

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**In re**

**CROSSWINDS AT LONE STAR  
RANCH 1000, LTD.,**

**Debtor.**

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**§ CASE NO. 08-40262**

**§**

**§ Chapter 11**

**§**

**§ Judge Brenda T. Rhoades**

**§**

**§**

**§**

**DEBTOR'S DISCLOSURE STATEMENT  
FOR DEBTOR'S PLAN OF REORGANIZATION**

**(Dated: May 5, 2008)**

FRANK J. WRIGHT  
C. ASHLEY ELLIS  
**WRIGHT GINSBERG BRUSLOW P.C.**  
600 SIGNATURE PLACE  
14755 PRESTON ROAD  
DALLAS, TX 75254

**ATTORNEYS FOR THE DEBTOR**

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## INTRODUCTION

This Disclosure Statement (“**Disclosure Statement**”) and the accompanying Ballots are being furnished by Crosswinds at Lone Star Ranch 1000, Ltd. (“**Crosswinds,**” the “**Debtor**” or the “**Plan Proponent**”) to the holders of Claims against and Interests in the Debtor pursuant to Section 1125 of the United States Bankruptcy Code in connection with the solicitation of ballots for the acceptance of the Plan of Reorganization for Crosswinds at Lone Star Ranch 1000, Ltd. Proposed by the Debtor (the “**Plan**”) under Chapter 11 (“**Chapter 11**”) of Title 11 of the United States Code (the “**Bankruptcy Code**”). Capitalized terms used in this Disclosure Statement and not defined herein shall have their respective meanings set forth in the Plan or, if not defined in the Plan, as defined in the Bankruptcy Code.

On February 4, 2008 (the “**Petition Date**”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Eastern District of Texas, Sherman Division (the “**Bankruptcy Court**”). On or about March 6, 2008, the Official Committee of Unsecured Creditors (“**Committee**”) was appointed by the Office of the United States Trustee and the composition of the Committee was amended on April 14, 2008.

On May 5, 2008, the Plan Proponent filed the Plan. On \_\_\_\_\_, 2008, after notice and hearing, the Bankruptcy Court approved this Disclosure Statement and authorized the Plan Proponent to solicit votes with respect to the Plan.

The purpose of this Disclosure Statement is to enable those persons whose Claims against and Interests in the Debtor are Impaired and entitled to vote under the Plan to make an informed decision with respect to the Plan before exercising their rights to vote to accept or reject the Plan. Holders of Claims should read this Disclosure Statement and the Plan in their entirety before voting on the Plan. No solicitation of votes with respect to the Plan may be made except pursuant to this Disclosure Statement. No statement or information concerning the Debtor (particularly as to the results or financial condition, or with respect to distributions to be made under the Plan) or any of the Debtor’s assets, properties or business that is given for the purpose of soliciting acceptances or rejections of the Plan is authorized, other than as set forth in this Disclosure Statement. In the event of any inconsistencies between the provisions of the Plan and this Disclosure Statement, the provisions of the Plan shall control. A copy of the Plan is attached hereto as Exhibit “A” to this Disclosure Statement.

On \_\_\_\_\_, 2008 after notice and a hearing, this Disclosure Statement was approved by the Bankruptcy Court as containing information, of a kind and in sufficient detail, to enable persons whose votes are being solicited to make an informed judgment with respect to acceptance or rejection of the Plan. A copy of the Bankruptcy Court’s order approving this Disclosure Statement and establishing procedures for voting on the Plan (the “**Approval Order**”) is enclosed with your copy of this Disclosure Statement. The Bankruptcy Court’s approval of this Disclosure Statement does not constitute either a guarantee of the accuracy or completeness of the information contained herein or an endorsement of any of the information contained in this Disclosure Statement or the Plan.

After carefully reviewing this Disclosure Statement and all exhibits and schedules attached hereto, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot.

**BALLOTS SHOULD BE MARKED, SIGNED, DATED AND RETURNED SO THAT THEY ARE ACTUALLY RECEIVED BY NO LATER THAN 4:00 P.M., CENTRAL STANDARD TIME, ON \_\_\_\_\_ (THE "VOTING DEADLINE") AT THE FOLLOWING ADDRESS, AS SET FORTH ON THE ENCLOSED RETURN ENVELOPE:**

**CROSSWINDS BALLOTS  
c/o WRIGHT GINSBERG BRUSILOW P.C.  
600 SIGNATURE PLACE  
14755 PRESTON ROAD  
DALLAS, TEXAS 75254**

**THE PLAN PROPONENT BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF ALL CLAIMANTS OF THE DEBTOR AND, CONSEQUENTLY, THE PLAN PROPONENT URGES ALL CLAIMANTS TO VOTE TO ACCEPT THE PLAN.**

Any Ballots received after the Voting Deadline will not be counted (unless otherwise ordered by the Bankruptcy Court). Ballots that are received after the Voting Deadline may not be used in connection with the Plan Proponent's request for confirmation of the Plan or any modification thereof, except to the extent allowed by the Bankruptcy Court.

This Disclosure Statement has been compiled by the Plan Proponent to accompany the Plan. The factual statements, projections, financial information, and other information contained in this Disclosure Statement have been taken from documents prepared by the Debtor, including the Debtor's Schedules and Statement of Financial Affairs, the Debtor's Monthly Operating Reports, pleadings filed in the Bankruptcy Case, and information obtained in the Bankruptcy Case. Nothing contained in this Disclosure Statement shall have any preclusive effect against the Plan Proponent (whether by waiver, admission, estoppel or otherwise) in any cause or proceeding which may exist or occur in the future. This Disclosure Statement shall not be construed or deemed to constitute an acceptance of fact or an admission by the Plan Proponent with regard to any of the statements made herein, and all rights and remedies of the Plan Proponent are expressly reserved in this regard. This Disclosure Statement contains statements which constitute the Debtor's or other third parties' views of certain facts. All such disclosures should be read as assertions of such parties. To the extent any paragraph does not contain an express reference that it constitutes an assertion of a particular party, it should be read as an assertion of the party indicated by the context and meaning of such paragraph.

The statements contained in this Disclosure Statement are made either as of the Petition Date or the date hereof unless another time is specified herein, and neither delivery of this Disclosure Statement nor any exercise of rights granted in connection with the Plan shall, under any circumstances, create an implication that there has been no change in the information set forth herein since the date of this Disclosure Statement.

Certain of the information contained in this Disclosure Statement, by its nature, is forward looking, contains estimates and assumptions which may prove to be inaccurate, and contains projections which may prove to be wrong, or which may be materially different from actual future results. Each Claimant should independently verify and consult its individual attorney and accountant as to the effect of the Plan on such individual Claimant or Interest holder.

The Plan Proponent strongly urges each recipient entitled to vote on the Plan to review carefully the contents of this Disclosure Statement, the Plan, and the other documents that accompany or are referenced in this Disclosure Statement in their entirety before making a decision to accept or reject the Plan.

**IT IS OF THE UTMOST IMPORTANCE TO THE PLAN PROPONENT THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN BY COMPLETING AND SIGNING THE BALLOT ENCLOSED HERewith AND RETURNING IT TO COUNSEL FOR THE DEBTOR, AT THE ADDRESS SET FORTH IN THE BALLOT INSTRUCTIONS THAT ACCOMPANY THE BALLOT. SHOULD YOU HAVE ANY QUESTIONS REGARDING THE VOTING PROCEDURES, YOUR BALLOT, OR THE BALLOT INSTRUCTIONS, OR IF YOUR BALLOT IS DAMAGED OR LOST, CONTACT COUNSEL FOR THE DEBTOR AT THE FOLLOWING ADDRESS:**

**FRANK J. WRIGHT  
C. ASHLEY ELLIS  
WRIGHT GINSBERG BRUSILOW P.C.  
600 SIGNATURE PLACE  
14755 PRESTON ROAD  
DALLAS, TEXAS 75254  
(972) 788-1600  
(972) 239-0138 (facsimile)**

The Approval Order fixes \_\_\_\_\_, Central Standard Time, in the Courtroom of the Honorable Brenda T. Rhoades, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, 660 North Central Expressway, Suite 300, Plano, Texas 75074, as the date, time, and place for the hearing on Confirmation of the Plan, and fixes \_\_\_\_\_, as the date by which all objections to Confirmation of the Plan must be filed with the Bankruptcy Court and received by counsel for the Plan Proponent. The Plan Proponent will request Confirmation of the Plan at the Confirmation Hearing.

As used herein, the terms "Crosswinds," the "Company," and the "Debtor" are used interchangeably to mean Crosswinds at Lone Star Ranch 1000, Ltd.

***THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND***

***EXCHANGE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.***

**ARTICLE I**

**HISTORICAL BACKGROUND AND PREPETITION BUSINESS OPERATIONS**

The Debtor is a Texas limited partnership formed for the purpose of acquiring and developing real estate in North Texas. The Debtor owns approximately 1000 acres of land located in Denton County, Texas, largely in the City of Frisco (the "Property"). The Debtor's business operations have, since inception, centered around the management and development of the Property into a thriving community of single family residences, recreational parks and facilities, schools, and the likely inclusion of business, office and/or retail space, all with the necessary infrastructure and supporting ventures. The Property is locally identified in part as a development known as Phillips Creek Ranch, which is intended to be developed in two phases: Phase I containing 632-lots and several out parcels and excess land area intended for future development of Phase II. The general boundaries are defined as FM 433 to the west, Lebanon Road to the South, Eldorado Parkway to the north and North Dallas Tollroad to the east.

As stated above, the Property is located within the city of Frisco, Texas. The city of Frisco is located 20 miles north of downtown Dallas in Collin County, and Denton County Texas. Frisco is one of the fastest growing cities in the Metroplex. Frisco is in a prime location on Preston Road, State Highway 289, which has been a center of economic growth in the Dallas region for many years. The northern extension of the Dallas North Tollway service road from State Highway 121 to Main Street (FM 720) has broadened the "Golden Corridor" through the heart of Frisco, providing direct access to downtown Dallas. The Debtor further believes that future plans to extend the Tollway to Frisco's northern boundary, US Highway 380, will accelerate future growth in the area.

Over the last 15 years, the population of the City of Frisco has increased at phenomenal rates. Frisco has experienced over a 600% increase in population since 1980, and is one of the fastest growing suburban areas in the Metroplex. However, Frisco is still heavily dependent upon the growth of Dallas and Fort Worth as a source of employment opportunities, finance and other services. As the growth of Frisco is somewhat contingent on the economic market in the Dallas/Fort Worth area, population growth in the subject's area is expected to continue but at a more gradual pace. The continuing population growth is largely attributable to the large quantity of available single-family residential land. Some of the future growth will be in the commercial and industrial uses to compliment the residential population. With a continued well-managed local government, a reasonable local tax structure and abatements, it is anticipated that the economic base of the city of Frisco will be in a position of continued significant growth for a number of years.

The Property is a portion of an original 997.562 acre tract purchased by the Debtor from Frisco 1000, LTD (William T. Saurenmann) with the sale recorded September 9, 2005. The funds to purchase the Property were obtained via a loan obtained on or about September 2, 2005 in the amount of \$44,000,000 between the Debtor and AmTrust Bank f/k/a Ohio Savings Bank ("**AmTrust**") secured by a first lien on the Property. On September 7, 2005, the Debtor also entered



into an agreement for mezzanine financing in the amount of \$19,000,000.00 with Residential Funding Company, LLC, a Delaware limited liability company (as successor by conversion to Residential Funding Corporation, a Delaware corporation) (“**RFC**”). The loan with AmTrust was subsequently amended on November 14, 2006 and the loan amount increased to \$66,620,000.00. The proceeds of the 2006 loan were used to refinance the original loan from AmTrust, pay non-refundable costs and fees to AmTrust associated with the refinancing, fund a payment to RFC (in its capacity as mezzanine lender), and fund the development and construction costs associated with the Property.

## **ARTICLE II**

### **FACTORS PRECIPITATING THE CHAPTER 11 CASE**

After acquisition of the Property, the Debtor proceeded expeditiously with its development plans. Between August, 2006 and May, 2007, the Debtor executed approximately fourteen (14) contracts with builders for the development of the Property into communities consisting of single family residences, recreational parks and facilities, schools, along with business, office and/or retail space. However, in 2006 and 2007, market forces intervened. As the real estate market in North Texas faltered, so did the development of the Property. In August of 2007, the Debtor attempted to renegotiate the terms of the loan with AmTrust, however AmTrust was not willing to refinance and, in order to preserve the value of the Property, the Debtor commenced this Chapter 11 case.

## **ARTICLE III**

### **PURPOSE OF CHAPTER 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. The commencement of a Chapter 11 case creates an “estate” comprised of all the legal and equitable interests of a debtor. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may remain in possession of its property and continue to operate its business as a “debtor-in-possession” (“**DIP**”). Thus, since the Petition Date, the Debtor has been operating and managing its business operations in the ordinary course of business and under the supervision of the Bankruptcy Court.

Formulation of a plan is the principal purpose of a Chapter 11 case. The plan is the vehicle for satisfying the holders of claims against and equity interests in a debtor. Under the Bankruptcy Code, when soliciting acceptance or rejection of a plan of reorganization, a plan proponent must transmit to the holders of claims or interests a disclosure statement approved by the court as containing “adequate information.” On \_\_\_\_\_, 2008, the Bankruptcy Court found that this Disclosure Statement contained information that is in compliance with the adequate information requirement of the Bankruptcy Code. The Disclosure Statement describes various transactions contemplated under the Plan and is supplied to you for purposes of assisting in your evaluation of, and your decision of how to vote on, the Plan. The Plan is attached hereto as Exhibit “A.”

## **ARTICLE IV**

### **ASSETS OF THE DEBTOR**

The following is a summary description of the Debtor's principal assets. The information has been compiled from the Debtor's audited and unaudited records as reflected in the Debtor's Schedules, Statement of Financial Affairs and Monthly Operating Reports.

**4.1 Real Property:** As of the Petition Date, the Debtor owned the following real property: approximately 943.50 acres of land located at Northeast corner of Lebanon Road and FM-423 in the City of Frisco, Denton County, Texas with prospective appraised value of \$162,060,000 as of February 17, 2007 and an "as is" fee simple market value as of August 21, 2006 of \$94,350,000.

The legal description of the Property is:

Tract I - Being a 852.732 acres tract of land situated in the David E. Lawhorn Survey, Abstract No. 727, the John B. Balch Survey, Abstract No. 114, the R.F. Teal Survey, Abstract No. 1264, the Crain & Warren Survey, Abstract No. 229 and the William Powell Survey, Abstract No. 1011, City of Frisco, Denton County, Texas, being described in deed to Frisco 1000, LTD as recorded Instrument No. 2004-109740 of the Official Records of Denton County, Texas.

Tract II - Being a 90.765 acre tract of land situated in the David E. Lawhorn Survey, Abstract No. 727, City of Frisco, Denton County, Texas being described in deed to Frisco 1000 LTD as recorded in Instrument No. 2004-109740 of the Official Records of Denton County, Texas.

**4.2 Cash/Deposits:** As reflected on the Debtor's Monthly Operating Report for the reporting period ending March 31, 2008, Crosswinds had cash of \$1,076.42. As of March 31, 2008, Crosswinds also had utility deposits in the amount of \$428,946.00. In addition, Crosswinds was holding on the Petition Date either directly or indirectly letters of credit in the amount of \$3,573,442 and cash deposits in the amount of \$856,158 from various builders pursuant to contracts of sale.

**4.3 Bronze Sculptures:** Pre-petition, the Debtor commissioned the artist Jon Minyard to create twenty-four (24) bronze equestrian statues. The bronze horses are valued at \$480,000 (the "Bronze Horses").

**4.4 Claims and Causes of Action:** The Debtor owns the following claims and causes of action:

(a) **Preferential Transfers/Fraudulent Transfers.** Within 90 days of the Petition Date, the Debtor made one payment of \$5,595.63 to Roger Davis Construction Service. Additionally, within one year of the Petition Date, the Debtor made payments totaling \$75,000.00 to its property manager, Trinity CW Development, LLC. In addition, the

Debtor may have made other payments or transfers more than ninety days before the Petition Date that may be avoidable. Section 546 of the Bankruptcy Code provides a time frame of two years from the entry of Order for Relief (February 4, 2008) within which to bring an action to set aside an avoidable preference or fraudulent transfer. Under the Plan, these avoidance causes of action may be investigated and pursued by the Reorganized Debtor. The Debtor has not attempted to estimate the potential recoveries on such avoidance causes of action.

(b) **Potential Causes of Action Against AmTrust and RFC.** The Debtor is currently investigating whether it has any causes of action arising out of its prepetition lending relationships. Under the Plan, any causes of action may be investigated and pursued by the Reorganized Debtor. The Debtor has not attempted to estimate the potential recoveries on such avoidance causes of action.

(c) **Other Causes of Action.** The Debtor may have other causes of action, including any and all claims, rights and causes of action that have been or could have been brought by or on behalf of the Debtor arising before, on or after the Petition Date, known or unknown, in contract or in tort, at law or in equity or under any theory of law, including, but not limited to any and all claims, rights and causes of action the Debtor or the Estate may have against any Person arising under chapter 5 of the Bankruptcy Code, or any similar provision of state law or any other law, rule, regulation, decree, order, statute or otherwise including avoidance actions as stated above, any and all claims, causes of action, counterclaims, demands, controversies, against third parties on account of costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, and executions of any nature, type, or description which the Debtor have or may come to have, including, but not limited to, negligence, gross negligence, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control, interference with contractual and business relationships, conflicts of interest, misuse of insider information, concealment, disclosure, secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies (both civil and criminal), racketeering activities, securities and antitrust laws violations, tying arrangements, deceptive trade practices, breach or abuse of fiduciary duty, breach of any alleged special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, whether or not in connection with or related to this Plan, at law or in equity, in contract in tort, or otherwise, known or unknown, suspected or unsuspected.

