to have accepted a plan if it is accepted by holders of interests who hold at least two-thirds in amount of the interests of such class that have actually voted on the plan.

If the Plan is not accepted by all Impaired Classes, the Plan may still be confirmed by the Bankruptcy Court under Section 1129(b) of the Bankruptcy Code if: (a) the Plan has been accepted by at least one Impaired Class, and (b) the Bankruptcy Court determines, among other things, that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each non-accepting Impaired Class. If the Plan is not accepted by all Impaired Classes, the Debtors reserve the right to ask the Bankruptcy Court to confirm the Plan under the cramdown provisions of Section 1129(b) of the Bankruptcy Code.

### **G. Evidentiary Confirmation Hearing and Deadline for Objections to Confirmation**

Pursuant to Section 1128 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3017(c), the Bankruptcy Court has scheduled an evidentiary hearing to consider confirmation of the Plan to begin on                     , [March 21](#), 2013 at                      ~~(Mountain Standard~~ [1:30 p.m. \(Arizona Time\)](#) before the Honorable Eileen W. Hollowell, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Arizona, 6<sup>th</sup> Floor, Courtroom 602, 203 N. First Avenue, Phoenix, Arizona 85003. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be filed with the Clerk of the Bankruptcy Court and served so that they are **ACTUALLY RECEIVED** on or before                     , 2013, at 5:00 p.m. ~~(Mountain Standard~~ [\(Arizona Time\)](#) by: (i) Squire Sanders (US) LLP, 1 E. Washington, Suite 2700, Phoenix, Arizona 85004, Attn: Craig. D. Hansen and Bradley A. Cosman, counsel for the Debtors, and (ii) the Office of the United States Trustee for the District of Arizona, 230 North First Avenue, Suite 204, Phoenix, Arizona 85003, Attn: Christopher Pattock, Esq.

## II. DEFINITIONS

All capitalized terms not defined in this Disclosure Statement have the meanings ascribed to them in the Plan.

## III. THE DEBTORS, BACKGROUND, AND EVENTS PRECIPITATING THE CHAPTER 11

### A. **Background**

The Debtors comprise a large, multi-state agricultural enterprise and market leaders in the palm tree industry. The Debtors have a robust palm-tree inventory that enables the Debtors to be the principal provider of decorative palm trees for large and high profile real estate developments in California, Las Vegas, Arizona and beyond. Significant developments for which the Debtors were the primary provider of palm trees include the Arizona Center, the San Diego Convention Center, Almaden Boulevard in San Jose, California, the Kohl Center, and the Jamboree Center.

The Debtors' tree and farming operations ~~are scattered across~~comprise approximately 14,000 noncontiguous acres in or near Buckeye, Hyder, and Yuma, Arizona, and approximately 9,000 noncontiguous acres in or near Indio, California. The ranches on which the Debtors' farming is conducted range in size from approximately 2 to 1300 acres. The Debtors' corporate headquarters is located in Indio, California.

As of the Petition Date, the Debtors ~~currently employ~~employed approximately 250 full-time salaried and hourly employees. In addition, the Debtors ~~currently~~collectively utilized approximately 50 – 250 contract laborers, depending on the season.

During the period from 2000 to 2006, the Debtors' annual gross revenue ranged from approximately \$24 million to \$51 million. The majority of that revenue was generated by the sale of palm trees. Palm trees reach peak value at approximately 10 years of age, but can maintain peak value for approximately 30 years thereafter. At the time the Debtors filed bankruptcy, the Debtors' owned more than 250,000 palm trees in various stages of the tree-growth cycle.

As a corollary to their tree-farming operations, the Debtors farm and harvest citrus, dates, and other crops for additional revenue streams. Much of the Debtors' farming and harvesting of citrus, dates and other crops is done in conjunction with sharecroppers whereby the sharecroppers provide all care and maintenance for the plants required above the ground (*e.g.* tie downs, thinning, bagging, de-thorning, pollination), while the Debtors provide all care and maintenance required on or below the ground (*e.g.* irrigation). Once the fruit has been harvested, it is delivered to a packing company where it is graded and sorted. The grading process for the fruit, and therefore payment from the packer to the Debtors, can take many months.

The Debtors' farming enterprise comprises four affiliated entities:

1. Cocopah Nurseries of Arizona, Inc. ("**Cocopah AZ**") is an Arizona corporation formed in 1993 which owns and leases the real properties in Maricopa and Yuma counties. Cocopah AZ also manages the tree and fruit farming operations on the Arizona properties.
2. Cocopah Nurseries, Inc. ("**Cocopah CA**") is a California corporation that owns and leases the Debtors' real properties in California.



3. William D. Young and Sons, Inc. (“**WDY**”) is a California corporation that manages and operates the Debtors’ California properties. WDY earns a management fee from Cocopah CA for WDY’s management services in an amount approximately equal to WDY’s payroll and operating expenses.
4. WD Young & Sons Trucking and Nursery (“**Trucking**”) is a California partnership that purchases mature trees from Cocopah AZ and Cocopah CA and then manages the sale process to the Debtors’ customers. The Debtors’ customers are primarily land developers and landscape architects who purchase and plant palm trees in residential, retail, and commercial developments.
5. The Young Family Trust Established August 26, 1987 (“**Young Trust**”) is a trust established under the laws of California that owns various ranch properties on which the other Debtors operate their farming and tree sales business, and other parcels of real property.

## **B. The Debtors’ Capital Structure**

The Debtors have two separate senior secured credit facilities that are secured by mostly-separate collateral pools between the Secured Lenders. Substantially all of the Debtors’ assets—including the Debtors’ tree inventory and crops—are encumbered by liens under the Rabobank credit facilities, the Wells Fargo credit facilities, or both.

1. *The Rabobank Facility*. The Debtors, as borrowers, entered into a series of loan documents with Rabobank, as lender, including that certain *Amended and Restated Loan Agreement* dated as of May 18, 2010, that certain *Term Loan Agreement* dated as of April 1, 2008, and that certain *2002 Master Agreement* dated as of June 2, 2006 (each as modified or amended from time to time, and together with all related line of credit agreements, swap agreements, environmental indemnity agreements, deeds of trust, security agreements, and promissory notes, the “**Rabobank Loan Agreements**”).

The Debtors’ obligations under the Rabobank Loan Agreements are secured by liens on, and security interests in, certain real and personal properties of the Debtors identified in the Rabobank Loan Agreements.

As of the Petition Date, the Debtors owed approximately \$72 million under the Rabobank Loan Agreements and the Debtors were in default under the Rabobank Loan Agreements. The Debtors’ obligations under the Rabobank Loan Agreements are guaranteed by the Debtors’ principals and related family trusts.

2. *The Wells Fargo Facility*. Cocopah CA, as borrower, also entered into a series of loan documents with Wells Fargo, as lender, including that certain *Amended and Restated Credit Agreement*, dated as of January 25, 2010 (as modified or amended from time to time, and together with all swap agreements, environmental indemnity agreements, deeds of trust, security agreements, and promissory notes delivered in connection therewith, the “**Wells Fargo Loan Agreements**”).

The Debtors’ obligations under the Wells Fargo Loan Agreements are secured by liens on, and security interests in, certain real and personal properties of the Debtors identified in the Wells Fargo Loan Agreements.

As of the Petition Date, the Debtors owed approximately \$70 million under the Wells Fargo Loan Agreements and the Debtors were in default under one or more of the Wells Fargo Loan Agreements.

Cocopah CA's obligations under the Wells Fargo Loan Agreements are guaranteed by Cocopah AZ, WDY and Trucking, as well as by the Debtors' principals and related family trusts.

**C. The Debtors' Equity Ownership**

The overlapping ownership of the Debtors' equity interests are set forth [in the table](#) below:

Debtor Entity	Equity Ownership Percentages				
	Duane Young	Darl Young	Gregston Young	William D. Young	William D. Young & Harriet M. Young Trust
Cocopah AZ	33.33%	33.33%	33.33%	N/A	N/A
Cocopah CA	33.33%	33.33%	33.33%	N/A	N/A
WDY	14.00%	14.00%	14.00%	N/A	58.00%
Young Trust	0%	0%	0%	50% <sup>2</sup>	0%
Trucking	25.00%	25.00%	25.00%	25.00%	N/A

**D. Events Precipitating Chapter 11**

Beginning in 2007, the Debtors' financial results began reflecting the weak real estate market and the well-documented economic conditions. As residential, retail and commercial development significantly contracted, so too did the Debtors' palm tree sales revenue. The Debtors' gross revenues in fiscal years 2006 and 2007 were approximately \$57 and \$53 million, respectively. But by fiscal years 2008 and 2009, those revenues had fallen to approximately \$41 million and \$22 million, respectively. By 2010, the Debtors' gross revenues were \$23 million. The decreased revenue has had a negative material impact on the Debtors' profitability and cash flows. By 2010, the Debtors' financial distress caused defaults under the Debtors' secured lending obligations to the Secured Lenders, and ultimately resulted in the Debtors' filing of these chapter 11 cases.

**IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

**A. Administrative Proceedings**

Debtors Cocopah AZ, Cocopah CA, WDY, and Trucking filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on July 9, 2012. The Young Trust filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 12, 2012. All of the cases have been jointly administered. The first meeting of creditors for all Debtors was held on August 14, 2012.

**B. Retention of Professionals**

On August 20, 2012, the Bankruptcy Court signed a final order approving the retention of Squire Sanders (US) LLP as Debtors' counsel. On August 20, 2012, the Bankruptcy Court also signed a final order approving the retention of Focus Management Group USA, Inc. as financial advisor to the Debtors.

<sup>2</sup> William D. Young and his wife, Harriet Young, are equal beneficiaries of the Young Trust.

On August 1, 2012, the Debtors filed an application to retain Stanley E. Speer of Speer & Associates, LLC as Chief Restructuring Officer (“**CRO**”) for the Debtors. On August 28, 2012, the Bankruptcy Court signed a final order approving the retention of Mr. Speer as CRO.

On December 11, 2012 the Bankruptcy Court signed an order approving the retention of Hochman, Salkin, Rettig, Toscher & Perez, PC as special tax counsel.

### **C. First Day Motions**

The Debtors filed several “first day” motions that were all approved by the Bankruptcy Court. These motions and the orders related thereto are available from the Bankruptcy Court’s docket. In summary these motions included the following:

1. A motion to approve the payment of prepetition wages;
2. A motion for the continued maintenance and use of existing bank accounts, cash management system and business forms;
3. A motion establishing procedures for providing adequate assurance to utilities;
5. A motion for joint administration of the Debtors’ cases; and
6. A motion to approve the Debtors’ use of cash collateral

### **D. Appointment of Unsecured Creditors Committee**

On August 15, 2012, the United States Trustee’s Office filed a notice of appointment of an Official Committee of Unsecured Creditors.

### **E. Motion to Sell Minority Membership Interest**

On August 1, 2012, the Debtors filed the *Emergency Motion for an Order: (I) Authorizing Debtors Sale of a Minority Membership Interest Free and Clear of Interests and Related Transactions; (II) Limiting Notice Requirements Pursuant to Rule 2002; and (III) Waiving the 14 Day Stay Imposed by Bankruptcy Rule 6004(h)* (the “**Membership Sale Motion**”) seeking approval to sell the Debtors’ minority interest in joint venture C.M.&S. Forbes Ranch Associates, LLC. The Membership Sale Motion was approved by the Bankruptcy Court on August 6, 2012 and the contemplated sale subsequently closed on September 4, 2012. The sale provided approximately \$675,000 of net sale proceeds to the Debtors.

### **F. Motion to Determine Tax Liability to Approval of the Transition Agreement**

On January 29, 2013, the Court entered its Interim Order (A) Approving Transition Agreement Amongst the Debtors, Wells Fargo Bank, N.A., Rabobank, N.A., the Official Committee of Unsecured Creditors and Certain Other Parties-In-Interest; (B) Approving Process For Orderly Transition Of Collateral; (C) Appointing Transition Agent; (D) Modifying The Automatic Stay; and (E) Granting Related Relief (the “**Transition Agreement Order**”) [D.E. 440]. The Transition Agreement Order approved the Transition Agreement, as filed with the Bankruptcy Court on January 24, 2013 as part of the Notice of Filing Final Transition Agreement [D.E. 433]. The Transition Agreement was the culmination of extensive, good faith negotiations amongst the Debtors, the Secured Lenders, the Committee and other parties-in-interest. As more fully described below, the Transition Agreement, other things: (a) resolved issues concerning the Debtors’ use of the Secured Lenders’ cash collateral, (b) resolved pending motions

for stay relief that had been filed by the Secured Lenders; (c) resolved treatment of the Secured Lenders deficiency and diminution claims, and (d) established Committee support for proposed the Plan's treatment for Allowed General Unsecured Claims.

Under the Transition Agreement, substantially all of the real and personal property owned by the Debtors that is subject to valid and properly perfected liens and security interests in favor of the Secured Lenders—(such property defined in the Transition Agreement, the “**Transferred Property**”)—has been segregated and is being held pending future transfers to or for the benefit of the Secured Lenders (such transfers defined in the Transition Agreement, the “**Asset Sales**”). Importantly, however, under the Transition Agreement the Secured Lenders assumed liability for certain postpetition accounts payable and administrative costs that were incurred by the Estates in connection with the Transferred Property. Under the Transition Agreement, the Secured Lenders were granted relief from the automatic stay to take all steps to enforce their rights with respect to the transferred Property. To that end, under the Transition Agreement, Speer & Associates, LLC has served as Transition Agent with the power and authority to manage and administer the Transferred Property as set forth in the Transition Agreement.

The Transition Agreement further provided that certain other real and personal property of the Debtors (as defined under the Transition Agreement, the “**Excluded Property**”) would be retained by the Estates to form the basis of a reorganized tree sale distribution business under terms of the Plan. As set forth in detail in the Transition Agreement, the excluded assets include, among other things, certain cash on hand, certain inventory and receivables, certain residential and commercial real properties (including a corporate office and related furniture and equipment), certain on- and off-road equipment, rights arising under certain leases and tree purchase contracts, and other supplies, equipment, and personal property associated with operating a tree sale distribution business. Pending confirmation of the Plan and occurrence of the Effective Date, and subject to terms of the Transition Agreement, the Excluded Property has remained managed and operated by the Debtors as Debtors-In-Possession. Importantly, under the Transition Agreement, the Secured Lenders have agreed not to seek any distribution from the Estates for the Secured Lenders' allowed unsecured deficiency claims other than those set forth in the Plan. Specifically, the Transition Agreement provides that pursuant to the Plan the Debtors will issue to the Secured Lenders both the Lender Notes (which total \$7.5 million) and the Deficiency Notes on account of the Secured Lenders' allowed unsecured deficiency claims.