## ARTICLE V

### LIABILITIES OF DEBTOR

**5.1 Administrative Claims.** Administrative Claims are any claim that is defined in § 503(b) of the Code as being an “administrative expense” and granted priority under § 507(a)(1) of the Code, including:

- (1) a Claim for any cost or expense of administration in connection with the Case, including, without limitation, any actual, necessary cost or expense of preserving the Debtor’s estate and of operating the business of the Debtor incurred on or before the Effective Date;
- (2) the full amount of all Claims for compensation for legal, accounting and other services or reimbursement of costs under §§ 330, 331 or 503 of the Bankruptcy Code;
- (3) all fees and charges assessed against the Debtor’s estate under Chapter 123 of Title 28 of the United States Code; and
- (4) a Claim for post-petition taxes and related items, including any interest and penalties on such post-petition taxes.

(a) **Professionals.** The Debtor employed the following law firms and other professionals in connection with these proceedings: Wright Ginsberg Brusilow P.C. as bankruptcy counsel; and Higier, Allen & Lautin, P.C. (“HAL”) as real estate counsel. Wright Ginsberg Brusilow P.C. is holding a retainer in the amount of \$45,838.75 and is currently owed \$66,232.17 in fees and expenses. Under the Plan, all professionals employed pursuant to §§ 327 and 330 shall be required to file with the Bankruptcy Court a final fee application within sixty (60) days after the Effective Date. Nothing in the Plan or this Disclosure Statement is intended to restrict the ability of any party in interest or the US Trustee to object to these final fee applications.

(b) **Other Asserted Administrative Claims.** A review of the docket on April 28, 2008, reveals that no requests for administrative expense payments have been filed in this case.

**5.2 Creditors Holding Secured Claims.** The Schedules of Crosswinds reflect the following secured claims:

(a) **Secured Claim of AmTrust.** On or about September 2, 2005 the Debtor and AmTrust entered into a Loan Agreement under which the Debtor was authorized to borrow the amount of \$44,000,000. The loan from AmTrust was documented via a Loan Agreement, Promissory Note, Deed of Trust, Assignment of Rents, Security Agreement and

Fixture Filing, and one or more UCC Financing Statements and various other documents related to the loan (collectively, the “**Original Loan Documents**”). The Original Loan Documents were amended on or about November 14, 2006 to reflect a loan amount of \$66,620,000.00. As of the Petition Date, the amount due to AmTrust was \$58,539,000.00. AmTrust’s claim is secured by a first lien on the Property and the Bronze Horses. Amounts due to AmTrust are guaranteed by an Unconditional and Continuing Guaranty and Indemnity Agreement executed by Bernard Gliberman, the Bernard Gliberman Revocable Living Trust dated June 8, 2001 as amended, and Tay Land, LLCD, a Michigan limited liability company.

(b) **Secured Claim of Fugro Consultants, LP.** Fugro Consultants, LP filed a mechanic’s and materialmen’s lien against the Property alleging a secured claim against the Debtor in the amount of \$187,544.31. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor’s records differ from the amount of the lien.

(c) **Secured Claim of Huitt-Zollars, Inc.** Huitt-Zollars, Inc. filed a mechanic’s and materialmen’s lien against the Property alleging a secured claim against the Debtor in the amount of \$508,167.10. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor’s records differ from the amount of the lien.

(d) **Secured Claim of JL Myers Co.** JL Myers Co. filed a mechanic’s and materialmen’s lien against the Property alleging a secured claim against the Debtor in the amount of \$283,393.50. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor’s records differ from the amount of the lien.

(e) **Secured Claim of Jowell Corp.** Jowell Corp. filed a mechanic’s and materialmen’s lien against the Property alleging a secured claim against the Debtor in the amount of \$160,441.14. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor’s records differ from the amount of the lien.

(f) **Secured Claim of LH Lacy Company, Ltd.** LH Lacy Company, Ltd. filed a mechanic’s and materialmen’s lien against the Property alleging a secured claim against the Debtor in the amount of \$1,011,205.40. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor’s records differ from the amount of the lien.

(g) **Secured Claim of Roger Davis Construction Service.** Roger Davis Construction Service filed a mechanic’s and materialmen’s lien against the Property alleging a secured claim against the Debtor in the amount of \$47,259.48. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor’s records differ from the amount of the lien.

(h) **Secured Claim of TBG Partners.** TBG partners filed a mechanic's and materialmen's lien against the Property alleging a secured claim against the Debtor in the amount of \$352,327.58. While the Debtor agrees some amount is owed, the Debtor has disputed this alleged secured claim on the Schedules because the Debtor's records differ from the amount of the lien.

**5.3 Priority Claims.** Crosswinds scheduled Unsecured Priority Claims in the amount of \$5,954.18 consisting of four claims for property taxes. In addition to the foregoing, the bar date for filing proofs of claim against the Debtor is June 19, 2008 and is August 22, 2008 for claims of governmental entities. A review of the claims register on April 28, 2008 reveals that no priority claims have been filed or asserted against Crosswinds.

**5.4 Unsecured Claims.** The bar date for filing proofs of claim is June 19, 2008 for non-governmental entities and is August 22, 2008 for claims of governmental entities. The Schedules reflect that as of the Petition Date Crosswinds owed \$19,073,943.24 in unsecured claims which includes the claim of RFC discussed below. A review of the claims register on April 28, 2008 reveals that no general unsecured claims have been filed or asserted against Crosswinds.

**5.5 Unsecured Claim of Residential Funding Company, LLC, a Delaware limited liability company (as successor by conversion to Residential Funding Corporation, a Delaware corporation) ("RFC").** The unsecured claim of RFC arises from an agreement for mezzanine financing in the amount of \$19,000,000.00 between RFC and the Debtor dated September 7, 2005. Specifically, the Debtor and RFC were parties to a Loan Agreement and Promissory Note executed on or about September 7, 2005; (b) a Promissory Note, in the original principal amount of \$19,000,000.00 bearing interest at the non-default rate of 17%. Incident to the mezzanine financing, RFC received an assignment of the partnership interests of the Debtor via an Assignment of Partnership Interest (Security Agreement) from Crosswinds at Frisco 1000 GP, LLC, a Texas limited liability company that is the Debtor's general partner and via an Assignment of Partnership Interest (Security Agreement) from Tay Land, LLC, a Michigan limited liability company, each executed on or about September 7, 2005. As of the Petition Date, the amount owed to RFC was \$18,219,788.00.

**5.6 Pending Litigation Against the Debtor.** The Statement of Financial Affairs reveals the following lawsuits, administrative proceedings, executions, garnishments and attachments in which Crosswinds was involved as of the Petition Date:

<b><u>Caption of Suit and Case Number</u></b>	<b><u>Court or Agency and Location</u></b>
Jowell Corporation v. L.H. Lacy Company, Ltd., et al. Cause No. 2008-30013-211	In the District Court of Denton County, Texas; 211 <sup>th</sup> Judicial District
SCMC, LP v. Crosswinds at Lone Star Ranch 1000, Ltd., Cause No. 2007-40354-36	In the District Court of Denton County, Texas; 362 <sup>nd</sup> Judicial District

## **ARTICLE VI**

### **THE CHAPTER 11 CASES**

**6.1 Commencement of Case.** This case was commenced by the filing of a voluntary petition under Chapter 11 on February 4, 2008. Upon commencement, Crosswinds filed several motions incident to the management of the Bankruptcy Case which have been granted by the Court, including, but not necessarily limited to authority to retain certain professionals to assist with the administration of this case.

**6.2 Appointment of the Committee.** On or about March 5, 2008, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) for Crosswinds. On or about April 14, 2008 filed an Amended Appointment of Members to Official Unsecured Creditors Committee.

**6.3 Designation as a Single Asset Real Estate Case.** On March 27, 2008, the Debtor amended the petition to reflect that this case is a single asset real estate case as that term is used and defined in § 101(51B) of the Bankruptcy Code. Incident to that designation, the Debtor was required under the Code, within ninety (90) days of the Petition Date, to either file a plan of reorganization or commence monthly interest payments to its secured lender. The Debtor timely filed the Plan on May 5, 2008.

**6.4 Rejection of Certain Builder Contracts.** As stated above, after acquisition of the Property, the Debtor proceeded development plans and, between August, 2006 and May, 2007, executed approximately fourteen (14) contracts with builders for the development of the Property. After the commencement of this case, the Debtor was contacted by five (5) of those builder/developers with whom the Debtor had entered into such contracts: Newport Homes, Ltd., Newcastle Homes, Ltd., Grenadier Investments, Inc., Balmoral Homes, and Shaddock Builders & Developers, Inc./Sotherby Homes. These builders alleged that the Debtor had failed to perform certain covenants and satisfy certain conditions in and under their various contracts, and that the Debtor would be unable to provide such performance and satisfaction. While the Debtor did not and does not concede that these contentions are correct, the Debtor did determine that the rejection of those particular contracts would leave the Debtor free to sell the respective lots free of any encumbrance of said contracts to another builder or other party, possibly for a higher price than specified in said contracts. Therefore, in exchange for an agreement with the builders listed above to waive any claims against the Debtor and the estate for damages based upon a rejection of the contracts, the Debtor agreed to reject and terminated those specific contracts.