The Transition Agreement also provided that, notwithstanding the Secured Lenders' claims and liens rising in connection with postpetition diminution in the value of the Secured Lenders' collateral, the Secured Lenders would waive rights to certain collateral and share certain proceeds from liquidation of the Excluded Property in the event that these Chapter 11 Cases converted to cases under Chapter 7 of the Bankruptcy Code. Specifically, in the event of a conversion of these Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, the Transition Agreement provides that: (1) Excluded Property having value net value of \$1.5 million would remain in the Debtors' Estates for distribution by a Chapter 7 trustee; and (2) any remaining Excluded Property would be liquidated by the Secured Lenders, with the net proceeds from such liquidation to be shared on a 50/50 basis between the Secured Lenders and an agent appointed for the benefit of all allowed general unsecured claimholders.

The Transition Agreement resolved issues concerning the treatment of unsecured creditors and certain guarantor liability. With respect to the treatment of unsecured creditors, the Transition Agreement established support by the Committee for the treatment of allowed general unsecured claims as contemplated under the Plan. Specifically, the Transition Agreement established the Committee's support of the \$1.5 million GUC Note to be issued under the Plan for the benefit of the general unsecured creditors. And with respect to the resolution of certain guarantor liability, the Transition Agreement included as Schedule 8 a Summary Guaranty Term Sheet which identifies the material terms—including

amount, maturity, interest rates, security and payment terms—concerning repayment of the guaranty liability.

**F.G. Settlement with the California Board of Equalization**

On August 21, 2012, the California Board of Equalization (the “**Board**”) filed Proof of Claim No. 2 asserting a priority unsecured claim in excess of \$14.8 million. The Board ~~has subsequently thereafter~~ completed its audit of the Debtors and ~~revised its filed an amended~~ claim ~~amount of~~ approximately ~~\$3.34.7~~ million.<sup>3</sup> The Board’s asserted claims ~~awere~~ predicated on allegations that the Debtors failed to properly collect ~~state certain California~~ sales taxes on certain trees sales from 2004 through 2012.

The Debtors disputed ~~any~~ liability for the Board’s alleged claims and ~~believe that the Board is estopped by California law from retroactively imposing the asserted certain defenses to Board’s~~ alleged taxes. ~~The Debtors’ have alternatively objected that the amount of any tax liability is substantially less than the amount claimed by the Board claims.~~ On September 26, 2012, the Debtors filed their *Motion for Determination of Sales Tax Liability Pursuant to 11 U.S.C. § 505(a) and Objection to Proof of Claim Number 2* (the “**Tax Determination Motion**”). On November 7, 2012, the Bankruptcy Court granted the Tax Determination Motion and, thereby, accepted jurisdiction to hear and determine the Debtors’ tax liability to the Board. ~~The Debtors and the Board have since exchanged discovery and a two-day trial has been set for January 24 and 25, 2013 regarding the issue of liability. To the extent necessary, an additional two-day trial has been set for February 21 and 22, 2013 to quantify any amount of the Debtors’ liability.~~

The Debtors and the Board subsequently reached an agreement regarding material terms to settle and resolve the Board’s alerted claims as set forth in the Notice of Settlement (the “BOE Settlement Notice”) [D.E. 434] filed with the Bankruptcy Court on January 24, 2013. As set forth in the BOE Settlement Notice, the settlement with the Board remains subject to final modification and approval by the Board. As more fully set forth in the BOE Settlement Notice, the settlement with the Board provides that Board will have an Allowed Priority Tax Claim under Section 507(a)(8) of the Bankruptcy Code in the amount of \$300,000 (the “Allowed BOE Priority Claim”). Under terms of the settlement, the Allowed BOE Priority Claim will be paid under the Plan through: (i) a Cash payment of \$180,000 on the Effective Date; plus (ii) \$120,000 payable in monthly installment payments amortized over twelve (12) months, the first monthly installment being due on the first full quarter following the Effective Date and monthly installment payments due each month thereafter with the full amount due and payable one (1) year following the Effective Date.

**V. CHAPTER 11 GENERAL SUMMARY**

Chapter 11 of the Bankruptcy Code is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of itself and its creditors and equity holders. Confirmation of a plan of reorganization is the principal objective of a chapter 11 case.

In general, a chapter 11 plan of reorganization (a) divides claims and interests into separate classes, (b) specifies the property that each class is to receive under the plan, and (c) contains other provisions necessary to the reorganization of the debtor. A chapter 11 plan may specify that certain classes of claims or interests are either to be paid in full upon the effective date of the plan, reinstated, or

<sup>3</sup> The Board subsequently filed Proof of Claim No. 4, which superseded and replaced Proof of Claim No. 2.

their legal, equitable and contractual rights are to remain unchanged by the reorganization effectuated by the plan. Such classes are referred to under the Bankruptcy Code as “unimpaired” and, because of such favorable treatment, are deemed to accept the plan. Accordingly, it is not necessary to solicit votes from the holders of claims or interest in such classes. A chapter 11 plan also may specify that certain classes will not receive any distribution of property. Such classes are deemed to reject the plan.

All other classes of claims and interests contain “impaired” claims and interests entitled to vote on the plan. As a condition to confirmation, the Bankruptcy Code generally requires that each impaired class of claims or interests votes to accept a plan. Acceptances must be received (a) from the holders of claims constituting at least two-thirds in dollar amount and more than one-half in number of the allowed claims in each impaired class of claims that have voted to accept or reject the plan, and (b) from the holders of at least two-thirds in amount of the allowed interests in each impaired class of interest that have voted to accept or reject the plan. If any class or classes of claims or interests entitled to vote with respect to the plan rejects the plan, upon request of the plan proponents, the bankruptcy court may nevertheless confirm the plan if certain minimum treatment standards are met with respect to such class or classes.

Chapter 11 of the Bankruptcy Code does not require each holder of a claim or interest to vote in favor of a plan of reorganization in order for the bankruptcy court to confirm the plan. The bankruptcy court must, however, find that the plan of reorganization meets a number of statutory tests (other than the voting requirements described in this section) before it may confirm, or approve, the plan of reorganization. Many of these tests are designed to protect the interest of holders of claims or interest that do not vote to accept the plan of reorganization but who will nonetheless be bound by the plan’s provisions if it is confirmed by the bankruptcy court.

The following statements concerning the Plan are merely a summary of the Plan and are not complete. The statements are qualified entirely by express reference to the Plan. Creditors and Equity Interest holders are urged to consult with counsel or each other in order to understand the Plan fully. The Plan is complete, inasmuch as it proposes a legally binding agreement by the Debtors, and an intelligent judgment cannot be made without reading it in full. With the exception of Classes 1 and 2, all other Classes of the Debtors are impaired under the terms of the Plan. Classes 3 through 7 are impaired and entitled to vote.

## **VI. OVERALL STRUCTURE OF THE DEBTORS’ PLAN**

The Debtors recognize that a lengthy and uncertain chapter 11 process may impair the Debtors’ financial condition, and imperil the Debtors’ prospects for a successful reorganization. The terms of the Plan are based on, among other things, the Debtors’ assessment of their ability to successfully restructure their capitalization, make the distributions contemplated under the Plan, and pay their continuing obligations in the ordinary course of TreeCo’s business.

Subject to the more detailed description of Classes and treatments set forth in the Plan and elsewhere in this Disclosure Statement, the Plan reflects implementation of the Transition Agreement, which generally provides for the sale of certain substantial portions of the debtors’ assets that are subject, in part, (referred to hereinafter as “Transferred Property” under the Transition Agreement) will be sold for the benefit of the Secured Lenders under terms of the Transition Agreement and. The Debtors’ remaining assets (referred to as “Excluded Property” under Section 363 of the Transition Agreement) will serve as the basis to reorganize and reconstitute the Debtors and provide distributions to creditors other than the Secured Lenders. The Excluded Property will vest in TreeCo on the Effective Date free and clear of all Liens and Claims of all kinds existing before the Effective Date. From and after the Effective Date, TreeCo may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code. The Debtors’ unencumbered assets and assets not transferred to the Secured Lenders (defined, including the

~~employment of, and payment to, Professionals except as otherwise provided in the Plan as the “TreeCo Property”) will be vested in the reorganized Debtors (defined in or the Confirmation Order. With respect to any Transferred Property that remains as of the Effective Date: (1) such Transferred Property will be nominally owned by the Debtor’s Estates and will not be owned by TreeCo; and (2) such property will be subject to disposition under the Transition Agreement.~~

~~Under the Plan as “TreeCo”) and utilized in conjunction, and consistent with post-confirmation tree sale operations.the Transition Agreement, TreeCo will issue: (i) a promissory note (defined in the Plan as the “TreeCoGUC Note”) for the benefit of holders of Allowed General Unsecured Claims; in Class 6; and (ii) the Lender Notes and Deficiency Notes for the benefit of holders of Allowed Wells Fargo General Unsecured Deficiency Claims in Class 3.B and holders of Allowed Rabobank General Unsecured Deficiency Claims in Class 4.B. Holders of Allowed Equity Interests in the Debtors will receive/retain the equity interests in TreeCo in consideration for the Affiliate New Equity Funding.~~

~~If the Transition Agreement implementing the Asset Sales is not approved by the Transition Agreement Deadline, or if the allowed claims of the California Board of Equalization exceed the BOE Priority Claim Cap, the Debtors will move to convert their Chapter 11 Cases to liquidation proceedings under chapter 7 of the Bankruptcy Code. The Debtors believe that the conversion to chapter 7 will have a material negative impact on the recover to all creditors.~~

At certain times after the Effective Date, TreeCo will distribute Cash, securities and other property in respect of certain Classes of Claims as provided in the Plan. The Classes of Claims against and Equity Interests in the Debtors created under the Plan, the treatment of those Classes under the Plan, and the securities and other property to be distributed under the Plan are described below.

## **VII. TREATMENT OF UNCLASSIFIED CLAIMS**

### **A. Unclassified Claims**

As provided in Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are not classified for purposes of voting on, or receiving distributions under, the Plan. Holders of Administrative Claims and Priority Tax Claims are not entitled to vote on the Plan but, rather, are treated separately in accordance with Articles 2.3 and 2.5 of the Plan and under Bankruptcy Code § 1129(a)(9)(A).

### **B. Liability Under the Transition Agreement**

Except as otherwise set forth in the Transition Agreement, neither the Secured Lenders nor FarmCo will have any liability for payment of Allowed Administrative Claims, Preserved Ordinary Course Administrative Claims or Allowed Priority Tax Claims.

### **C. Allowed Administrative Claims**

1. Generally. Each Allowed Administrative Claim (other than a Preserved Ordinary Course Administrative Claim or Professional Claim) will be paid in full in Cash (or otherwise satisfied in accordance with its terms) on the latest of: (a) the Effective Date, or as soon after that date as practicable; (b) any date the Bankruptcy Court may fix, or as soon after that date as practicable; (c) 30 days after the Claim is Allowed; and (d) any date on which the holder of the Claim and the Debtors or TreeCo may agree.

2. Requests for Payment. All requests for payment of an Administrative Claim

(other than a Preserved Ordinary Course Administrative Claim or Professional Claim) must be served on TreeCo and filed with the Bankruptcy Court no later than the Administrative Claims Bar Date. Any holder of an Administrative Claim (other than a Preserved Ordinary Course Administrative Claim or Professional Claim) that fails to file and serve its request by the Administrative Claims Bar Date will be forever barred from asserting its Administrative Claim against any of the Debtors, and/or TreeCo.

**D. Preserved Ordinary Course Administrative Claims.**

Each Allowed Preserved Ordinary Course Administrative Claim will be allocated between the Secured Lenders and TreeCo in accordance with the Transition Agreement, based on the nature of, and circumstances giving rise to, the Allowed Preserved Ordinary Course Administrative Claim. The Allowed Preserved Ordinary Course Administrative Claim will be paid in full in Cash at the election of the applicable Secured Lender or TreeCo, as the case may be and as otherwise set forth in the Transition Agreement, either: (a) in accordance with the terms and conditions under which the Claim arose; or (b) on such date on which the holder of the Claim and the Secured Lenders or TreeCo, as the case may be, agree. Payments will be made without further action by the holder of the Preserved Ordinary Course Administrative Claim.

**E. Allowed Priority Tax Claims. Any**

1. **Generally.** Allowed Priority Tax Claims other than the BOE Allowed Priority Claim, will be paid in full on the later of the Effective Date (or as soon after that date as practicable) and 30 days after the Claim is Allowed, but TreeCo may elect to pay any Allowed Priority Tax Claim, other than the Allowed BOE Priority Claim, through regular installment payments in Cash of a total value, as of the Effective Date, equal to the Allowed amount of the Claim, over a period ending not later than five years after the Petition Date, and in a manner not less favorable than the most favored General Unsecured Claim provided for by the Plan. If TreeCo so elects, the installment payments will be made in equal quarterly installments of principal plus simple interest on the unpaid portion of the Allowed Priority Tax Claim accruing from the Effective Date at the statutory rate. The first payment will be made on the latest of: (a) the Effective Date, or as soon after that date as practicable; (b) 30 days after the Claim is Allowed, or as soon after the date as practicable; and (c) another date on which the holder of the Claim and TreeCo may agree. TreeCo retains the right to prepay any Allowed Priority Tax Claim, or any remaining balance of such a Claim, in full or in part, at any time on or after the Effective Date without premium or penalty. ~~NOTWITHSTANDING ANYTHING SET FORTH IN THE PLAN TO THE CONTRARY, IF THE BOARD OF EQUALIZATION'S ALLOWED PRIORITY CLAIM EXCEEDS THE BOE PRIORITY CLAIM CAP, THE DEBTORS WILL INITIATE THE LIQUIDATION ALTERNATIVE.~~

2. **BOE Allowed Priority Claim.** Pursuant to the BOE Settlement, the Board of Equalization will receive in full and final satisfaction of the Allowed BOE Priority Claim: (i) a Cash payment of \$180,000 on the Effective Date; plus (ii) \$120,000 payable in monthly installment payments amortized over twelve (12) months, the first monthly installment being due on the first full quarter following the Effective Date and monthly installment payments due each month thereafter with the full amount due and payable one (1) year following the Effective Date.