**6.5 Efforts to Sell the Property.** While no motion to employ a real estate broker has yet been filed, the debtor has been working diligently since even before this case was filed to employ a real estate broker to assist in the sale of the Property. Prepetition, the Debtor had signed an engagement letter with Houlihan Lokey Howard & Zukin (“HLHZ”) as financial advisors in connection with the sale of the Property. However, after this case was commenced, no agreement for compensation acceptable to HLHZ, the Debtor, AmTrust and RFC could be reached. The Debtor has however continued its own efforts to market the Property. If not already engaged by the Debtor

prior to confirmation, the proposed Plan contemplates that the Reorganized Debtor shall promptly engage a reputable, licensed real estate broker, on a non-exclusive basis, to assist in the sale of the Property pursuant to the Plan. The broker shall, with the assistance and advice of the Reorganized Debtor, take all reasonable and prudent steps to market the Property for sale at the highest and best price and will receive as compensation a commission commensurate with the commercially reasonable market rate for brokerage fees incident to a sale of undeveloped real estate similar to the Property in North Texas.

## **ARTICLE VII**

### **THE PLAN OF REORGANIZATION FOR THE DEBTOR**

The Plan Proponent believes that the Plan provides the only vehicle by which Holders of Allowed Unsecured Claims can maximize the recovery on their Allowed Claims. A copy of the Plan is attached as Exhibit "A." The Plan Proponent urges you to review carefully and then vote to accept the Plan.

#### **A. Summary of the Plan**

The Debtor has filed this Plan as the vehicle by which to commence an orderly sale process for the Phillips Creek Ranch, the Debtor's primary assets ("Property"). The Debtor believes that the sale of the Property (as defined herein) in accordance with the terms of this Plan will bring the highest and best price for the Property, and will provide ample resources for the payments to creditors as set forth in this Plan. This Plan contemplates:

1. The orderly sale of the Property and all assets of the Debtor for the highest and best price.
2. The mechanism by which all Allowed Priority Wage Claims, Administrative Claims, Fee Claims and the costs incurred in connection with the disposition of the Property will be funded and paid.
3. The satisfaction of all Allowed Secured Claims in accordance with the terms of the Plan and applicable state law from the Net Proceeds of the sale of the Property.
4. The mechanism by which all disputes regarding the existence and priority of all alleged liens against the Property will be resolved, including but not limited to the Mechanic's and Materialman's Liens.
5. The distribution to Unsecured Creditors in accordance with the terms of the Plan of all Net Proceeds received from the sale of the Property after payment of Allowed Secured, Priority and Administrative Claims.



6. The distribution to Equity Holders in accordance with the terms of the Plan of all Net Proceeds received from the sale of the Property after the satisfaction of all Allowed Claims and Allowed.

## **B. Acceptance and Confirmation of the Plan**

**1. Requirements for Confirmation.** At the Confirmation Hearing, the Court will determine whether the provisions of section 1129 of the Code have been satisfied. Section 1129 of the Bankruptcy Code, as applicable here, provides as follows:

The Plan must comply with the applicable provisions of the Code, including section 1123 which specifies the mandatory contents of a plan and section 1122 which requires that Claims and Interests be placed in Classes with “substantially similar” Claims and Interests (section 1129(a)(1)).

The Plan Proponent of the Plan must comply with the applicable provisions of the Code (section 1129(a)(2)).

The Plan must have been proposed in good faith and not by any means forbidden by law (section 1129(a)(3)).

Any payment made or to be made by the Debtor, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Case, or in connection with the Plan and incident to the Case, must be disclosed to the Court and approved or be subject to the approval of the Court as reasonable (section 1129(a)(4)).

The Debtor must disclose the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the reorganized debtor, of an affiliate of the Debtor participating in the Plan with the Debtor, or of a successor to the Debtor under the Plan. The appointment to, or continuance in, such office of such individual must be consistent with the interests of the Debtor’s creditors, equity holders, and with public policy. The Plan Proponent must also disclose the identity of any insider that will be employed or retained by the reorganized debtor and the nature of any compensation for such insider (section 1129(a)(5)).

The Plan must meet the “best interest of creditors” test which requires that each holder of a Claim or Interest of a Class of Claims or Interests that is impaired under the Plan either accept the Plan or receive or retain under the Plan on account of such Claim or Interest property of a value as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Code. If the holders of a Class of Secured Claims make an election under section 1111(b) of the Code, each holder of a Claim in such electing Class must receive or retain under the Plan on account of its Claim property of a value, as of the Effective Date of the Plan, that is not less than the value of its interest in the Debtor’s interest in the property that secures its Claim (section 1129(a)(7)). To calculate what non-accepting holders would receive if the Debtor was liquidated under Chapter 7, the Court must determine the dollar amount that would be generated upon disposition of the Debtor’s assets and reduce such

amount by the costs of liquidation. Such costs would include the fees of a Trustee (as well as those of counsel and other professionals) and all expenses of sale.

Each Class of Claims or Interests must either accept the Plan or not be impaired under the Plan (section 1129(a)(8)). Alternatively, as discussed herein, the Plan may be confirmed over the dissent of a Class of Claims or Interests if the “cramdown” requirements of section 1129(b) of the Code are met.

Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan must provide that holders of Administrative Claims and Priority Claims (other than tax claims) will be paid in full in cash on the Effective Date of the Plan, and that holders of priority tax Claims will receive on account of such Claims deferred cash payments, over a period not exceeding six (6) years after the date of assessment of such tax, of a value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim (section 1129(a)(9)).

At least one impaired Class must accept the Plan, determined without including the acceptance of the Plan by any insider holding a Claim of such Class (section 1129(a)(10)).

The Plan must be “feasible”. In other words, it can not be likely that confirmation of the Plan will be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation is proposed in the Plan (section 1129(a)(11)).

All fees required to be paid under the Code have been paid or the Plan provides for such payment on its Effective Date (section 1129(a)(12)).

The Plan provides for the continuation after the Effective Date of the payment of all retiree benefits at the level established prior to Confirmation, pursuant to the provisions of §1114 of the Code (section 1129(a)(13)).

**2. The Plan Meets All of the Requirements for Confirmation.** The Plan Proponent believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Code and therefore should be confirmed. More specifically:

- (i) The Plan complies with all of the applicable provisions of the Code;
- (ii) The Plan Proponent has complied with the Code and has proposed the Plan in good faith;
- (iii) All disclosure requirements concerning payments made or to be made for services rendered in connection with the Chapter 11 case or the Plan have been, or will be met prior to or at the Confirmation Hearing; and
- (iv) Administrative Claims, Priority Claims, and fees required to be paid under the Code are appropriately treated under the Plan.

## ARTICLE VIII

### LIQUIDATION ANALYSIS

The Plan Proponent believes that the Plan affords creditors the potential for the greatest realization from the Debtor's primary asset, the Property, and, therefore, is in the best interests of creditors. The Plan Proponent has considered alternatives to the Plan, such as alternative Chapter 11 plans and a sale of the Property in the context of a liquidation in a Chapter 7 case. The Plan Proponent does not believe that any alternative Chapter 11 plan or a liquidation in the context of Chapter 7 would afford the holders of Claims a return as great as may be achieved by the orderly sale of the Property as proposed in the Plan.

The Plan Proponent believes that the sale of the Property by the Reorganized Debtor with the assistance of an experienced real estate broker as proposed in the Plan is the most efficient and cost-effective means by which Creditors can maximize the return on their Claims. An alternative to the confirmation of the Plan would be conversion of these Cases to liquidation proceedings under Chapter 7 of the Bankruptcy Code. Under Chapter 7, a trustee would be appointed to administer the Estate, to resolve pending controversies against the Debtor and claims of the Estate against other parties, and to make distribution to Creditors. If the Case was converted to a case under Chapter 7, significant additional Administrative Expenses would be incurred. Any distributions to holders of Claims would be substantially delayed and, in all likelihood, reduced as compared to the anticipated results of Confirmation of the Plan. A Chapter 7 trustee would be entitled to compensation in accordance with the scale set forth in § 326 of the Bankruptcy Code. A Chapter 7 trustee might also seek to retain new professionals, including attorneys and accountants, in order to resolve any disputed Claims and possibly to pursue claims of the Estate against other parties.

There is also a strong probability that such Chapter 7 trustee would not possess any particular knowledge of the real estate industry. The trustee and any such new professionals retained by the trustee would need to expend time familiarizing themselves with the Property, would likely ultimately engage a broker just as the Plan proposes, and would thus merely result in duplication of effort, increased expense, and delay in payment to Creditors. Under the Bankruptcy Rules, a new bar date for the filing of proofs of claim would have to be set, and additional Claims against the Estate that will soon be time-barred (because they were not filed before the applicable bar dates set in the Case) could be asserted.