**~~E.F.~~ Professional Claims.**

Each Allowed Professional Claim will be paid in full in Cash: (a) no later than three days after the Professional Claim is Allowed; or (b) in accordance with the terms of any applicable administrative procedures order entered by the Bankruptcy Court. Each Person seeking an award by the Bankruptcy Court of Professional Fees must file with the Bankruptcy Court and serve its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the



Confirmation Date by the Professional Claim Bar Date.

## **VIII. CLASSIFICATION OF CLAIMS AND INTERESTS**

Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Equity Interests in the Debtors. All Claims and Equity Interests, except Administrative Claims, Priority Tax Claims, Professional Claims and any other unclassified Claims are placed in the Classes as set forth below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, and Professional Claims have not been classified, and the respective treatments of such unclassified Claims are set forth in Article II of the Plan.

### **A. Class 1 – Other Priority Claims**

Class 1 consists of all unsecured Claims entitled to priority under Section 507(a) of the Bankruptcy Code other than Allowed Priority Tax Claims.

### **B. Class 2 – Secured Real Property Tax Claims**

Class 2 consists of all Secured Real Property Tax Claims. Each holder of a Secured Real Property Tax Claim is considered to be in its own separate subclass within Class 2, and each such subclass is deemed to be a separate Class for purposes of the Plan.

### **C. Class 3 – Wells Fargo Claims**

Class 3 consists of two subclasses, and each such subclass is deemed to be a separate Class for purposes of the Plan. Subclass 3.A consists of all Wells Fargo Secured Claims. Subclass 3.B consists of all Wells Fargo Unsecured Deficiency Claims.

### **D. Class 4 – Rabobank Claims**

Class 4 consists of two subclasses, and each subclass is deemed to be a separate Class for purposes of the Plan. Class 4.A consists of all Rabobank Secured Claims. Subclass 4.B consists of all Rabobank Unsecured Deficiency Claims.

### **E. Class 5 – Miscellaneous Secured Claims**

Class 5 consists of all Miscellaneous Secured Claims. Each Miscellaneous Secured Claims constitutes a separate subclass within Class 5 for purposes of voting on the Plan. Subclass 5.A consists of all Spilman Secured Claims. Subclass 5.B consists of all Bergen Secured Claims. Subclass 5.C consists of all QVale Secured Claims. Subclass 5.D consists of all Smith Secured Claims. Subclass 5.E consists of all Avedisian Secured Claims. Subclass 5.F consists of any Miscellaneous Secured Claims other than the Spilman Secured Claims, the Bergen Secured Claims, the QVale Secured Claims, the Smith Secured Claims, and the Avedisian Secured Claims.

### **F. Class 6 – General Unsecured Claims**

Class 6 consists of all General Unsecured Claims.

### **G. Class 7 – Equity Interests and Equity Related Claims**

Class 7 consists of all Equity Interests in the Debtors and all Equity Related Claims.

## **IX. TREATMENT OF CLASSES & EQUITY INTERESTS UNDER THE PLAN**

~~Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Equity Interests in the Debtors. All Claims and Equity Interests, except Administrative Claims, Priority Tax Claims, Professional Claims and any other unclassified Claims are placed in the Classes as set forth below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, and Professional Claims have not been classified, and the respective treatments of such unclassified Claims are set forth in Article II of the Plan.~~

The treatment of Claims and Equity Interests as provided in Article IV of the Plan represents a compromise and full and final settlement, pursuant to Section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, of the various Claims and Equity Interests of parties-in-interest in the Chapter 11 Cases.

### **A. Class 1 – Other Priority Claims**

1. Impairment and Voting. Class 1 is unimpaired by the Plan. All holders of Allowed Secured Vendor Claims in Class 1 are deemed to have accepted the Plan and will not be entitled to vote on the Plan.

2. Treatment. Upon the occurrence of the Effective Date, each holder of an Allowed Other Priority Claim will receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Priority Claim: (a) Cash in an amount equal to the amount of such Allowed Other Priority Claim; or (b) such other treatment as to which TreeCo and such Claim holder will have agreed upon in writing, provided that such treatment is not more favorable than the treatment in clause (a) above.

### **B. Class 2 – Secured Real Property Tax Claims**

1. Impairment and Voting. Class 2 is unimpaired by the Plan. All holders of Allowed Secured Real Property Tax Claims are deemed to have accepted the Plan and will not be entitled to vote on the Plan. Each Secured Real Property Tax Claim constitutes a separate sub-class within Class 2 for purposes of voting on the Plan.

2. Treatment. In exchange for full satisfaction, settlement, release, and discharge, Allowed Secured Real Property Tax Claims will be treated as follows:

(a) Allowed Secured Real Property Tax Claims arising from real property that is Collateral and subject to an Asset Sale under the Transition Agreement will be satisfied as provided for in the Transition Agreement.

(b) Allowed Secured Real Property Tax Claims arising from any real property retained by TreeCo will be paid in full in Cash by the Debtors and/or TreeCo as such Claims become due in accordance with applicable law.

(c) Allowed Secured Real Property Tax Claims arising from real property that is Collateral returned to a holder of a Miscellaneous Secured Claim shall remain ~~subject attached to such real property and be satisfied in accordance with applicable law by the holder of the applicable Miscellaneous Secured Claim. Neither the Debtors nor TreeCo will be liable for any and all Liens securing~~ Allowed Secured Real Property Tax Claims arising from real property that is Collateral returned to a holder of a Miscellaneous Secured Claim.

### C. Class 3 – Wells Fargo Claims

1. Impairment and Voting. Class 3 is Impaired by the Plan. All holders of the Wells Fargo Claims are entitled to vote and will be solicited to vote on the Plan. Class 3.A and 3.B constitute separate sub-classes within Class 3 for purposes of voting on the Plan.

2. Treatment. ~~Treatment of~~The Allowed Wells Fargo Secured Claims in Class 3.A will be deemed satisfied by the transfer of the Transferred Property pursuant to the Asset Sales and ~~treatment of~~the Transition Agreement. The Allowed Wells Fargo General Unsecured Deficiency Claims in Class 3.B will be ~~governed by~~deemed satisfied in exchange for the ~~Transition Agreement~~Lender Notes and Deficiency Notes to be ~~approved~~issued by ~~the Bankruptcy Court no later than~~TreeCo pursuant to the Transition Agreement ~~Deadline. If the Transition Agreement is not approved by the Bankruptcy Court by the Transition Agreement Deadline, or if Wells Fargo votes to reject the Plan, the Debtors will implement the Liquidation Alternative, in accordance with the provisions set forth in Section 6.2 of the Plan.~~

### D. Class 4 – Rabobank Claims

1. Impairment and Voting. Class 4 is Impaired by the Plan. All holders of the Rabobank Claims are entitled to vote and will be solicited to vote on the Plan. Class 4.A and 4.B constitute separate sub-classes within Class 4 for purposes of voting on the Plan.

2. Treatment. ~~Treatment of~~The Allowed Rabobank Secured Claims in Class 4.A will be deemed satisfied by the transfer of the Transferred Property pursuant to the Asset Sales and ~~treatment of~~the Transition Agreement. The Allowed Rabobank General Unsecured Deficiency Claims in Class 4.B will be ~~governed by~~deemed satisfied in exchange for the ~~Transition Agreement~~Lender Notes and Deficiency Notes to be ~~approved~~issued by ~~the Bankruptcy Court no later than~~TreeCo pursuant to the Transition Agreement ~~Deadline. If the Transition Agreement is not approved by the Bankruptcy Court by the Transition Agreement Deadline, or if Rabobank votes to reject the Plan, the Debtors will implement the Liquidation Alternative, in accordance with the provisions set forth in Section 6.2 of the Plan.~~

### E. Class 5 – Miscellaneous Secured Claims

1. Impairment and Voting. Class 5 is Impaired by the Plan. All holders of Allowed Miscellaneous Secured Claims in Class 5 are entitled to vote and will be solicited to vote on the Plan. Each Miscellaneous Secured Claim constitutes a separate subclass within Class 5 for purposes of voting on the Plan.

2. Treatment. In full settlement, release and discharge of Allowed Miscellaneous Secured Claims in subclasses 5.A through 5.F, holders of Allowed Miscellaneous Secured Claims in subclasses 5.A through 5.F will either: (A) be paid on terms that are: (i) agreed to by such holders and TreeCo to the extent TreeCo retains the Collateral subject to a Lien in favor of such Miscellaneous Secured Claim; or (ii) determined by the Bankruptcy Court; or (B) satisfied in full by a return to such holder of the Collateral securing such Allowed Miscellaneous Secured Claim.

3. Election Notice. No later than five days before the Voting Deadline, the Debtors will notify each holder of Miscellaneous Secured Claims in subclasses 5.A through 5.F of which treatment option from Article 4.5.B of the Plan is applicable to their particular claim.

~~3.4.~~ Collateral. To the extent that TreeCo retains Collateral subject to a Lien in favor of the holder of an Allowed Miscellaneous Secured Claim, TreeCo will grant to the holder of such Allowed Miscellaneous Secured Claim senior, perfected and valid first-priority Liens on such Collateral.

## F. Class 6 – General Unsecured Claims

1. Impairment and Voting. Class 6 is Impaired by the Plan. All holders of Allowed General Unsecured Claims in Class 6 are entitled to vote and will be solicited to vote on the Plan.

2. Treatment. On the Effective Date, each holder of an Allowed General Unsecured Claim will receive a Pro Rata beneficial interest in the ~~TreeCo Note vested in the~~ Unsecured Creditors' Trust, which will be vested with the Trust Assets, including the GUC Note.

The Debtors estimate that the amount of Allowed General Unsecured Claims will total approximately \$4 to \$7 million. Based on such estimate, recovery percentages for Allowed General Unsecured Claims are estimated between 37.5% and 21.4%. The Debtors caution that no representations can be made as to the accuracy of the projected recovery percentage for Allowed General Unsecured Claims. Actual results can be expected to vary from the estimate, recovery percentages and the variations may be material and adverse.

## G. Class 7 – Equity Interests and Equity Related Claims

1. Impairment and Voting. Class 7 is Impaired by the Plan. All holders of Allowed Equity Interest or Allowed Equity Related Claims in Class 7 ~~are entitled to vote and~~ will be solicited to vote on the Plan.

2. Treatment. On the Effective Date, ~~each holder~~ the holders of ~~an~~ Allowed Equity ~~Interest~~ Interests will provide or cause their Affiliates to provide, the Affiliate New Equity Funding. In consideration thereof, the holders of Allowed Equity Interests will receive ~~its Pro Rata distribution of or retain, as applicable, the~~ TreeCo MembershipEquity Interests ~~of TreeCo,~~ subject to the terms of the ~~TreeCo Operating Agreement and TreeCo Articles of Organization. Equity Related Claims will not be entitled to any recovery under the Plan~~ Restated Governance Documents.

## X. SECURITIES TO BE ISSUED IN CONNECTION WITH THE PLAN

### A. TreeCo MembershipEquity Interests

Principal provisions of the TreeCo MembershipEquity Interests are summarized as follows:

1. Authorization. The ~~TreeCo Operating Agreement authorizes~~ Restated Governance Documents authorize the ~~issuance~~ retention of TreeCo MembershipEquity Interests. On the Effective Date, ~~or as soon thereafter as practicable, TreeCo will issue~~ 100% of the TreeCo MembershipEquity Interests ~~to will be retained by~~ current equity holders of the Debtors, ~~directly or through a holding company.~~

2. Rights. The TreeCo MembershipEquity Interests will have such rights with respect to Distributions, liquidation, voting, and other matters as are set forth in the ~~TreeCo Operating Agreement~~ Restated Governance Documents, and as provided under applicable law.

### ~~B.~~ TreeCo Note

### B. GUC Note, Lender Notes, and Deficiency Notes

On the Effective Date, TreeCo will issue: (i) the TreeCoGUC Note for the benefit of Allowed General Unsecured Claims in Class 6-; and (ii) the Lender Notes and Deficiency Notes for the benefit of

[the Allowed Wells Fargo General Unsecured Deficiency Claims in Classes 3.B and Allowed Wells Fargo General Unsecured Deficiency Claims in 4.B. Material terms of the GUC Note, the Lender Notes and Deficiency Notes are set forth in Schedule 10\(a\) of the Transition Agreement. The GUC Note, Lender Notes and Deficiency Notes will be issued by TreeCo](#) substantially in the form attached to the Plan Supplement.

[Cocopah CA, Cocopah AZ, WDY, and Trucking will jointly and severally issue the GUC Note, Lender Notes, and Deficiency Notes. In addition, the Young Trust will be a joint and several issue of the Lender Notes.](#)

### **C. Section 1145 Exemption**

In accordance with Section 1145 of the Bankruptcy Code, the issuance of the TreeCo [MembershipEquity](#) Interests, and the TreeCo Note in accordance with the Plan is exempt from the registration requirements of Section 5 of the Securities Act, and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is deemed to be a public offer of such securities.

## **XI. IMPLEMENTATION OF THE PLAN**

### **A. Substantive Consolidation**

The Plan constitutes a motion for substantive consolidation of the liabilities and properties of all Debtors. The Plan requests that confirmation of the Plan constitute the Bankruptcy Court's granting of that motion.

Substantively consolidating the liabilities and properties of all Debtors on the Effective Date: (a) consolidates the chapter 11 cases into the chapter 11 case of Cocopah AZ as a single case; (b) consolidates all property of each Estate into the Consolidated Estate only for purposes of distributions to holders of Allowed Claims under the Plan; (c) converts all Claims against each Estate into Claims against the Consolidated Estate such that any proof of claim filed against one or more of the Debtors are deemed to be a single Claim filed against the Consolidated Estate, and all duplicate proofs of claim for the same Claim filed against more than one Debtor are deemed expunged; (d) disallows, discharges, and eliminates all Intercompany Claims and precludes any distributions under the Plan on account of Intercompany Claims; (e) eliminates and discharges all guarantees by one Debtor of the obligations of any other Debtor or in favor of any other Debtor and precludes any distributions under the Plan on account of Claims based on such guarantees; and (f) for purposes of determining the availability of the right of setoff under Bankruptcy Code § 553, treats all Debtors as one consolidated entity so that, subject to the other provisions of Bankruptcy Code § 553, debts due to any Debtor may be [set-offsetoff](#) against the debts of any other Debtor. Substantive consolidation under the Plan does not affect valid, enforceable, and unavoidable Liens, except for Liens that secure a Claim that is eliminated by virtue of substantive consolidation and Liens against Collateral that are extinguished by virtue of substantive consolidation. Substantive consolidation under the Plan does not create a Claim in a Class different from the Class in which a Claim would have been placed in the absence of substantive consolidation. The substantive consolidation contemplated in the Plan does not affect any applicable date for purposes of pursuing any Avoidance Actions.

Substantive consolidation under the Plan is strictly for the purposes described in Article VI of the Plan and does not effect a merger or other consolidation of the Debtors.

## B. Transition Agreement and Asset Sales

The Transition Agreement ~~will generally provide~~ provides that upon the Transition Agreement effective date, substantially all of the real and personal property owned by the Debtors that was subject to a valid and properly perfected lien and security interest in favor of the Lenders as of July 9, 2012 (the "Transferred Property") will be sold for the benefit of the lenders, free and clear of all liens, claims and encumbrances under Section 363 of the Bankruptcy Code to either FarmCo or to such third parties that are designated by the Secured Lenders from time pursuant to time (the "Asset Sales"). Under the Transition Agreement, the timing and mechanism of the Asset Sales will be determined by the Secured Lenders in their sole and absolute discretion, subject to an outside completion date. ~~Upon Pending~~ the effective date completion of the ~~Transition Agreement~~ Asset Sales, the Transferred Property will be managed and operated at the Secured Lenders' expense by the Debtors' Chief Restructuring Officer ~~Transition Agent~~ in accordance with the Transition Agreement, ~~including any operating budget.~~

## C. Affiliate New Equity Funding.

Consistent with Section 5(e) of the Transition Agreement, on the Effective Date, the holders of Allowed Equity Interests will provide or cause their Affiliates to provide, the Affiliate New Equity Funding. In consideration therefor, the holders of Allowed Equity Interests will receive or retain, as applicable, the TreeCo Equity Interests, subject to the terms of the Restated Governance Documents.

## D. Rabobank Cash Leave

Under Section 6(e) of the Transition Agreement, TreeCo will issue a secured promissory note to Rabobank, a copy of which will be included in the Plan Supplement, to secure repayment of the \$250,000 in Rabobank's cash collateral included in Excluded Property (referred to in the Transition Agreement as the "Rabobank Cash Leave"). TreeCo will grant and convey to Rabobank a valid and properly perfected first priority lien upon and security interest in TreeCo's leasehold interest in the Bard (Harkins Road) lease and all net cash flow and related proceeds arising out of and related to such lease to secure such promissory note.

## ~~C~~.E. Continued Corporate Existence

~~Cocopah CA, Cocopah AZ, WDY, and Trucking.~~ From and after the Effective Date, Cocopah CA, Cocopah AZ, WDY, Trucking and Young Trust will continue to exist as ~~TreeCo~~, a separate corporate entities with all ~~the~~ associated powers of a limited liability company under ~~California~~ applicable law pursuant to the ~~Tree~~ Articles of Organization and TreeCo Operating Agreement ~~Restated Governance Documents~~, except to the extent such ~~articles of incorporation and bylaws~~ governance or other organizational documents are amended by the Plan, without prejudice to any right to terminate such existence (whether by merger or otherwise) under applicable law after the Effective Date. ~~From and after the Effective Date, Cocopah AZ, WDY, and Trucking will be deemed merged into TreeCo, to the extent necessary to preserve~~ Any licenses, permits, regulatory authority, pensions, or intellectual property necessary or appropriate to maintain TreeCo's operations are preserved under the Plan.

~~1. Young Trust. The Chapter 11 Case of the Young Trust should be dismissed effective as of the Plan Effective Date.~~

The GUC Note, Lender Notes, and Deficiency Notes will be joint and several obligations of each of Cocopah CA, Cocopah AZ, WDY and Trucking. In addition, the Young Trust will be jointly and severally liable for the Lender Notes

#### **D.F. Amended and Restated Organizational Documents**

As of the Effective Date and without any further action by the shareholders, members or partners of the Debtors, ~~Cocopah CA's~~ the respective organizational and governance documents of Cocopah CA, Cocopah AZ, WDY, and Trucking will be amended and restated substantially in the forms of the TreeCo Articles of Organization and TreeCo Operating Agreement. ~~Restated Governance Documents~~. The TreeCo Articles of Organization and TreeCo Operating Agreement ~~Restated Governance Documents~~ will also prohibit (to the extent required by Bankruptcy Code § 1123(a) and (b)) the issuance of non-voting equity securities. After the Effective Date, TreeCo may amend ~~its TreeCo Articles of Organization and TreeCo Operating Agreement~~ the Restated Governance Documents, or any similar documents and agreements as permitted by applicable law.

#### **E.G. Post-Confirmation Management**

The ~~managing members~~ day-to-day operations of TreeCo will be managed by Duane Young, Darl Young, and Gregston Young. ~~The managing members~~

1. ~~Retention~~ of TreeCo will ~~manage the day to day operations of TreeCo after the Effective Date.~~

#### **F. Cancellation of Securities, Instruments and Agreements**

~~On the Effective Date: (i) the prepetition equity interests in the Debtors will be cancelled; and (ii) the obligations of the Debtors under any agreements, documents, contracts or certificates of designation governing the prepetition equity interests will be discharged. As of the Effective Date, all prepetition equity interests that have been authorized to be issued but that have not been issued will be deemed cancelled and extinguished without any further action of any party or order of the Bankruptcy Court.~~

#### **G.H. Issuance of New Membership Equity Interests**

On the Effective Date and in accordance with the terms of the Plan and the Plan Documents, ~~TreeCo will issue the TreeCo Membership~~ and in consideration for the Affiliate New Equity Funding, the TreeCo Equity Interests will be retained by the Allowed Equity Interests.

#### **H.I. Effectiveness of New Securities, Instruments, Agreements and Documents.**

On the Effective Date, all securities, instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan, including, without limitation, the ~~TreeCo Note~~ GUC Note, the Lender Notes, the Deficiency Notes, the Plan Documents, and any security, instrument, agreement or document entered into, delivered, or filed in connection with any of the foregoing, will be deemed to become effective, binding, and enforceable in accordance with their respective terms and conditions.

#### **I.J. No Corporate Action Required.**

As of the Effective Date: (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan; and (b) the other matters provided for under, or in furtherance of, the Plan involving corporate action required of the Debtors, will be deemed to have occurred and become effective as provided in the Plan, and will be deemed authorized and approved in all respects without further order of the Bankruptcy Court or any further action by the stockholders or directors of the Debtors.

## **J.K. Operations Pending Effective Date**

Until the Effective Date, the Debtors will continue to operate their businesses, subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and otherwise consistent with the Transition Agreement.

## **K.L. Exemption from Certain Transfer Taxes and Recording Fees**

In accordance with Bankruptcy Code § 1146(c): (a) the issuance, distribution, transfer, and exchange of assets or property of the Estates; (b) the execution, assignment, modification, or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing are not subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents are directed to forego the collection of any such tax or assessment and to accept for filing or recordation of any of the foregoing instruments or other documents without the payment of any such tax or assessment.

## **L. ~~Liquidation Alternative~~**

## **M. ~~If (a) Intercompany Claims~~**

For purposes of the Plan, the Confirmation Order may allocate the Intercompany Claims between and among the Debtors, provided that no payment will be made on account of such Intercompany Claims prior to satisfaction of the Debtors and TreeCo's obligation under the Plan and the Transition Agreement is not approved

## **N. Unsecured Creditors' Trust**

1. Formation. On the Effective Date, the Unsecured Creditors' Trust will be formed subject to the Creditor Trust Agreement. The GUC Note and Avoidance Actions will vest in the Unsecured Creditor Trust and the Unsecured Creditor Trustee will begin serving for the benefit of all holders of Allowed Claims in Class 6 consistent with the Creditor Trust Agreement.

2. Authority. Subject to any limitations contained in, or as otherwise provided by ~~Order of the~~ the Plan or the Creditor Trust Agreement, the Unsecured Creditors' Trustee will have the following powers, authorities and duties, by way of illustration and not of limitation:

(a) to collect, receive, hold, manage, invest and distribute any and all money and other property which are Trust Assets and to give full discharge and acquittance therefor;

(b) subject to the terms of the Plan, to retain and set aside funds out of the Trust Assets as the Unsecured Creditors' Trustee deems necessary or appropriate to pay, or provide for the payment of: (i) the unpaid liabilities, debts or obligations of the Unsecured Creditors' Trust, (ii) contingencies, and (iii) the expenses of administering the Trust Assets;

(c) in accordance with Section 1123(b)(3)(B) of the Bankruptcy Code, the Plan and the Creditor Trust Agreement, the Unsecured Creditors' Trustee may engage in,



intervene in, prosecute, join, defend, compound, settle, compromise, abandon or adjust, by arbitration or otherwise, the Avoidance Actions, all in the name of the Unsecured Creditors' Trust if necessary or appropriate, and, when appropriate, settle the Avoidance Actions and claims in the Unsecured Creditor's Trustee's sole discretion and best business judgment;

(d) to assign its rights under the Plan;

(e) to file any and all documents and take any and all such other action as the Unsecured Creditors' Trustee, in its sole judgment, may deem necessary in order that the Unsecured Creditors' Trustee may lawfully carry out the purposes of the Unsecured Creditors' Trust in any jurisdiction;

(f) to review any Claims in Classes 6 and file or litigate objections to the allowance of any such Claims and seek to estimate them and to prosecute, enforce, compromise, settle or release such Claims;

(g) to pay and discharge any costs, expenses, professional fees or obligations deemed necessary to preserve or enhance the liquidation value of the Trust Assets, discharge duties under the Plan or perform the purpose of the Plan and the Creditor Trust Agreement; payment of such fees and expenses will not require Bankruptcy Court ~~on or~~ approval;

(h) to open and maintain bank accounts and deposit funds, draw checks and make disbursements in accordance with the Plan and the Creditor Trust Agreement;

(i) to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any Professional previously retained by the Debtor or the Committee, in accordance with the terms of the Plan and the Creditor Trust Agreement, as the Unsecured Creditors' Trustee deems necessary and desirable to assist it in fulfilling its obligations under the Creditor Trust Agreement and the Plan and pay the reasonable fees of such Persons and reimburse such Persons for their reasonable out of pocket costs and expenses upon approval of the same by the Unsecured Creditors' Trustee. To the extent that the Unsecured Creditors' Trustee is licensed and capable of doing so, the Unsecured Creditors' Trustee may serve as its own attorney, accountant, and/or tax specialist in conjunction with any of the rights, powers, and duties of the Unsecured Creditors' Trustee under the Plan;

(j) to in general, without in any manner limiting any of the foregoing, deal with the Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to or different from the ways herein specified, but in all events subject to and consistent with the terms of the Plan;

(k) to obtain and pay for insurance coverage relative to the proper performance of its duties under the Plan and the Creditor Trust Agreement, and to provide indemnification for itself and others provided for in the Creditor Trust Agreement;

(l) to establish and maintain any accounts, and establish such additional reserves, funds, and accounts out of the Trust Assets as may be necessary for carrying out

the provisions of the Creditor Trust Agreement which are consistent with the terms of the Plan;

(m) to appear and participate in any proceeding before the Transition Agreement Deadline, or (b) the Allowed Priority Tax Claim of the Board of Equalization exceeds the BOE Priority Claim Cap, the Debtors' will promptly convert the Debtors' Chapter 11 Cases to liquidation cases under chapter 7 of the Bankruptcy Code Bankruptcy Court with respect to any matter regarding or relating to the Plan, or the Unsecured Creditors' Trust;

(n) have the right to seek Bankruptcy Court approval of any action to be undertaken by the Unsecured Creditors' Trust; and

(o) without limitation, to do any and all things necessary to accomplish the purposes of the Plan and the Creditor Trust Agreement.

4.3. Compensation and Reimbursement of Expenses. The Unsecured Creditors' Trustee shall be compensated in accordance with the terms of the Creditor Trust Agreement. TreeCo will pay the Unsecured Creditors' Trust \$10,000 during each of the five years of the GUC Note term for purposes of compensating the Unsecured Creditors' Trustee. TreeCo will have no further obligation with respect to compensation of the Unsecured Creditors' Trustee and costs to administer the Avoidance Actions and determine claims in Class 6 will be borne by the Unsecured Creditors' Trust.

## **XII. DETERMINATION OF CLAIMS**

### **A. Objections to Claims.**

Notwithstanding the occurrence of the Effective Date, and except as to any Claim that has been Allowed before the Effective Date; (i) the Debtors or TreeCo may object to the allowance of ~~any Claim against the Debtors,~~ or seek estimation of, any Claim or Interest in Classes 1, 2, 5 and 7; and (ii) the Unsecured Creditors' Trustee may object to the allowance of, or seek estimation of, any Claim ~~on any grounds permitted by the Bankruptcy Code~~ in Class 6. All objections to Claims must be brought by filing the appropriate pleading in the Bankruptcy Court before the first Business Day that is 180 days after the Effective Date, but the Bankruptcy Court may approve a later date on the Debtors' or TreeCo's motion filed (but not necessarily heard) before the first Business Day that is 180 days after the Effective Date.

### **B. Distribution Reserve.**

The Unsecured Creditors' ~~Trust~~ Trustee will estimate the amount of, and the appropriate Pro Rata amount of beneficial interests in the TreeCoGUC Note to be distributed on account of, each Disputed Claim in Class 6 at the Maximum Amount of the Claim. Notwithstanding anything to the contrary contained in the Plan, the Maximum Amount of a Disputed Claim will constitute the maximum amount at which the Disputed Claim may be Allowed.

### **C. Distributions on Allowance or Disallowance of Disputed Claims**

No distributions will be made to any holder of a Claim unless and until the Claim becomes an Allowed Claim. If a Claim is not an Allowed Claim as of the Effective Date, distributions on account of that Claim will commence only when the Claim becomes an Allowed Claim after the Effective Date or as otherwise specifically provided in the Plan. If a Disputed Claim becomes an Allowed Claim, TreeCo or the Unsecured Creditors' ~~Trust~~ Trustee will make a distribution in accordance with the terms of the Plan

applicable to Claims of the Class in which that Claim resides.

#### **D. Contingent Claims**

Until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan. The holder of a Contingent Claim will be entitled to a distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with a Debtor on a Claim of a Creditor is Disallowed as of the Effective Date if: (a) that Creditor's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Creditor under Bankruptcy Code § 509.