Given that the Plan, as proposed, is a mechanism for the orderly disposition of the Property which is the Debtor's primary asset, a detailed liquidation analysis is unnecessary. The Plan Proponent believes that a sale of the Debtor's Property and other assets in a "fire-sale" would yield substantially less than the anticipated payments to creditors under the sale process as proposed in the Plan. Thus, the Plan affords creditors the potential for the greatest realization from the Debtor's assets, and, therefore, is in the best interests of creditors.

**THE PLAN PROPONENT BELIEVES THAT CONFIRMATION AND IMPLEMENTATION OF THE PLAN IS PREFERABLE TO ANY OF THE ALTERNATIVES DESCRIBED HEREIN BECAUSE IT SHOULD PROVIDE GREATER**

**RECOVERIES THAN THOSE AVAILABLE IN A CHAPTER 7 LIQUIDATION TO THE HOLDERS OF UNSECURED CLAIMS WHO WOULD LIKELY RECEIVE LESS IN A CHAPTER 7 LIQUIDATION. IN ADDITION, OTHER ALTERNATIVES WOULD INVOLVE DELAY, UNCERTAINTY, AND SUBSTANTIAL ADMINISTRATIVE COSTS.**

## **ARTICLE IX**

### **VOTING PROCEDURES**

**ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED, PURSUANT TO THE BANKRUPTCY CODE, BASED UPON THE ALLOWED CLAIMS AND ALLOWED INTERESTS THAT ACTUALLY VOTE ON THE PLAN. THEREFORE, IT IS IMPORTANT THAT CLAIMANTS EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.**

#### **A. Classes Entitled to Vote on the Plan**

All members of Impaired Classes who hold Allowed Claims are entitled to vote to accept or reject the Plan. Section 1124 of the Bankruptcy Code generally provides that a class of claims or interests is considered to be Impaired under a plan unless the plan does not alter the legal, equitable and contractual rights of the holders of such claims or interest. For purposes of the Plan solicitation Classes 2 through 13 are impaired and therefore entitled to vote on the Plan. Interest holders are deemed to have rejected the Plan and are therefore not entitled to vote on the Plan.

#### **B. Persons Entitled to Vote on the Plan**

Only holders of Allowed Claims and holders of Disputed Claims which have been temporarily allowed for voting purposes are entitled to vote on the Plan. For purposes of the Plan, an Allowed Claim is (i) a Claim against or Interest in the Debtor, proof of which, if filed on or before the Bar Date, which is not a Contested Claim or Contested Interest, (ii) if no proof of claim or interest was so filed, a Claim against or Interest in the Debtor that has been or hereafter is listed by the Debtor in the Schedules as liquidated in amount and not disputed or contingent, or (iii) a Claim or Interest allowed hereunder or by Final Order. An Allowed Claim or Allowed Interest does not include any Claim or Interest or portion thereof which is a Disallowed Claim or Disallowed Interest which has been subsequently withdrawn, disallowed, released or waived by the holder thereof, by this Plan, or pursuant to Final Order. Unless otherwise specifically provided in this Plan, an Allowed Claim or Allowed Interest shall not include any amount for punitive damages or penalties. Therefore, although the holders of Disputed Claims will receive ballots, these votes will not be counted unless such Claims become Allowed Claims as provided under the Plan or are temporarily allowed for voting purposes by the Court.

**THE CLAIMS IN CLASSES 2 THROUGH 13 ARE IMPAIRED UNDER THE PLAN AND ARE ENTITLED TO VOTE WITH RESPECT TO ACCEPTANCE OR REJECTION OF THE PLAN. SINCE HOLDERS OF INTERESTS IN CLASS 14 ARE RETAINING**

**THEIR INTERESTS UNDER THE PLAN, THEY ARE DEEMED TO HAVE ACCEPTED REJECTED THE PLAN AND ARE NOT ENTITLED TO VOTE.**

**C. Vote Required for Class Acceptance**

During the Confirmation Hearing, the Bankruptcy Court will determine whether the Classes voting on the Plan have accepted the Plan by determining whether sufficient acceptances have been received from the holders of Allowed Claims actually voting in such Classes. A Class of Claims will be determined to have accepted the Plan if the holders of Allowed Claims in the Class casting votes in favor of the Plan (i) hold at least two-thirds of the total amount of the Allowed Claims of the holders in such Class who actually vote and (ii) constitute more than one-half in number of holders of the Allowed Claims in such Class who actually vote on the Plan.

As a condition to Confirmation, the Bankruptcy Code requires that each impaired Class of Claims or Interests accept the Plan, subject to the “cramdown” exception of § 1129(b) described herein. To effectuate the § 1129(b) exception, at least one impaired Class of Claims must accept the Plan.

**D. Voting Instructions**

**1. Ballots and Voting.** Holders of Allowed Claims entitled to vote on the Plan have been sent a Ballot, together with instructions for voting, with this Disclosure Statement. Claimants should read the Ballot carefully and follow the instructions contained therein. In voting for or against the Plan, please use only the Ballot(s) that accompanies this Disclosure Statement.

If you have Claims in more than one Class, you will receive multiple Ballots. **IF YOU RECEIVE MORE THAN ONE BALLOT, YOU SHOULD ASSUME THAT EACH BALLOT IS FOR A SEPARATE CLAIM OR INTEREST AND SHOULD COMPLETE AND RETURN EACH BALLOT. IF YOU ARE A MEMBER OF A CLASS ENTITLED TO VOTE ON THE PLAN AND DID NOT RECEIVE A BALLOT FOR SUCH CLASS, OR IF YOUR BALLOT IS DAMAGED OR LOST, OR IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU SHOULD CONTACT COUNSEL FOR THE DEBTOR:**

**FRANK J. WRIGHT  
C. ASHLEY ELLIS  
WRIGHTGINSBERG BRUSILOW P.C  
600 SIGNATURE PLACE  
14755 PRESTON ROAD  
DALLAS, TEXAS 75254**

**BALLOTS OF CLAIMANTS THAT ARE SIGNED AND RETURNED, BUT NOT EXPRESSLY VOTED EITHER FOR ACCEPTANCE OR REJECTION OF THE PLAN, SHALL BE COUNTED AS BALLOTS FOR THE ACCEPTANCE OF THE PLAN IF PERMITTED BY THE BANKRUPTCY COURT.**

2. **Returning Ballots and Voting Deadline.** You should complete and sign each Ballot that you receive and return it in the pre-addressed envelope enclosed with each Ballot to the counsel for the Debtor in the self-addressed envelope provided, by the Voting Deadline.

**THE VOTING DEADLINE IS 4:00 P.M., CENTRAL STANDARD TIME, ON \_\_\_\_\_, 2008. IN ORDER TO BE COUNTED, BALLOTS MUST BE ACTUALLY RECEIVED BY COUNSEL FOR THE DEBTOR ON OR BEFORE 4:00 P.M., CENTRAL STANDARD TIME, ON THE VOTING DEADLINE AT THE ADDRESS SET FORTH IN THE BALLOT INSTRUCTIONS WHICH ACCOMPANY THE ENCLOSED BALLOT. EXCEPT TO THE EXTENT ALLOWED BY THE BANKRUPTCY COURT, BALLOTS RECEIVED AFTER THE VOTING DEADLINE MAY NOT BE ACCEPTED OR USED IN CONNECTION WITH THE PLAN PROPONENTS' REQUEST FOR CONFIRMATION OF THE PLAN OR ANY MODIFICATION THEREOF.**

3. **Incomplete or Irregular Ballots.** Ballots which fail to designate the Class to which they apply shall be counted in the appropriate Class as determined by the Plan Proponents , subject only to contrary determinations by the Bankruptcy Court.

**BALLOTS OF CLAIMANTS THAT ARE SIGNED AND RETURNED, BUT DO NOT INDICATE A VOTE EITHER FOR ACCEPTANCE OR REJECTION OF THE PLAN SHALL BE COUNTED AS BALLOTS FOR THE ACCEPTANCE OF THE PLAN IF PERMITTED BY THE BANKRUPTCY COURT.**

4. **Changing Votes.** Bankruptcy Rule 3018(a) permits a Claimant, for cause, to move the Bankruptcy Court to permit such claimant to change or withdraw its acceptance or rejection of a plan of reorganization.

#### **E. Contested and Unliquidated Claims**

Contested Claims are not entitled to vote to accept or reject the Plan. If you are the holder of a Contested Claim, you may ask the Bankruptcy Court pursuant to Bankruptcy Rule 3018 to have your Claim temporarily Allowed for the purpose of voting.