### **XIII. PRESERVATION OF LITIGATION CLAIMS**

#### **A. Preserved Litigation Claims & Avoidance Actions**

In accordance with Bankruptcy Code § 1123(b)(3), ~~all Avoidance Actions and the~~ Preserved Litigation Claims are retained and reserved for TreeCo, which is designated as the Estates' representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the ~~Avoidance Actions and Preserved Litigation Claims~~ Preserved Litigation Claims. Under the Plan, the Avoidance Actions vest in the Unsecured Creditors' Trust and the Unsecured Creditors' Trustee is the Estates' representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the Avoidance Actions.

#### **B. Prosecution and Abandonment of Preserved Litigation Claims**

TreeCo will have the authority to prosecute, defend, compromise, settle, and otherwise deal with any ~~Avoidance Actions and~~ Preserved Litigation Claims, and will do so in its capacity as a representative of the Estates in accordance with Bankruptcy Code § 1123(b)(3)(B). TreeCo will pay the fees and costs associated with litigating the ~~Avoidance Actions and~~ Preserved Litigation Claims. TreeCo will have sole discretion to determine in its business judgment which ~~Avoidance Actions and~~ Preserved Litigation Claims to pursue, which to settle or abandon, and the terms and conditions of those settlements. TreeCo will not pursue ~~Avoidance Actions and~~ Preserved Litigation Claims with respect to any Allowed Class 6 claim holder that is doing business with TreeCo and providing post-Effective Date trade terms to TreeCo.

### **XIV. EFFECT OF CONFIRMATION**

#### **A. Vesting of Assets**

Except as provided in the Transition Agreement, the Plan, the Confirmation Order, or the Plan Documents, ~~TreeCo's the Excluded~~ Property will vest in TreeCo on the Effective Date free and clear of all Liens and Claims of all kinds existing before the Effective Date. From and after the Effective Date, TreeCo may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, including the employment of, and payment to, Professionals except as otherwise provided in the Plan or the Confirmation Order. With respect to any Transferred Property that remains as of the Effective Date: (1) such Transferred Property will be nominally owned by the Debtors' Estates and will not be owned by TreeCo; and (2) such property will be subject to disposition under the Transition Agreement.

#### **B. Discharge**

Except as provided in the Plan or the Confirmation Order, the rights granted under the Plan and the treatment of Claims and Equity Interests under the Plan are in exchange for and in complete

satisfaction, discharge, and release of, all Claims including any interest accrued on General Unsecured Claims from the Petition Date and termination of all Equity Interests. Except as provided in the Plan or the Confirmation Order, confirmation of the Plan: (a) discharges the Debtors and TreeCo from all Claims or other debts that arose before the Confirmation Date, and all debts of the kind specified in Bankruptcy Code §§ 502(g), 502(h) or 502(i), whether or not: (i) a proof of claim based on such debt is filed or deemed filed under Bankruptcy Code § 501; (ii) a Claim based on such debt is Allowed under Bankruptcy Code § 502; or (iii) the holder of a Claim based on such debt has accepted the Plan; and (b) terminates all Equity Interests and other rights of Equity Interests in the Debtors except as expressly provided in the Plan. Without limiting the foregoing, the discharge granted under the Plan is granted to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c), and 1141(d)(1).

### C. Injunction

*Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim or other debt or liability that is unclassified by the Plan or that is classified by Article III of the Plan or is subject to a distribution under the Plan, or an Equity Interest or other right of an equity security holder that is canceled or terminated under the Plan are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Equity Related Claims, or terminated Equity Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Debtors or TreeCo (including any officer or director or other Person acting as a representative or otherwise on behalf of the Debtors or TreeCo); (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against the Debtors or TreeCo, or their respective property; (c) creating, perfecting, or enforcing any Lien or encumbrance against the Debtors or TreeCo, or their respective property; (d) asserting a right of setoff, subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtors or TreeCo, or their respective property; and (e) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code. Nothing in Article 12.3 of the Plan or elsewhere in the Plan is to be construed or is to have the effect of extinguishing, prohibiting, or otherwise limiting, the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan.*

### D. Releases, ~~Exculpation and Related Matters~~ by the Debtors

Pursuant to Section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, the Debtors, in their individual capacity for and on behalf of their Estates, will be deemed to forever release, waive, and discharge all Released Parties from all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to (i) the Debtors, (ii) the Chapter 11 Cases and the conduct thereof, and (iii) the Plan. TreeCo will be bound, to the same extent the Debtors are bound, by all of the releases set forth in this Article 12.4(A) of the Plan.

~~If the Transition Agreement is not executed,~~ Nothing in the Plan or [this](#) Article 12.4(A) will effect the rights and obligations of the Secured Lenders or the Debtors' current and former officers, directors, principals, members, employees, and agents as such rights and obligations relate to guaranty liability of the Wells Fargo Claims or the Rabobank Claims.

## E. Releases by Holders of Claims and Interests

As of the Effective Date, each holder of an Impaired Claim entitled to vote to accept or reject the Plan is also entitled to vote to accept or reject the provisions of this Article 12.4.B of the Plan. Any holder of such Impaired Claim that affirmatively elects on the ballot for voting on the Plan to agree to the provisions of this Article 12.4.B of the Plan, shall in consideration for the obligations of the Debtors and TreeCo under the Plan and the securities, contracts, instruments, releases and other agreements or documents to be delivered in connection with the Plan, forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the rights to enforce the Debtors' or TreeCo's obligations under the Plan and the securities, contracts, instruments, releases and other agreements and documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases or the conduct thereof, or the Plan against: (i) the Debtors; (ii) TreeCo; and (iii) the Released Parties.

Nothing in the Plan or this Article 12.4(B) will effect the rights and obligations of the Secured Lenders or the Debtors' current and former officers, directors, principals, members, employees, and agents as such rights and obligations relate to guaranty liability of the Wells Fargo Claims or the Rabobank Claims.

## E.F. Exculpation and Limitation of Liability Regarding Conduct of Chapter 11 Cases

The Debtors, the Secured Lenders, the Committee, and TreeCo, and any of such parties' successors and assigns, will not have or incur, and are hereby forever released, waived, and discharged from any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities to one another or to any Claim holder or Interest holder, or any other party-in-interest, or any of their respective agents, employees, professionals, or any of their successors and assigns, for any act or omission, unless such act or omission is caused by such parties' gross negligence or willful misconduct, in connection with, relating to, or arising out of (i) the Chapter 11 Cases, (ii) the negotiation and filing of the Plan, (iii) the filing of the Chapter 11 Cases, (iv) the pursuit of confirmation of the Plan, including distributions made under the Plan, and the consummation of the Plan, including distributions made under the Plan, or (v) the administration of the Plan or the property to be distributed under the Plan.

## F.G. Preservation of Insurance

The discharge and release from Claims as provided in the Plan, except as necessary to be consistent with the Plan, do not diminish or impair the enforceability of any insurance policy that may cover Claims against a Debtor or any other Person.

## XV. LIQUIDATION ANALYSIS

*The Debtors' detailed Liquidation Analysis is included as an Exhibit to ~~the Plan Supplement~~this Disclosure Statement. The following is a general overview only and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information and financial statements and notes thereto appearing in the ~~Plan Supplement~~Liquidation Analysis. The final Liquidation Analysis ~~provided in the Plan Supplement~~ may change or differ from the following general overview. In the event of any conflict between the Liquidation Analysis ~~provided in the Plan Supplement~~ and this general overview, the Liquidation Analysis ~~provided in the Plan Supplement~~ will govern.*

Often called the “best interests” test of creditors, Section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a plan of reorganization, that each holder of a Claim or Equity interest in each impaired class either: (i) has voted to accept the Plan; or (ii) will receive or retain under the Plan property of a value that, as of the Effective Date, is not less than the amount that such Person would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. To make these findings, a Bankruptcy Court will typically: (1) estimate the cash proceeds that a Chapter 7 trustee would generate if the Debtors’ Chapter 11 ~~case was~~ Cases were converted to a Chapter 7 case on the Effective date and the assets of the Debtors’ Estates were liquidated (the “**Liquidation Proceeds**”); (2) determine the distribution that each non-accepting holder of a Claim or interest would receive from the Liquidation Proceeds under the priority scheme dictated in Chapter 7 (the “**Liquidation Distribution**”); and (3) compare each holder’s Liquidation Distribution to the distribution under the Plan (“**Plan Distribution**”) that such holder receive if the Plan were confirmed and consummated.

It is assumed that the liquidation would occur under the direction of a Chapter 7 trustee. It is further assumed that the Liquidation Proceeds would be distributed in accordance with Section 726 of the Bankruptcy Code. Under any liquidation scenario there can be unanticipated events that may materially impact disbursements. These events can include, but are not limited to, macro economic conditions, changes in the value of the assets that are being liquidated and changes in consumer preferences.

To assist the Bankruptcy Court in making the findings required under section 1129(a)(7), the Debtors’ management together with its professionals and CRO prepared the Liquidation Analysis. The Liquidation Analysis presents both “High” and “Low” estimates of Liquidation Proceeds representing a range of management’s assumptions related to the sale of the assets, the costs incurred during liquidation and the proceeds realized.

~~The Debtors’ assets consist of the real and personal property that make up nearly 23,000 acres of farming operations. The Debtors’ real property has potential long term appreciation value, and Pursuant to the Transition Agreement, if the palm trees, date fruit and citrus fruit growing on the Debtors’ ranches generate revenue. In Chapter 11 Cases were converted to a Chapter 7 liquidation, certain distinctive factors would limit the recovery from the sale of the Debtors’ assets. Most notably, the Secured Lenders hold valid, prepetition liens on substantially all of the Debtors’ real property and personal property assets. As of the Petition Date, the value of the Debtors’ assets was most likely substantially less than the amount owed prepetition under terms of the Bankruptcy Court-approved Transition Agreement, and under a Chapter 7 liquidation scenario, the Secured Lenders will assert their claims and liens against the Excluded Property arising in connection with postpetition diminution in the value of the Secured Lenders’ collateral. Such diminution claims and liens were granted to the Secured Lenders. Therefore, as more fully set forth under the cash collateral orders entered in these Chapter 11 Cases. More specifically, in the event of a conversion of these Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, the Transition Agreement provides that: (1) Excluded Property having value net value of \$1.5 million would remain in the Debtors’ Estates for distribution by a Chapter 7 trustee; and (2) any remaining Excluded Property would be liquidated by the Secured Lenders, with the net proceeds from such liquidation to be shared on a 50/50 basis between the Secured Lenders and an agent appointed for the benefit of all allowed general unsecured claimholders. Furthermore, under term of the BOE Settlement, under a Chapter 7 liquidation scenario the Board of Equalization will have an allowed general unsecured claim of \$100,000 which will be entitled to share in the pro rata distributions to general unsecured creditors, in addition to the BOE Allowed Priority Claim. Accordingly, as reflected in the Liquidation Analysis, it is anticipated that there would be no distribution to recoveries for Allowed unsecured claims in a Chapter 7 liquidation. In contrast, would be less than projected under the Plan. Under the Plan, holders of Allowed Priority Claims will receive payment in full, and the holders of Allowed General Unsecured Claims will receive~~

~~meaningful~~ payments ~~underby way of~~ the ~~TreeCo~~GUC Note. In addition, holders of equity interests will ~~receiv~~~~retain their~~ equity in ~~the reorganized debtor entity~~~~TreeCo~~.

THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTORS WERE, IN FACT, TO UNDERGO SUCH A LIQUIDATION, AND THE ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE CONTAINED WITHIN THE LIQUIDATION ANALYSIS. THE LIQUIDATION ANALYSIS IS SUBJECT TO ECONOMIC, COMPETITIVE AND OPERATIONAL UNCERTAINTIES THAT MAY BE BEYOND THE CONTROL OF THE DEBTORS OR A CHAPTER 7 TRUSTEE. NEITHER THE LIQUIDATION ANALYSIS NOR THE FINANCIAL PROJECTIONS HAVE BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH THE STANDARDS OF THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.

#### Application of the Best Interests Test to the Liquidation Analysis

The Liquidation Analysis is attached as an Exhibit to ~~the Plan Supplement~~~~this Disclosure Statement~~. The Debtors believe that any liquidation analysis is speculative. For example, the Liquidation Analysis necessarily contains an estimate of the amount of Claims that will ultimately become Allowed Claims. In preparing the Liquidation Analysis, the Debtors will project the amount of Allowed Claims based upon a review of their scheduled and filed proofs of claim. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtors projected a range for the amount of Allowed Claims with the low end of the range, the lowest reasonable amount of Claims and the high end of the range, the highest reasonable amount of the Claims, thus allowing assessment of the most likely range of Chapter 7 liquidation dividends to the holders of the Allowed Claims. The estimate of the amount of Allowed Claims set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims and Allowed Interests under the Plan.

Notwithstanding the difficulties in quantifying recoveries to creditors with precision, the Debtors believe that, taking into account the Liquidation Analysis, the Plan will meet the “best interests” test of Bankruptcy Code § 1129(a)(7). The Debtors believe that each member of each Class will receive at least as much under the Plan as it would in a liquidation in a hypothetical chapter 7 case. Creditors will receive a better recovery through the distributions contemplated by the Plan because maintaining the Debtors, through TreeCo, as a going concern under the Plan will allow the realization of more value for the Debtors’ assets over time and for the benefit of all Creditors ~~and holders of Equity Interests~~.

#### **XVI. FEASIBILITY ANALYSIS**

*The Debtors’ detailed Feasibility Analysis is included as an Exhibit to ~~the Plan Supplement~~~~this Disclosure Statement~~. The following is a general overview only and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions, information and financial statements and notes thereto appearing in the ~~Plan Supplement~~~~Feasibility Analysis~~. The final Feasibility Analysis ~~provided in the Plan Supplement~~ may change or differ from the following general overview. In the event of any conflict between the Feasibility Analysis ~~provided in the Plan Supplement~~ and this general overview, the Feasibility Analysis ~~provided in the Plan Supplement~~ will govern.*

To confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors. This requirement is imposed by Bankruptcy Code § 1129(a)(11) and is referred to as the “feasibility” requirement. The Debtors believe

that they will be able to perform timely all obligations described in the Plan and, therefore, that the Plan is feasible. To demonstrate the feasibility of the Plan, the Debtors have attached a feasibility analysis and financial projections as an Exhibit to ~~the Plan Supplement~~this Disclosure Statement (the “**Feasibility Analysis**”).

### FEASIBILITY RISK FACTORS

#### A. TreeCo’s Leverage and Dependence on Affiliate Funding

The Feasibility Analysis ~~demonstrates~~indicates that TreeCo will ~~have or~~ generate sufficient cash flow to satisfy ~~all~~TreeCo’s obligations under the ~~Plan~~GUC Note. ~~TreeCo’s ability to all Creditors in all Classes. According~~ly satisfy obligations under the Lender Note, however, depends on funding to be provided by holders of Allowed Equity Interests or their Affiliates, including but not limited to Jewel Date and Vintage Nurseries. In order to provide such funding, holders of Allowed Equity Interests or their Affiliates will likely be required to sell or leverage their respective assets. There can be no assurances of TreeCo’s ability to secure such funding from holders of Allowed Equity Interests or their Affiliates. Though not assured, the Debtors believe that ~~the Plan satisfies~~TreeCo will be able secure such funding from holders of Allowed Equity Interests or their affiliates and satisfy the feasibility requirement of Bankruptcy Code §1129(a)(11).

Despite significantly reducing their debt obligations through the Plan, TreeCo will continue to have substantial indebtedness that could adversely impact its financial health and performance in the future. Much of this continued indebtedness will be secured by all or substantially all of TreeCo’s assets. There can be no assurance that TreeCo will be able to secure requisite funding from holders of Allowed Equity Interests or their affiliates.

#### B. TreeCo’s Financial Results May be Volatile and May Not Reflect Historical Trends

The Debtors operate in a highly competitive market. The price for the Debtors’ products are sensitive to changes in overall economic conditions and consumer preferences and competition. As a result of these and other factors, including volatility in the price of raw materials and transportation costs, upon emergence from Chapter 11, the amounts reported in the Debtors’ financial statements may materially change relative to historical financial statements.

#### C. Competition

The market for palm tree sales is highly competitive. TreeCo will compete with various other parties in the palm tree sale market. Increased supply of available palm trees may lower market prices, which could negatively impact TreeCo’s business.

#### D. Projected Financial Results

The Debtors caution that no representations can be made as to the accuracy of the Feasibility Analysis ~~and projections contained in the Plan Supplement~~ or as to the ability of TreeCo to achieve the projected results. Certain of the assumptions on which the Feasibility Analysis is based are subject to uncertainties outside the Debtors’ control. Some assumptions inevitably will not materialize, and events and circumstances occurring after the date on which the Feasibility Analysis was prepared may be different from those assumed or may be unanticipated, and may adversely affect the Debtors’ financial results. Therefore, the actual results can be expected to vary from the Feasibility Analysis and the variations may be material and adverse.



The Feasibility Analysis was not prepared with a view toward compliance with the guidelines established by the American Institute of Certified Public Accountants, the practices recognized to be in accordance with generally accepted accounting principles, or the rules and regulations of the Securities and Exchange Commission regarding projections. Furthermore, the Feasibility Analysis was not audited by the Debtors' independent accountants. Although presented with numerical specificity, the Feasibility Analysis is based on a variety of assumptions, some of which in the past have not been achieved and which may not be realized in the future, and are subject to significant business, economic and competitive uncertainties and contingencies, and many of which are beyond the Debtors' control. Consequently, the Feasibility Analysis should not be regarded as a representation or warranty by the Debtors or any other Person, that projections will be realized. Actual results may vary materially from those presented.

## **XVII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

A summary description of certain United States federal income tax consequences (hereinafter, "Tax Consequences") of the Plan follows. This description is for informational purposes only and, owing to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various Tax Consequences of the Plan discussed below. This disclosure describes only the principal Tax Consequences of the Plan to the Debtors and to holders of Claims and Equity Interests. No opinion of counsel has been sought or obtained with respect to any Tax Consequences of the Plan. No rulings or determinations of the Internal Revenue Service ("IRS") or any other tax authorities have been sought or obtained with respect to any Tax Consequences of the Plan, and the discussion below is not binding on the IRS or other authorities. No representations are being made to the Debtors or any holder of a Claim or Equity Interest regarding the particular Tax Consequences of the confirmation and consummation of the Plan. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed here.

The following discussion of the Tax Consequences is based on the Internal Revenue Code of 1986, as amended (the "Code"), Treasury Regulations, judicial authorities, published positions of the IRS and other applicable authorities, all as in effect on the date of this document and all of which are subject to change or differing interpretations (possibly with retroactive effect).

The following discussion does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address the Tax Consequences of the Plan to special classes of taxpayers (e.g., insurance companies, tax-exempt organizations, persons that are, or hold their Claims through, pass-through entities, persons whose functional currency is not the United States dollar, foreign persons, dealers in securities or foreign currency, employees of the Debtors, persons who received their Claims by exercising an employee stock option or otherwise as compensation, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction). Furthermore, the following discussion does not address United States federal taxes other than income taxes.

The following discussion assumes that Cocopah AZ, Cocopah CA and WDY each have validly elected S corporation status within the meaning of Code Sections 1361 and 1362 (the "S Status"), and their shareholders have consented to such election, effective as of the date the Debtor was originally organized and that neither the Debtor nor its shareholders, or any other agents thereof, have taken or permitted any action that resulted in a termination of the Debtors' S Status through the Effective Date. If the Debtors' S Status has not been maintained from the date it was originally organized through the Effective Date, the discussion below would be irrelevant as the Debtors would be taxed as a corporation, as opposed to an S corporation, for United States federal income tax purposes (hereinafter "Tax Purposes"). The following discussion also assumes that Trucking is a "partnership" for Tax Purposes and that an election to treat Trucking as a corporation for Tax Purposes has not been made. Lastly, the

discussion assumes that the Young Trust is a grantor trust for Tax Purposes, the grantors are individuals and that the items of income, deduction, gain, loss and credit are being reported by the grantors of the Young Trust directly on their individual income tax returns.

Holders of Claims and Equity Interests are strongly urged to consult their own tax advisor regarding the United States federal, state, local, and foreign tax consequences of the transactions described in this Disclosure Statement and in the Plan.

#### A. Tax Consequences to the Debtors

The Debtors as described above are an S corporation, a Partnership or a Grantor Trust for Tax Purposes. Generally speaking, none incurs any federal income tax liability. Rather, any gains, losses or other items of income, deductions or credit (hereinafter "Tax Items") realized by the Debtors are passed through (or effectively passed through) to the holders of Equity Interests. The fact that the Debtors have filed a Chapter 11 proceeding does not change this tax result. No new taxable entity is created when they filed bankruptcy. Thus, any gain or loss recognized by the Debtors in connection with the transactions contemplated by the Plan will be passed through to the holders of Equity Interests. The Debtors other than the Young Trust will continue to file information returns for Tax Purposes, to the extent applicable, and will allocate to each owner his, her or its respective share of Tax Items, and the grantors of the Young Trust will directly report the Tax Items on the individual income tax returns of the grantors.

Under the Plan, each Debtors' outstanding indebtedness to Wells Fargo and Rabobank will be satisfied in exchange for transfer of their Collateral, [their Lender Notes and their Deficiency Notes](#) to the Secured Lenders. ~~It is anticipated pursuant to the Transition Agreement. The Transition Agreement became effective upon the Bankruptcy Court's order on January 29, 2013. Upon the Transition Agreement becoming effective, the benefits and burdens of the ownership of the Debtors' Collateral was transferred to the Secured Lenders.~~

~~The Debtors and the Secured Lenders intend that the Lender Notes will be paid in full by Debtors. The Debtors and Secured Lenders do not intend for the Deficiency Notes to be paid in full as the amounts outstanding with respect to such notes will only be payable upon certain transfers or events that the Debtors and Secured Lenders do not anticipate ever occurring. Thus, while not free from doubt and subject to the Debtors' accountants agreeing with this analysis, we anticipate that the Debtors will treat the principal portion of the Deficiency Notes as being cancelled now rather than when they mature in five years. Thus, in our view, the transfer of the Debtors' Collateral and the Lender Notes to the Secured Lenders is in exchange for the satisfaction of the excess of the outstanding indebtedness to the Secured Lenders over the aggregate value of the Collateral and the Lender Notes.~~

~~It has been agreed under the Transition Agreement that the value of the Collateral and the principal amount of the Lender Notes each Debtor transfers to Wells Fargo and Rabobank will be less than the amount of such Debtor's outstanding indebtedness to Wells Fargo and Rabobank. Assuming the Debtors' outstanding indebtedness to Wells Fargo and Rabobank are considered recourse indebtedness, the ~~sale~~transfer of the Collateral and associated cancellation of any deficiency ~~in excess of the principal amount of the Lender Notes~~ (i) will cause the Debtor to recognize ~~on the date the Transition Agreement became effective~~ gain or loss in connection with the deemed transfer of each asset in an amount equal to the difference between the sum of the fair market value of the Collateral transferred and the adjusted basis of such Collateral in the hands of the Debtor and (ii) ~~could cause~~ the debtor to recognize ~~cancellation on the date the Lender Notes and Deficiency Notes are delivered~~ cancellation of indebtedness (COD) income ~~depending on whether~~ equal to cancellation of any deficiency ~~in excess of the principal amount of the Lender Notes~~. Any gain or loss recognized as a result of the transfer of the Collateral may be either ordinary gain or loss or capital gain or loss, ~~depending on the character of the Collateral transferred.~~~~

COD income is taxed at ordinary income rates. To the extent the Debtors' outstanding indebtedness to Wells Fargo and Rabobank are considered nonrecourse indebtedness, which we would believe would be unlikely given the Debtors are delivering the Lender Notes, the cancellation of a nonrecourse debt upon a transfer of the Collateral securing such debt ~~does~~ may not produce COD income. Rather, the Debtors' transfer of the Collateral securing a nonrecourse debt in satisfaction of the debt is treated as a sale of the Collateral in exchange for the face amount of the outstanding indebtedness ~~less the principal amount of the Lender notes~~. In such a case, ~~the partnership is~~ each Debtor would be required, under Code Section 1001(a), to report gain or loss equal to the difference between the face amount of the outstanding indebtedness and the Debtor's basis in the transferred Collateral. The amount realized from the deemed sale of the Collateral includes the amount of the canceled debt ~~less the principal amount of the Lender Notes~~, regardless of whether the amount of the debt exceeds the fair market value of the property. While not free from doubt, regardless of whether the outstanding indebtedness income to the Secured Lenders is recourse debt or nonrecourse debt, in calculating each Debtor's gain, loss or cancellation of indebtedness income under the above-described principles, we believe that the Debtors will need to trace who was the beneficial borrower of the outstanding indebtedness borrowed from the Secured Lenders. The above principles would also apply to a transfer of Collateral to another secured creditor.

As part of the Plan, certain other indebtedness may simply be cancelled. In addition, certain intercompany debt among the Debtors may be simply cancelled. Such cancellation likely would produce COD income, except to the extent such payment of indebtedness will give rise to an ordinary and necessary deduction for Tax Purposes.

As stated above, any gain or loss generated upon a deemed sale of the assets and all COD income (subject to the below discussion with respect to S corporations), will be passed through (or effectively passed through). With respect to Trucking, the allocation of the Tax Items to its owners are subject to complex rules under Code Section 704 which, along with the applicable partnership agreement, governs the allocation of the gain or loss on the transfer of the Collateral and the COD income among the holders of the ~~membership~~ interests in HoldingsTrucking and it is quite possible that cash would not be distributed to the holders to pay any tax resulting from such allocations. Further, certain other partnership income tax rules, relating to prior deductions that were attributable to Collateral secured by nonrecourse debt or the cancellation of outstanding indebtedness could give rise to a chargeback of income to the owner who was allocated the nonrecourse deduction or gain being allocated to such owner upon the reduction in outstanding indebtedness. Each holder of an interest in a Debtor or grantor of the Young Trust should consult his, her or its own tax advisors in order to determine how the Tax Items described above will affect them.

There are special rules that apply to an S Corporation. Under these special rules, any COD income of any Debtor that is an S corporation that occurs in a Title 11 bankruptcy may be able to be excluded by such Debtor and not passed through to its owners. There are specific requirements for such exclusion and the owners of such Debtors should consult their tax advisors regarding any such exclusion. But, in the case of a partnership and its partners, the relevant exception to the recognition of such income applies at the partner, not the partnership level. Accordingly, the tax treatment of the COD income allocated to the holders of the interests in Trucking will depend upon the individual circumstances of each holder. If each holder of the interests in Trucking is not in its own title 11 bankruptcy case or insolvent (to the extent of its allocable share of the COD income) or can exclude COD under some other provision at the time such COD income is realized by such holder, the holder will be required to report its allocable share of COD income as ordinary income. In such event, it should be noted that to the extent such holder has offsetting capital losses (losses realized from the sale or exchange of capital assets) from this or any other transaction that can be claimed (e.g., if the IRS were to succeed in contesting that certain ordinary losses from this transaction were actually capital losses), such capital losses can only offset up to \$3,000 of ordinary income such as the COD income discussed above. It is unclear how the above rules should

apply to the Young Trust and its grantors-, [although it is our belief that any insolvency should be tested with respect to the grantor not the grantor trust.](#) We encourage them to consult their tax advisors with respect to these issues.

It is also contemplated that certain assets may be transferred to Cocopah CA directly or through a merger or other consolidation of the Debtors into Cocopah CA, with Cocopah CA surviving. Any such transfer or merger or consolidation, however effectuated, may result in Tax Items to the holders of the interests in the Debtors or to the grantors of the Young Trust. As discussed above, with respect to Trucking, the holders of the interest in Trucking should consult their tax advisors with respect to any complex partnership income tax allocation and other issues.

Any prior losses or losses produced by a transfer of the Collateral may be limited under the “at risk” rules, the passive activity loss rules, the related party rules under Code Section 267 and 707, and under general applicable common law tax principles.

The holders of the Equity Interests are strongly urged to consult their own tax advisor (including their own estate and gift tax advisor) regarding the Tax Consequences of the transactions described in this Disclosure Statement and in the Plan.

## **B. Tax Consequences to the Creditors who Hold Debt Instruments**

The following discusses certain Tax Consequences of the transactions contemplated by the Plan to Creditors that are “United States holders,” as defined below, who hold debt instruments. The Tax Consequences of the transactions contemplated by the Plan to Creditors (including the character, timing and amount of income, gain or loss recognized) will depend on, among other things: (1) whether the Claim and the consideration received in respect of it are “securities” for Tax Purposes; (2) the manner in which a Creditor acquired a Claim; (3) the length of time the Claim has been held; (4) whether the Claim was acquired at a discount; (5) whether the Creditor has taken a bad debt deduction with respect to the Claim (or any portion of it) in the current tax year or any prior tax year; (6) whether the Creditor has previously included in its taxable income accrued but unpaid interest with respect to the Claim; and (7) whether the Claim is an installment obligation for Tax Purposes. Creditors, therefore, should consult their own tax advisors regarding the particular Tax Consequences to them of the transactions contemplated by the Plan.