#### **F. Possible Reclassification of Creditors and Interest Holders**

The Plan Proponents are required pursuant to § 1122 of the Bankruptcy Code to place Claims and Interests into Classes that contain substantially similar Claims or Interests. While the Plan Proponents believe they have classified all Claims and Interests in compliance with § 1122, it is possible that a Claimant or Interest holder may challenge the classification of its Claim or Interest. If the Plan Proponents are required to reclassify any Claims or Interests of any Claimants or Interest holders under the Plan, the Plan Proponents, to the extent permitted by the Bankruptcy Court, intend to continue to use the acceptances received from such Claimants or Interest holders pursuant to the solicitation of acceptances using this Disclosure Statement for the purpose of obtaining the approval of the Class or Classes of which such Claimants or Interest holders are ultimately deemed to be a member. Any reclassification of Claimants or Interest holders should affect the Class in which such

Claimants or Interest holders were initially a member, or any other Class under the Plan, by changing the composition of such Class and the required vote thereof for approval of the Plan.

## **ARTICLE X**

### **CRAMDOWN OR MODIFICATION OF THE PLAN**

#### **A. “Cramdown:” Request for Relief under Section 1129(b)**

In the event any Impaired Class of Claims shall fail to accept the Plan in accordance with § 1129(a) of the Bankruptcy Code, the Plan Proponents shall request the Bankruptcy Court to confirm the Plan in accordance with the provisions of § 1129(b) of the Bankruptcy Code.

The Court may confirm a plan, even if it is not accepted by all impaired Classes, if a plan has been accepted by at least one impaired Class of Claims and the plan meets the “cramdown” provisions set forth in § 1129(b) of the Code. The “cramdown” provisions require that the Court find that a plan “does not discriminate unfairly” and is “fair and equitable” with respect to each non-accepting impaired Class. In the event that all impaired Classes do not vote to accept the Plan, the Plan Proponents will request that the Bankruptcy Court nonetheless confirm the Plan pursuant to the provisions of § 1129(b) of the Code.

The Court may find that the Plan is “fair and equitable” with respect to a Class of non-accepting impaired Interests only if (a) the holder of an Interest will receive or retain under the Plan property of a value as of the Plan’s Effective Date equal to the greatest of any fixed liquidation preference or redemption price or the value of such Interest or (b) the holder of any Interest that is junior to such Interest will not receive or retain any property under the Plan.

The Court may find that the Plan is “fair and equitable” with respect to a Class of non-accepting impaired Unsecured Claims only if (a) each impaired unsecured Creditor receives or retains under the Plan property of a value as of the Effective Date of such Plan equal to the amount of its Allowed Claim, or (b) the holder of any Claim or Interest that is junior to the Claims of the dissenting Class will not receive or retain any property under the Plan.

The Court may find that the Plan is “fair and equitable” with respect to a Class of non-accepting Secured Claims, only if, under the Plan, (a) the holder of each Secured Claim in such Class retains such holder’s lien and receives deferred cash payments totaling at least the Allowed amount of such Secured Claim and having a value, as of the Effective Date of the Plan, equal to or in excess of the value of such holder’s interest in the estate’s interest in the collateral for the Secured Claim, (b) the collateral for such Secured Claim is sold, the lien securing such Claims attached to the proceeds, and such liens on proceeds are afforded the treatment described under clause (a) or (c) of this sentence, or (c) the holders of such Secured Claims realize the “indubitable equivalent” of their claims.

If all of the provisions of section 1129 are met, the Court may enter an order confirming the Plan.

## **B. The Plan Meets the “Best Interest of Creditors” Test**

The “best interest of creditors” test requires that the Court find that the Plan provides to each non-accepting holder of a Claim or Interest treated under the Plan a recovery which has a present value at least equal to the present value of the distribution that such person would receive from the Debtor if the Debtor were liquidated under Chapter 7 of the Code. An analysis of the likely recoveries and affect on Creditors in the event of liquidation under Chapter 7 of the Code is contained hereinabove.

## **C. The Plan is Feasible**

The Code requires that, as a condition to Confirmation of a plan, the Court find that Confirmation is not likely to be followed by a liquidation or a need for further financial reorganization except as proposed in that plan. Initially, the Plan provides the mechanism by which all Allowed Priority Wage Claims, Administrative Claims, Fee Claims and the costs incurred in connection with the disposition of the Property will be funded and paid: an infusion of necessary cash from Lontray Enterprises, LLC (“**Lontray**”) in its sole discretion, in an amount not to exceed \$525,000.00. Lontray is ready, willing and financially able to make the payments it has committed to fund under the Plan. Further, the Plan itself provides for the disposition via sale of the assets of the Estate, including first and foremost, the Property. The Plan provides for the employment of a real estate broker, the marketing of the Property for sale, and the process for the orderly sale of the Property and all assets of the Debtor for the highest and best price. The Net Proceeds from the sale of the Property will be used to satisfy the Allowed Claims of all Secured and Unsecured Creditors in accordance with the terms of the Plan as proposed and the priority scheme set forth in the Code. Creditors are not asked to pin their hopes for payment on future business successes, an infusion of capital from some unidentified source, or any other visionary scheme of the Debtor. The Property will be sold and Creditors holding Allowed Claims will be paid; the Plan is feasible.

## **D. The Plan Meets the Cramdown Standard With Respect to Any Impaired Class of Claims Rejecting the Plan**

The Plan satisfies the provisions for cramdown under §1129(b)(2) of the Code. Secured Creditors are retaining their liens and receiving the value of their interest in the Debtor’s property totaling the allowed amount of their Secured Claims. Interest Holders are not receiving or retaining any property under the Plan on account of their Interests unless and until all senior Creditors are paid in full. In the event an impaired Class rejects the Plan, the Plan shall be deemed a motion for cramdown of such Class under §1129(b)(2) of the Code.

## **E. Modification or Revocation of the Plan; Severability**

Subject to the restrictions on modifications set forth in § 1127 of the Bankruptcy Code and any applicable notice requirements, the Plan Proponents reserve the right to alter, amend or modify the Plan before its substantial consummation. The Plan Proponents also reserve the right to withdraw the Plan prior to the Confirmation Date. If the Plan Proponents withdraw the Plan, or if Confirmation does not occur, then the Plan shall be null and void in all respects, and nothing



contained in the Plan will: (1) constitute a waiver or release of any Claims or rights against, or any Interest in, the Debtor; or (2) prejudice in any manner the rights of the Debtor or the Committee.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Plan Proponents, has the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

## **ARTICLE XI**

### **RISK FACTORS**

#### **A. Factors Relating to Chapter 11 and the Plan**

The following is intended as a summary of certain risks associated with the Plan, but is not exhaustive and must be supplemented by the analysis and evaluation of the Plan and this Disclosure Statement made by each Claimant as a whole in consultation with such Claimant's own advisors. It is unlikely, yet theoretically possible, that the Property cannot be sold. The fact remains, however, that in order for Creditors to be paid, either the Property must be sold or a new source of capital for the maintenance and development of the Property must be found. The Debtor believes that the most realistic and timely avenue by which Creditors will be paid is via a sale of the Property as proposed in the Plan. The real "risk" associated with the Plan, therefore, is either that the Property cannot be sold within the six (6) month time frame as projected by the Debtor, with the attendant delay in payment to creditors, or that the Property cannot be sold for an amount sufficient to pay all creditors in full. This risk, however, is not exclusive to the Plan. The value of the Debtor's estate is tied to the Property whether the Plan is confirmed or not. The Debtor believes that the Plan is feasible, and the risk that the Property will not be sold is minimal.

#### **B. Insufficient Acceptances**

The Plan may not be confirmed without sufficient accepting votes. Each impaired Class of Claims and Interests receiving a distribution under the Plan is given the opportunity to vote to accept or reject the Plan. The Plan will be accepted by a Class of impaired Claims if the Plan is accepted by Claimants in such Class actually voting on the Plan who hold *at least* two-thirds (2/3) in amount and *more than* one-half (1/2) in number of the total Allowed Claims of that Class which actually vote. The Plan will be accepted by a Class of impaired Interests if it is accepted by holders of Interests in such Class actually voting on the Plan who hold *at least* two-thirds (2/3) in amount of the total Allowed Interests of the Class which actually vote. However, an Interest Holder is deemed to have rejected the Plan and is therefore not entitled to vote on the Plan. Only those members of a Class who vote to accept or reject the Plan will be counted for voting purposes.

If any impaired Class of Claims under the Plan fails to provide acceptance levels sufficient to meet the minimum Class vote requirements but at least one impaired Class of Claims accepts the Plan, then, subject to the provisions of the Plan, the Debtor intends to request confirmation of the Plan under Section 1129(b) of the Bankruptcy Code.

## ARTICLE XII

### CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion summarizes certain possible federal income tax consequences of the Plan to the Debtor, and to the holders of Claims and Interests. It is based on the Internal Revenue Code of 1986, as amended (the “Code”), Treasury Regulations, and administrative and judicial interpretations thereof which are now in effect, but which could change, even retroactively, at any time. This discussion does not address all aspects of federal, state and local tax laws that could impact the various classes of Claimants, the holders of Interests or the Debtor.