For purposes of the following discussion, a “United States holder” is a Creditor that is: (1) a citizen or individual resident of the United States; (2) a partnership, limited liability company, or corporation created or organized in the United States or under the laws of the United States, a political subdivision of the United States, or a State of the United States; (3) an estate whose income is subject to United States federal income taxation regardless of its source; or (4) a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States fiduciaries have the authority to control all substantial decisions of the trust, or (ii) the trust was in existence on August 20, 1996, and properly elected to be treated as a United States person.

Under the Plan, subject to the potential factors described above, some Creditors will receive debt instruments in full and final satisfaction of their Claims, including the Creditors in Class 6 who will receive Pro Rata beneficial interests [\(through the Unsecured Creditors’ Trust \)](#) in the new [FreeCoGUC](#) Note to be issued by [FreeCothe Debtors](#) in exchange for the full and final satisfaction of their Claims. Under such circumstances, a Creditor will generally recognize gain or loss in an amount equal to the difference between the Creditor’s amount realized (the value of the debt instrument received or, in the case of a Class 6 Creditor, a beneficial interest in the [FreeCoGUC](#) Note) and the Creditor’s adjusted tax basis in such Claim.

The character of a Creditor's gain or loss as described in the immediately preceding paragraph as capital gain or loss or as ordinary income or loss will be determined by a number of factors which vary depending on a Creditor's particular circumstances. Such factors include the nature of such Claim as held by the Creditor, whether such Claim constitutes a capital asset in the hands of the Creditor, whether such Claim was purchased at a discount, whether any amount received in respect of such Claim constitutes accrued interest, and whether and to what extent the Creditor has previously claimed a bad debt deduction with respect to such Claim. A Creditor who recognizes a loss on a transaction conducted under the Plan may be entitled to a bad debt deduction, either in the taxable year of the Effective Date or a prior taxable year.

A Creditor who has not previously included accrued interest into taxable income will be required to recognize ordinary income equal to the portion of the: (i) a Cash payment; (ii) the face amount of any debt instrument given the Creditor; or (iii) the beneficial interest such Creditor has in the issue price of the [TreeCoGUC](#) Note, as applicable, that is allocable to the Creditor's accrued interest, regardless of whether that Creditor realizes an overall gain or loss as a result of the exchange of its existing Claims. A Creditor who has included such accrued interest into taxable income generally may take an ordinary deduction to the extent that such Claim is not fully satisfied under the Plan (after allocating between principal and accrued interest), even if the underlying Claim is held as a capital asset. It is not clear the extent to which a portion of the: (i) a Cash payment; (ii) the face amount of any debt instrument given the Creditor; or (iii) the beneficial interest such Creditor has in the issue price of the [TreeCoGUC](#) Note, as applicable, will be properly allocable to accrued interest.

1. Adequately Stated Interest

Generally, it is anticipated that any debt instrument provided by TreeCo, including the [TreeCoGUC](#) Note, will have an interest rate that is equal to or in excess of the IRS provided applicable federal rate (hereinafter, the "AFR"). However, if the interest rate of any such instrument becomes lower than the AFR (which could result from a subsequent increase in the AFR), a Creditor will be treated as receiving additional interest equal to the amount of "foregone interest." For this purpose, "foregone interest" would be equal to the difference between the amount of interest the Creditor would have received if the interest rate of the [TreeCoGUC](#) Note was equal to the AFR, and the amount of interest payable on the [TreeCoGUC](#) Note.

2. Market Discount

In general, a debt obligation, other than one with a fixed maturity of one year or less, that is acquired by a holder in the secondary market (or, in certain circumstances, on original issuance) is a "market discount bond" as to that holder if the obligation's stated redemption price at maturity (or, in the case of a debt obligation having original issue discount, the revised issue price) exceeds the holder's adjusted tax basis in the debt obligation immediately after its acquisition. However, a debt obligation will not be a "market discount bond" if such excess is less than a statutory de minimis amount. To the extent that a Creditor has not previously included market discount in its taxable income, gain recognized by a Creditor on the disposition of a "market discount bond" will generally be treated as ordinary interest income to the extent of the market discount accrued on such bond during the Creditor's period of ownership. A holder of a market discount bond that is required to defer deduction of all or a portion of the interest on indebtedness incurred or maintained to acquire or carry the bond may be allowed to deduct such interest, in whole or in part, on the disposition of such bond. In addition, any partial principal payment received by a Creditor that is attributable to a market discount bond will generally be treated as ordinary interest income to the extent such payment does not exceed the market discount accrued on such bond during the Creditor's period of ownership.

### 3. Original Issue Discount

The original issue discount (“OID”) rules provide an extremely detailed and complex method for determining and taxing the interest components of debt instruments, including any Claims treated as debt instruments and the ~~Free Co~~GUC Note. A holder of a debt instrument containing OID must include a portion of the OID in gross income in each taxable year in which the holder holds the debt instrument, regardless of whether any cash payments are received. OID is defined as the difference between the issue price and the stated redemption price at maturity of a debt instrument. As the OID rules are extremely complex, it is not certain how they will apply to the transactions contemplated by the Plan. Accordingly, each Creditor must consult its own tax advisor.

### 4. Other Claimholders

If a Creditor reaches an agreement with the Debtors to have its Claim satisfied, settled, released, exchanged, or otherwise discharged in a manner other than as described in the Plan, that Creditor should consult with its own tax advisors regarding the Tax Consequences of that satisfaction, settlement, release, exchange, or discharge.

### 5. 3.8% Medicare Tax

Effective for 2013, pursuant to the Patient Protection and Affordable Care Act, certain passive taxpayers and trusts who meet certain income thresholds (generally, \$250,000 of adjusted gross income in the case of individuals) will be subject to an additional 3.8% tax on certain kinds of investment income. The holders of the Equity Interests, the grantors of the Young Trust, and the Creditors (and their owners) all may be subject to this additional tax. We encourage each of you to consult your own tax advisors with respect to this additional tax.

### C. Information Reporting and Backup Withholding

Certain payments, including payments in respect of accrued interest or market discount, are generally subject to information reporting by the payor to the IRS. These reportable payments do not include those that give rise to gain or loss on the exchange of a Claim. Moreover, such reportable payments are subject to backup withholding under certain circumstances. A United States holder may be subject to backup withholding at rate of ~~31 Percent following December 31, 2012~~ 25.28 percent with respect to certain distributions or payments of accrued interest, market discount, or similar items pursuant to the Plan, unless the holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct United States taxpayer identification number and certifies under penalty of perjury that the holder is a United States person, the taxpayer identification number is correct, and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Payments that give rise to gain or loss on the exchange of a Claim are not subject to backup withholding.

Backup withholding is not an additional tax. Amounts subject to backup withholding are credited against a holder’s United States federal income tax liability, and a holder may obtain a refund of any excess backup withholding by filing an appropriate claim for refund with the IRS.

## **XVIII. IMPORTANCE OF OBTAINING PROFESSIONAL TAX ASSISTANCE**

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A LIMITED SUMMARY OF CERTAIN TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS**

**FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF THE DEBTOR, EACH HOLDER OF AN EQUITY INTEREST AND THE CREDITORS. ACCORDINGLY, ANYONE AFFECTED BY THE PLAN IS STRONGLY URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN, INCLUDING WITH RESPECT TO TAX REPORTING AND RECORD KEEPING REQUIREMENTS.**

**A. IRS CIRCULAR 230 NOTICE**

**TO COMPLY WITH UNITED STATES TREASURY REGULATIONS, BE ADVISED THAT ANY UNITED STATES FEDERAL TAX ADVICE INCLUDED IN THIS COMMUNICATION (AND ~~IT IS NOT INTENDED THAT~~ ANY SUCH ADVICE ~~BE~~ GIVEN IN THIS DISCLOSURE STATEMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, TO AVOID ANY UNITED STATES FEDERAL TAX PENALTIES OR TO PROMOTE, MARKET, OR RECOMMEND TO ANOTHER PARTY ANY TRANSACTION OR MATTER DESCRIBED HEREIN.**

**XIX. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The executory contracts and unexpired leases between a Debtor and any Person are dealt with as follows:

**A. Assumption or Rejection of Executory Contracts and Unexpired Leases**

1. Assumption of Executory Contracts and Unexpired Leases by the Debtors. All executory contracts and unexpired leases set forth on the schedule of assumed executory contracts and unexpired leases filed ~~with the Bankruptcy Court~~ as part of the Plan Supplement will be deemed assumed by the Debtors as of the Effective Date, except for any executory contract or unexpired lease: (i) that has been rejected in accordance with a Final Order entered before the Confirmation Date; or (ii) as to which a motion to reject has been filed with the Bankruptcy Court before the Confirmation Date.

2. Assignment of Executory Contracts and Unexpired Leases to FarmCo. All executory contracts and unexpired leases set forth on the schedule of assumed and assigned executory contracts and unexpired leases filed ~~with the Bankruptcy Court~~ as part of the Plan Supplement will be assumed by the Debtors and assigned to FarmCo as part of the Asset Sales under the Transition Agreement. Cure amounts for executory contracts and unexpired leases assigned to FarmCo will be paid by FarmCo under terms of the Transition Agreement.

3. Rejection of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases either (i) set forth on the schedule of rejected executory contracts and unexpired leases filed ~~with the Bankruptcy Court~~ as part of the Plan Supplement or (ii) existing but not listed as assumed, or assumed and assigned, under the Plan Supplement will be deemed rejected as of the Effective Date, except for any executory contract or unexpired lease that has been assumed or rejected in accordance with a Final Order entered on or before the Confirmation Date.

## **B. Approval of Assumption or Rejection**

Entry of the Confirmation Order constitutes: (a) the approval under Bankruptcy Code § 365 of the assumption or assumption and assignment of the executory contracts and unexpired leases assumed or assumed and assigned under the Plan, [the Transition Agreement](#), or otherwise during the Chapter 11 Cases; and (b) the approval under Bankruptcy Code § 365 of the rejection of the executory contracts and unexpired leases rejected under the Plan or otherwise during the Chapter 11 Cases. Notwithstanding anything contained in this Article to the contrary, the Debtors retain the right to add or change the treatment (assumed or rejected) of any executory contract or unexpired lease listed in the Plan Supplement, thus changing the treatment of the contract or lease under the Plan, at any time within 30 days after the Effective Date.

## **C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

On the Effective Date or as soon after that date as practicable, TreeCo or FarmCo, as applicable, will Cure any defaults under any executory contract or unexpired lease assumed or assumed and assigned under the Plan in accordance with Bankruptcy Code § 365(b)(1). TreeCo and FarmCo will not, and need not as a condition to assuming or assuming and assigning any executory contract or unexpired lease under the Plan, Cure any default ~~relating to a Debtor's failure to perform a nonmonetary obligation under any executory contract or unexpired lease that need not be cured in accordance with Bankruptcy Code § 365(b).~~

## **D. Rejection Claims Bar Date**

All Rejection Claims arising from the rejection of any executory contract or unexpired lease under the Plan are required to be filed with the Bankruptcy Court no later than the Rejection Claims Bar Date. Any such Claim not filed within that time will be forever barred. With respect to any executory contract or unexpired lease rejected by a Debtor before the Confirmation Date, the deadline for filing a Rejection Claim remains the deadline set forth in the order of the Bankruptcy Court authorizing that rejection. If such an order did not contain such a deadline, the deadline for filing a Rejection Claim arising from that rejection is the Rejection Claims Bar Date.

## **XX. CONDITIONS PRECEDENT**

### **A. Conditions to Confirmation**

The following are conditions precedent to confirmation of the Plan that must be satisfied or waived in accordance with Article 11.3 of the Plan:

1. The Bankruptcy Court enters a Final Order approving the Disclosure Statement in form and substance acceptable to the Debtors in their sole and absolute discretion.
2. The Bankruptcy Court enters the Confirmation Order in form and substance acceptable to the Debtors in their sole and absolute discretion.
3. The Confirmation Order contains the following:
  - (a) The provisions of the Confirmation Order are nonseverable and mutually dependent;
  - (b) To the extent not previously approved by the Bankruptcy Court, approval



of the Transition Agreement, and authorization for the Debtors to take all actions necessary to implement the transactions provided in the Transition Agreement;

(c) Approval of the BOE Settlement by the Bankruptcy Court;

~~(e)~~(d) Approval of the assumption, rejection, or assumption and assignment of all executory contracts and unexpired leases under the Plan;

~~(d)~~(e) Approval of the ~~TreeCo Operating Agreement~~Restated Governance Documents, and any other Plan Documents the Debtors deem necessary;

~~(e)~~(f) All executory contracts and unexpired leases assumed or assumed and assigned by the Debtors during the Chapter 11 Cases or under the Plan remain in full force and effect for the benefit of TreeCo or any assignee of such contracts or leases, as the case may be, notwithstanding any provision in any such contract or lease (including those described in Bankruptcy Code § 365(b)(2) and (f)) that prohibits or conditions such assignment or transfer or that enables, permits, or requires termination of such contract or lease;

~~(f)~~(g) The Debtors are released and discharged from all obligations arising under all executory contracts and unexpired leases rejected by the Debtors during the Chapter 11 Cases or under the Plan;

~~(e)~~(h) Except as provided in the Plan, TreeCo, is discharged as of the Confirmation Date from any and all Claims and any and all “debt” (as that term is defined in Bankruptcy Code § 101(12)) that arose on or before the Confirmation Date, and the Debtors’ liability in respect of such Claims and debts is extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or unfixe, matured or unmatured, disputed or undisputed, legal or equitable, or known or unknown, or that arose from any agreement of the Debtors that has either been assumed, assumed and assigned, or rejected in the Chapter 11 Cases or under the Plan, or obligation of the Debtors incurred before the Confirmation Date, or that otherwise arose before the Confirmation Date including, without limitation, all interest, if any, on any such Claims, whether such interest accrued before or after the Petition Date and, without limiting the foregoing, the discharge granted under the Plan is granted to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c) and 1141(d)(1);

~~(h)~~(i) In accordance with Bankruptcy Code § 1123(b)(3)(B), TreeCo is appointed as the representative and agent of the Estates to prosecute, compromise, or abandon any Avoidance Actions and Preserved Litigation Claims in accordance with the Plan; and

~~(i)~~(j) Retention of jurisdiction of the Bankruptcy Court to the fullest extent permitted by applicable law, and at least to the extent contemplated by Article 13 of the Plan.