**NO RULING HAS BEEN SOUGHT OR OBTAINED FROM THE IRS WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OBTAINED BY THE PLAN PROPONENTS WITH RESPECT THERETO. NO REPRESENTATIONS OR ASSURANCES ARE BEING MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES AS DESCRIBED HEREIN. CERTAIN TYPES OF CLAIMANTS AND INTEREST HOLDERS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN THIS SUMMARY OF FEDERAL INCOME TAX CONSEQUENCES. FURTHER, STATE, LOCAL, OR FOREIGN TAX CONSIDERATIONS MAY APPLY TO A HOLDER OF A CLAIM OR INTEREST WHICH ARE NOT ADDRESSED HEREIN. BECAUSE THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND MAY VARY BASED ON INDIVIDUAL CIRCUMSTANCES, EACH HOLDER OF A CLAIM OR INTEREST AFFECTED BY THE PLAN MUST CONSULT, AND RELY UPON, HIS OR HER OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO THAT HOLDER’S CLAIM OR INTEREST. THIS INFORMATION MAY NOT BE USED OR QUOTED IN WHOLE OR IN PART IN CONNECTION WITH THE OFFERING FOR SALE OF SECURITIES.**

**12.1 Tax Consequences to the Debtor.** Under the IRC, a taxpayer generally must include in gross income the amount of any discharge of indebtedness income realized during the taxable year. Section 108(a)(1)(A) of the IRC provides an exception to this general rule, however, in the case of a taxpayer that is under the jurisdiction of a bankruptcy court in a case brought under the Bankruptcy Code where the discharge of indebtedness is granted by the court or is pursuant to a Plan approved by the court, provided that the amount of discharged indebtedness that would otherwise be required to be included in income is applied to reduce certain tax attributes of the taxpayer. Section 108(e)(2) of the IRC provides that a taxpayer shall not realize income from the discharge of indebtedness to the extent that satisfaction of the liability would have given rise to a deduction. As a result of §§ 108(a)(1)(A) and 108(e)(2) of the IRC, the Debtor does not anticipate that it will

recognize any taxable income from the discharge of indebtedness through the Chapter 11 Cases. Reductions in tax attributes (net operating loss carryover) will occur to the extent of cancellation of indebtedness income not recognized due to the above.

Under § 1141 of the Bankruptcy Code, confirmation of the Plan will not, in and of itself, discharge the Debtor from any debts. Implementation of the Plan, including the liquidation and ultimate dissolution of the Debtor may result in discharge of indebtedness to the Debtor as a matter of tax law to the extent of any unsatisfied portion of such Claims. Any such discharge of indebtedness should not be included in gross income of the Debtor, however, because of the exceptions to such inclusion discussed above.

**12.2 Tax Consequences to Creditors.** A Creditor who receives cash or other consideration in satisfaction of any Claim may recognize ordinary income. The impact of such ordinary income, as well as the tax year for which the income shall be recognized, shall depend upon the individual circumstances of each Claimant, including the nature and manner of organization of the Claimant, the applicable tax bracket for the Claimant, and the taxable year of the Claimant. Each Creditor is urged to consult with its tax advisor regarding the tax implications of any payments or distributions under the Plan.

In general, the principal federal income tax consequences of the Plan to holders of Claims will be (a) recognition of loss or a bad debt deduction to the extent that the total payments received under the Plan with respect to the Claim are less than the adjusted basis of the holder in such Claim, or (b) recognition of taxable income by the holder of the Claim to the extent of the excess of the amount of any payments made under the Plan in respect of the Claim over the holder's adjusted basis therein.

Common examples of holders of Claims who may recognize taxable income upon receipt of payments under the Plan include (a) former employees with Claims for services rendered while serving as employees of the Debtor, (b) trade creditors whose Claims represent an item not previously reported in income (including Claims for lost income upon rejection of leases or other contracts with the Debtor), (c) holders of Claims who had previously claimed a bad debt deduction with respect to their Claims in excess of their ultimate economic loss, and (d) holders of Claims that include amounts of pre-petition interest that had not previously been reported in income. Common examples of Claims who may recognize a loss or deduction for tax purposes as a result of implementation of the Plan, provided that such holders are not paid in full, include holders of Claims that arose out of cash actually loaned or advanced to the Debtor, and holders of Claims consisting of items that were previously included in income of such holders on the accrual method of accounting, to the extent, in both cases, that the economic loss to such holders has not been allowed as a tax deduction in a prior year.

The amount and character or any resulting income or loss recognized for federal income tax consequences to a holder of any Claim as a result of implementation of the Plan will, however, depend on many factors. The most significant of these factors include (a) the nature and origin of the Claim, (b) whether the holder is a corporation (c) the extent to which the Plan provides for payment of the particular Claim, (d) the extent to which any payment made is allocable to pre-

petition interest which is part of such Claim, and (e) the prior tax reporting positions taken by the holder with respect to the item that constitutes the Claim. As to the last factor, relevant tax reporting positions include whether the holder had to report under its method of accounting any portion of the Claim (including accrued and unpaid interest) as income prior to receipt and whether the holder previously claimed a bad debt or worthlessness deduction with respect to the Claim, which would affect the adjusted basis of the holder in the Claim.

General rules for the deduction of bad debts are provided in IRC § 166 as follows:

If either (a) the creditor is a corporation, or (b) the debt is a business bad debt in the hands of the creditor, and the creditor demonstrates that the debt is collectable only in part, a deduction for partial worthlessness of the debt will be allowed to the extent that the debt is charged off in the accounting records of the creditor.

For a creditor not described in the previous paragraph, a bad debt deduction is allowable only in the year that the debt becomes wholly worthless.

If the creditor is not a corporation and the debt is a nonbusiness bad debt, the bad debt deduction is treated as a short-term capital loss, which can offset only capital gain income and a limited amount of ordinary income.

For purposes of IRC § 166, a “nonbusiness debt” means a debt other than (i) a debt created or acquired in connection with the creditor’s trade or business, or (ii) a debt the loss from the worthlessness of which was incurred during the operation of the creditor’s trade or business.

The time as of which a debt becomes worthless (or partially worthless), and therefore the tax year in which a creditor may claim a bad debt deduction, is a question of fact. Pursuant to Income Tax Regulations (“Regs.”) § 1.166-2(c), as a general rule, bankruptcy is an indication of the worthlessness of at least a part of an unsecured, non-priority debt. In bankruptcy cases, a debt may become worthless before settlement in some instances, and only when a settlement in bankruptcy has been reached in other instances. The mere fact that bankruptcy proceedings instituted against the debtor are terminated in a later year, thereby confirming the conclusion that the debt is worthless (or partially worthless), does not necessarily shift the deduction to such later year. Thus, even though the precise amount that holders of General Unsecured Claims or other Claims will receive under the Plan may not be known until the final distribution date, the determination of the precise amount that will be paid under the Plan with respect to a Claim, or that no amount will be paid, does not necessarily establish that any resulting bad debt deduction is properly allowable in the Creditor’s tax year in which the final distribution is made, rather than in an earlier year. Accordingly, to the extent that a Creditor may claim a bad debt deduction which it has not previously claimed, it is possible that the Creditor will be required to amend its return for a prior year and claim the deduction in that year, rather than in the year in which the final distribution is made. Creditors should consult with their individual tax advisors with respect to this issue.

The extent to which gain or loss may be recognized by a holder of a Claim upon implementation of the Plan may be significantly affected by any bad debt deduction that may have been claimed by the holder in a prior year with respect to the debt on which the Claim is based. If the holder took a bad debt deduction in a prior year which is recovered in whole or part through a payment made to the holder pursuant to the Plan, the holder will generally be required to include in income the amount recovered in the year the holder receives the payment. An exception to this rule permits exclusion of a recovery of a prior bad debt deduction to the extent that the earlier bad debt deduction did not produce a tax benefit to the holder.

THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING OR CONSULTATION WITH A TAX ADVISOR. THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OR HER OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

### **ARTICLE XIII**

#### **RECOMMENDATION OF THE PLAN PROPONENT**

The Plan Proponent believes that the Plan is in the best interests of all Creditors. Accordingly, the Plan Proponent recommends that you vote for acceptance of the Plan and hereby solicits your acceptance of the Plan.

**DATED: May 5, 2008**

**CROSSWINDS AT LONE STAR RANCH 1000, LTD.**

By: Crosswinds at Frisco 1000 GP, LLC, its General Partner

By: Bentley Management, LLC

By: /s/ Bernard Glieberman  
Bernard Glieberman, Manager

**WRIGHT GINSBERG BRUSLOW P.C.**

By: /s/ Frank J. Wright  
Frank J. Wright  
State Bar No. 22028800  
C. Ashley Ellis  
Texas Bar No. 00794824  
600 Signature Place  
14755 Preston Road  
Dallas, Texas 75254  
(972) 788-1600  
(972) 239-0138 - fax

**ATTORNEYS FOR THE DEBTOR**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**In re**

**CROSSWINDS AT LONE STAR  
RANCH 1000, LTD.,**

**Debtor.**

§ **CASE NO. 08-40262**

§

§ **Chapter 11**

§

§ **Judge Brenda T. Rhoades**

§

§

§

**DEBTOR'S PLAN OF REORGANIZATION**  
**(Dated: May 5, 2008)**

Crosswinds at Lone Star Ranch 1000, Ltd. (referred to herein as “**Crosswinds**” or “**Debtor**”) proposes the following Plan of Reorganization (the “**Plan**”) pursuant to the United States Bankruptcy Code (the “**Bankruptcy Code**”) for the Debtor and its Estate.