**B. Conditions to Effectiveness.**

The following are conditions precedent to the occurrence of the Effective Date, each of which may be satisfied or waived in accordance with Article 11.3 of the Plan:

1. The Confirmation Date occurs;
2. Each of the Plan Documents to be issued, entered into, delivered, or filed under the Plan are issued, entered into, delivered, or filed and are effective; ~~and~~

~~3. The Claims of the Board of Equalization against the Debtors are resolved in a manner acceptable to the Debtors.~~

3. The Affiliate New Equity Funding is provided;

**C. Waiver of Conditions**

The Debtors may waive any condition to confirmation or the Effective Date other than the condition to the Effective Date requiring provision of the Affiliate New Equity Funding, in whole or in part, at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of the Plan.

**XXI. POST-EFFECTIVE DATE FEES; FINAL DECREE**

TreeCo will be responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which will be as soon as practicable after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Equity Interests and other parties that, after the Effective Date, specifically request such notice.

**XXII. RETENTION OF JURISDICTION**

**A. Generally**

Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court will have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including, among others, the following matters:

1. to hear and determine motions for (i) the assumption or rejection or (ii) the assumption and assignment of executory contracts or unexpired leases to which any of the Debtors are a party or with respect to which any of the Debtors may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of Cure, if any, required to be paid;

2. to adjudicate any and all adversary proceedings, applications and contested matters that may be commenced or maintained pursuant to the Chapter 11 Cases or the Plan, proceedings to adjudicate the allowance of Disputed Claims and Disputed Interests and all controversies and issues arising from or relating to any of the foregoing;

3. to ensure that distributions to Allowed Claimholders are accomplished as provided herein;

4. to hear and determine any and all objections to the allowance or estimation of Claims and Equity Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow or disallow any Claim or Equity Interest, in whole or in part;

5. to hear and determine any requests by Debtors or TreeCo to appoint a successor as representative of the Estates under Section 1123 of the Bankruptcy Code;

6. to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified and/or vacated;

7. to issue orders in aid of execution, implementation, or consummation of the Plan;
8. to consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
9. to hear and determine all applications for allowance of compensation and reimbursement of Professional Claims under the Plan or under Sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;
10. to determine requests for the payment of Claims entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including compensation of and reimbursement of expenses of parties entitled thereto;
11. to hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order including disputes arising under agreements, documents or instruments executed in connection with the Plan;
12. to hear and determine all suits or adversary proceedings to recover assets of any of the Debtors and property of their Estates, wherever located;
13. to hear and determine matters concerning state, local and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code;
14. to hear any other matter not inconsistent with the Bankruptcy Code;
15. to hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;
16. to enter a final decree closing the Chapter 11 Cases; and
17. to enforce all orders previously entered by the Bankruptcy Court.

**B. Retention of Jurisdiction Related to Transition Agreement**

Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court will have exclusive jurisdiction of all matters arising out of, and related to, the Transition Agreement, including jurisdiction to hear and determine motions to effectuate the Asset Sales under the Transition Agreement

**XXIII. MISCELLANEOUS PROVISIONS**

**A. Effecting Documents, Further Transactions, Timing**

The Debtors, TreeCo, and all other parties to the Plan Documents are authorized and directed as of the Effective Date, and without further order of the Bankruptcy Court, to execute, deliver, file, or record all Plan Documents and other contracts, instruments, releases, and other agreements or documents, and to take all actions necessary or appropriate to effect and further evidence the terms of the Plan. All transactions required to occur on the Effective Date under the terms of the Plan are deemed to have occurred simultaneously.

## **B. Binding Effect**

The Plan is binding on, and inures to the benefit of, the Debtors and the holders of all Claims and Equity Interests, including the holders of Equity Related Claims, and their respective successors and assigns.

## **C. Governing Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable or as provided in any document entered into in connection with the Plan, the rights, duties and obligations of the Debtors and any other Person arising under the Plan are governed by, and construed and enforced in accordance with, the internal laws of the State of Arizona, without giving effect to Arizona's choice of law provisions.

## **D. Modification and Treatment of Claims**

The Debtors reserve the right to modify the treatment of any Allowed Claim in any manner adverse only to the holder of that Claim at any time after the Effective Date on that holder's prior written consent.

## **E. Setoffs and Recoupment**

The Debtors and TreeCo may, but are not required to, setoff or recoup against any Claim or Equity Interest and the payments or other distributions to be made under the Plan in respect of such Claim, Claims of any nature that arose before the Petition Date that any Debtor may have against the holder of such Claim or Equity Interest to the extent such Claims may be setoff or recouped under applicable law, but neither the failure to do so nor the fact of any Claim or Equity Interest under the Plan becoming Allowed constitutes a waiver or release by any Debtor or TreeCo of any such claim that it may have against such holder.

## **F. Severability**

If the Bankruptcy Court finds the Plan or any provision of the Plan to be invalid, illegal or unenforceable, or if the Bankruptcy Court cannot confirm the Plan under Bankruptcy Code § 1129, the Bankruptcy Court, at the request of the Debtors or TreeCo, may retain the power to alter and interpret the Plan or any such provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the provision held to be invalid or unenforceable, and such provision will then become applicable as altered or interpreted. The Confirmation Order constitutes a judicial determination and provides that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable.

## **G. Plan ~~Supplement~~ Documents**

Notwithstanding anything to the contrary contained in the Plan, including any reference in the Plan to documents in the forms annexed to the Plan or the Plan Supplement as exhibits, the Debtors may revise any Plan Document (a) by filing such revised Plan Document with the Bankruptcy Court more than ten days before the deadline for voting on the Plan, or (b) with the written consent of all parties in interest that are entitled to vote on the Plan and are materially and adversely affected by such revision.

## **H. Inconsistency**

If any inconsistency between the Plan and the Disclosure Statement exists, the provisions of the Plan govern. If any inconsistency between the Plan and any Plan Document exists, the provisions of the Plan Document govern.

## **I. Subordination**

The distributions under the Plan take into account the relative priority of each Claim in connection with any contractual subordination provisions relating to such Claim. Accordingly, distributions under the Plan are not and may not be subject to levy, garnishment, attachment, or other legal process by any holder of a Claim or Equity Interest purporting to be entitled to the benefits of such contractual subordination, and all such holders are deemed to have waived all contractual subordination rights they otherwise may have had.

## **J. Withholding and Reporting Requirements**

In connection with the Plan and all instruments issued in connection with the Plan, the Debtors, or TreeCo, as the case may be, must comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions under the Plan remain subject to any such withholding and reporting requirements. The Debtors and TreeCo may take all actions necessary to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, each holder of an Allowed Claim or Allowed Equity Interest that has received a distribution under the Plan has sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding, and other tax obligation on account of such distribution.

## **K. Post-Effective Date Fees; Final Decree**

Except as otherwise provided for under the Transition Agreement, TreeCo, on behalf of the Estates, will be responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which will be as soon as practicable after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those holders of Claims and Equity Interests and other parties that, after the Effective Date, specifically request such notice.

## **L. De Minimis Distributions**

No distributions of less than \$10 will be made on account of any Claim or Equity Interest. If the holder of an Allowed Claim or Allowed Equity Interest does not receive a distribution owing to the provisions of this Article 14.14 on the Effective Date or any subsequent date, the Allowed Claim or Allowed Equity Interest remains eligible for distributions on the first date set for distributions when such distribution exceeds \$10.

## **M. Method of Payment; Payments, Filings and Notices Only on Business Days**

Payments of Cash under the Plan must be made by check drawn on a domestic bank or by wire transfer from a domestic bank. Whenever any payment, distribution, filing, delivery, or notice to be made under the Plan is due on a day other than a Business Day, such payment, distribution, filing, delivery, or notice may instead be made, without interest or penalty, on the immediately following Business Day.

## **XXIV. RISKS**

The restructuring of the Debtors involves a degree of risk, and this Disclosure Statement and the Plan, [Plan Supplement](#), and certain of their Exhibits contain forward-looking statements that involve risks and uncertainty. The actual results of the Debtors and TreeCo could differ materially from those anticipated in such forward-looking statements as a result of a variety of factors, including those set forth in the following risk factors and elsewhere in this Disclosure Statement. Holders of Claims should consider carefully the [following risk factors set forth in this Disclosure Statement](#), in addition to the other information contained in this Disclosure Statement, before submitting a vote to accept or reject the Plan.

### **A. Industry Factors**

1. **Tree Sales Industry.** TreeCo's tree sales business revenue will be largely dependent on the residential and commercial development activity. These industries are sensitive to changes in economic conditions and other factors, such as the level of employment, consumer confidence, consumer income, availability of financing, and interest rate levels.

Additionally, residential and commercial development have in recent years suffered from a deep economic downturn, which has had a negative impact on the Debtors' tree sales business and could continue to impact TreeCo on a forward-looking basis. During the downturn, real estate development suffered through lack of consumer confidence, decreased housing affordability, and rising unemployment which have resulted in decreased demand for new residential, retail, and commercial development. The real estate development industry stalled due to a widespread commercial credit freeze, decreased land values, increased cost of materials, and a myriad of other factors. While the industry is beginning to show signs of recovery, there is still at least some risk of an additional downturn, and it is impossible to pinpoint with certainty how strong the recovery will be and the extent to which it will lead to a corresponding recovery in the tree sale industry.

Other influencing factors specific to the tree sales industry include the cost of labor and other materials, other unanticipated increases in operating costs, increased competition, regulatory changes, and various other influences. TreeCo is likely to face significant increased competition and price pressure as a result of increased tree supply being released into the market following transfer of properties to the Secured Lenders as contemplated under the Transition Agreement and the Plan. Increased tree supply may have a material negative impact on pricing for trees which may, in turn, adversely affect TreeCo's profitability and financial condition. While the Debtors believe that TreeCo will be successful given the terms of the Plan, adverse changes in any of these conditions generally, or in the markets where TreeCo operate, could decrease demand and pricing for trees, which could adversely affect the projections that were used to create the Plan and could result in a decrease in revenues and earnings and would adversely affect the financial condition of TreeCo.

### **B. Reorganization Factors**

1. **Financial Considerations.** As with any plan of reorganization or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated, some events will develop in ways that were not foreseen, and many or all of the assumptions that have been used in connection with this Disclosure Statement and the Plan will not be realized exactly as assumed. Some or all of such variations may be material. While efforts have been made to be reasonable in this regard, there can be no assurance that subsequent events will bear out the analyses set forth in this Disclosure Statement. Holders of Claims and Equity Interests should be aware of ~~some of the~~ [following](#) principal risks associated with the contemplated reorganization [under the Plan](#):

(a) There is a risk that one or more of the required conditions or obligations under the Plan or the Plan Documents will not occur, be satisfied or waived, as the case may be, resulting in the inability to confirm the Plan.

(b) The total amount of all Claims filed in the Chapter 11 Cases may materially exceed the estimated amounts of Allowed Claims assumed in the development of the Plan, ~~in the valuation recovery estimates provided above.~~ The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions that will ultimately be received by any particular holder of an Allowed Claim in any Class may be materially and adversely affected if the estimates are exceeded as to any Class.

(c) A number of other uncertainties may adversely affect the future operations of the Debtors and TreeCo including, without limitation, economic recession, increased competition, adverse regulatory agency actions, acts of God, or similar circumstances. Many of these factors will be substantially beyond the Debtors' or TreeCo's control, and a change in any factor or combination of factors could have a material adverse effect on the financial condition, cash flows, and results of operations of the Debtors and TreeCo.

(d) There can be no assurance that the Debtors or TreeCo will be able to continue to generate sufficient funds to meet their obligations and necessary capital expenditures. ~~Although~~ Moreover, as discussed in the Feasibility Analysis section of this Disclosure Statement, TreeCo's financial projections assume included in the Feasibility Analysis indicate that TreeCo will generate sufficient funds to its working capital needs for the foreseeable future on a stand-alone basis, their ability to gain have negative cash flow that necessitates access to additional capital, if needed, funding from the holders of Equity Interests of their Affiliates. TreeCo's ability to secure such funding cannot be assured, particularly in view of possible competitive factors and industry conditions.

2. Risk of Non-Confirmation of the Plan. Although the Debtors believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. There can also be no assurance that modifications of the Plan will not be required for confirmation, that such negotiations would not adversely affect the holders of Allowed Claims and Equity Interests, or that such modifications would not necessitate the re-solicitation of votes.

## **XXV. RECOMMENDATION AND CONCLUSION**

### **A. Hearing On and Objection to Confirmation**

An evidentiary hearing on confirmation of the Plan has been scheduled for March 21, 2013 at (MST) 1:30 p.m. (Arizona Time). The hearing may be adjourned from time to time by announcing the adjournment in open court, all without further notice to parties-in-interest, and the Plan may be modified by the Debtors under Bankruptcy Code § 1127 before, during, or as a result of that hearing, without further notice to parties-in-interest.

The time by which any objections to confirmation of the Plan must be filed with the Bankruptcy Court and received by the parties listed in the confirmation hearing notice has been set for \_\_\_\_\_, 2013 at (MST) (Arizona Time).

**B. Recommendation**

The Plan maximizes the value of the Debtors for distribution to creditors and holders of equity interests. The Debtors believe that any alternative to confirmation of the Plan, such as a continuation in chapter 11, attempts by another party-in-interest to file a plan, or liquidation, could result in significant delays, litigation, and costs and reduce distributions available to creditors.

**FOR THESE REASONS, THE DEBTORS URGE YOU TO RETURN YOUR BALLOT ACCEPTING THE PLAN.**

Dated ~~December 18, 2012~~February 7, 2013

**SQUIRE SANDERS (US) LLP**

By: /s/ Craig D. Hansen

Craig D. Hansen  
Brian M. McQuaid  
Bradley A. Cosman  
One East Washington, Suite 2700  
Phoenix, Arizona 85004-4498

*Counsel to Debtors and Debtors-in-Possession*



EXHIBIT 1

Plan

EXHIBIT 2

Liquidation Analysis

TO BE FILED PRIOR TO FEBRUARY 13, 2013

**EXHIBIT 3**

Feasibility Analysis

TO BE FILED PRIOR TO FEBRUARY 13, 2013