**SUMMARY OVERVIEW**

The Debtor has filed this Plan as the vehicle by which to commence an orderly sale process for the Phillips Creek Ranch, the Debtor's primary assets (“**Property**”). The Debtor believes that the sale of the Property (as defined herein) in accordance with the terms of this Plan will bring the highest and best price for the Property, and will provide ample resources for the payments to creditors as set forth in this Plan. This Plan contemplates:

1. The orderly sale of the Property and all assets of the Debtor for the highest and best price.
2. The mechanism by which all Allowed Priority Wage Claims, Administrative Claims, Fee Claims and the costs incurred in connection with the disposition of the Property will be funded and paid.
3. The satisfaction of all Allowed Secured Claims in accordance with the terms of the Plan and applicable state law from the Net Proceeds of the sale of the Property.
4. The mechanism by which all disputes regarding the existence and priority of all alleged liens against the Property will be resolved, including but not limited to the Mechanic's and Materialman's Liens.
5. The distribution to Unsecured Creditors in accordance with the terms of the Plan of all Net Proceeds received from the sale of the Property after payment of Allowed Secured, Priority and Administrative Claims.
6. The distribution to Equity Holders in accordance with the terms of the Plan of all Net Proceeds received from the sale of the Property after the satisfaction of all Allowed Claims and Allowed.

## **ARTICLE I**

### **DEFINITIONS**

Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Plan that is not defined herein, but that is defined in the Bankruptcy Code, shall have the meaning assigned to such term in the Bankruptcy Code.

**1.01 Administrative Claim** means a Claim for payment of an administrative expense under §503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority under §507(a)(1) of the Bankruptcy Code, including (a) actual, necessary costs and expenses, incurred after the Petition Date, of preserving the Debtor's Estate and operating its business, including wages, salaries or commissions for services rendered after the Petition Date, (b) Fee Claims, (c) all fees and charges assessed against the Estates under 28 U.S.C. §1930 and (d) all Allowed Claims that are entitled to be treated as Administrative Claims by virtue of a Final Order entered under §546(c)(2)(A) of the Bankruptcy Code.

**1.02 Allowed Amount** means the amount in lawful currency of the United States of any Allowed Claim, or the number of shares representing any Allowed Interest.

**1.03 Allowed Claim and Allowed Interest** means, with reference to any Claim or Interest: (i) a Claim against or Interest in the Debtor, proof of which, if required, was Filed on or before the Bar Date, which is not a Contested Claim or Contested Interest, (ii) if no proof of claim or interest was so Filed, a Claim against or Interest in the Debtor that has been or hereafter is listed by the Debtor in their Schedules as liquidated in amount and not disputed or contingent, or (iii) a Claim or Interest allowed hereunder or by Final Order. An Allowed Claim or Allowed Interest does not include any Claim or Interest or portion thereof which is a Disallowed Claim or Disallowed Interest or which has been subsequently withdrawn, disallowed, released or waived by the holder thereof, by this Plan, or pursuant to a Final Order. Unless otherwise specifically provided in this Plan, an Allowed Claim or Allowed Interest shall not include any amount for punitive damages or penalties.

**1.04. Avoidance Actions** means any claim or cause of action belonging to the Debtor and arising under the Bankruptcy Code including, but not limited to, §§544, 547, 548 and 550.

**1.05 Bankruptcy Code** means Title 11 of the United States Code, as amended.

**1.06 Bankruptcy Court** means the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division.

**1.07 Bar Date** means the deadline by which a Claim must have been timely Filed. The Bar Date is June 19, 2008, as to all prepetition Claims, excluding Claims of governmental units for which the Bar Date is August 22, 2008.

**1.08 Business Day** means any day, other than a Saturday, Sunday, or legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).



**1.09 Causes of Action** means any and all claims, rights and causes of action that have been or could have been brought by or on behalf of the Debtor arising before, on or after the Petition Date, known or unknown, in contract or in tort, at law or in equity or under any theory of law, including, but not limited to any and all claims, rights and causes of action the Debtor or the Estates may have against any Person arising under chapter 5 of the Bankruptcy Code, or any similar provision of state law or any other law, rule, regulation, decree, order, statute or otherwise, including but not limited to any claim or cause of action under a policy of insurance, claims, if any, against the general partner or persons in control of the Debtor, Avoidance Actions under the Code, and any other causes of action belonging to the Debtor or the Estate.

**1.10 Chapter 11 Case** means the above entitled and numbered case Filed by the Debtor pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

**1.11 Claim** means: (i) right of payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**1.12 Claimant** means a holder of a Claim.

**1.13 Class** means all of the holders of Claims against or Interests with respect to the Debtor that have been designated as a class in Article III hereof.

**1.14 Collateral** means any property or interest in property of a Debtor's Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code.

**1.15 Committee** means the Official Unsecured Creditors' Committee of the Debtor.

**1.16 Confirmation** means the Bankruptcy Court's confirmation of the Plan.

**1.17 Confirmation Date** means the date of entry by the Court of an order confirming the Plan.

**1.18 Confirmation Hearing** means the hearing or hearings to be held before the Bankruptcy Court in which the Plan Proponents shall seek Confirmation of this Plan.

**1.19 Confirmation Order** means the Final Order confirming this Plan.

**1.20 Consummation** shall mean the instant upon which (i) the sale of the Property is closed and the purchase price for the Property has been paid by the purchaser of the Property to the Reorganized Debtor; and (ii) distribution of cash or property has commenced to any class of Creditors, at which time this Plan shall be deemed fully consummated and on which date this Plan shall be fully effective.

**1.21 Contested** when used with respect to a Claim or Interest, means a Claim against or Interest in the Debtor that is: (i) listed in the Debtor' Schedules as disputed, contingent, or

unliquidated and as to which a proof of claim has been timely Filed; (ii) listed in the Debtor's Schedules as undisputed, liquidated, and not contingent and as to which a proof of Claim or Interest has been Filed with the Bankruptcy Court, to the extent the proof of Claim or Interest amount exceeds the amount provided for in the Debtor's Schedules; or (iii) the subject of an objection which has been or may be timely Filed and which claim has not been allowed or disallowed by Final Order. Further, except as otherwise provided in this Plan, a Contested Claim shall also include any Claim as to which the holder has retained property of the estate. To the extent an objection relates to the allowance of only a part of a Claim or Interest, such a Claim or Interest shall be a Contested Claim or Contested Interest only to the extent of the objection.

**1.22 Creditor** means holder of a Claim as of the Petition Date.

**1.23 Debtor** means Crosswinds at Lone Star Ranch 1000, Ltd., the Debtor and Debtor-in-Possession in this Case.

**1.24 Deficiency Claim** means an Allowed Claim of a Creditor, equal to the amount by which the aggregate Allowed Claim of such Creditor exceeds the sum of (a) any set off rights of the Creditor permitted under §553 of the Code, plus (b) the Secured Claim of such Creditor; provided, however, that if the holder of a Secured Claim or the Class of which such Claim is a member makes the election provided in §1111(b)(2) of the Code, there shall be no Deficiency Claim in respect of such Claim.

**1.25 Disallowed Claim or Disallowed Interest** means a Claim against, or Interest in, the Debtor, or any portion thereof, (i) that has been disallowed by Final Order, (ii) proof of which has been untimely Filed and as to which no Order of allowance has been entered by the Bankruptcy Court, or (iii) listed as disputed, contingent, or unliquidated and as to which no proof of claim or proof of interest has been timely Filed.

**1.26 Disclosure Statement** means the written disclosure statement approved by the Bankruptcy Court that relates to this Plan that the Debtor has distributed to solicit acceptances of the Plan.

**1.27 Effective Date** means the date on which the sale of the Property is closed and the purchase price for the Property has been paid by the purchaser of the Property to the Debtor. Notice of the occurrence of the Effective Date shall be filed by the Debtor and provided to all professionals retained by the Debtor, the Committee and all other parties in interest in this Chapter 11 Case.

**1.28 Entity** includes any individual, partnership, corporation, estate, trust, governmental unit, person, and the United States Trustee.

**1.29 Estate** means the estate of the Debtor, being all assets of the Debtor, as created under §541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

**1.30 Estimated Claim** means any Contested Claim which is estimated in accordance with §502(c) of the Code. For purposes of distribution, the estimated amount of such Contested Claim pursuant to §502(c) shall be deemed the Allowed Amount of such Claim, subject to the provisions of §502(j) that provide for reconsideration of an allowed claim for cause. For the full satisfaction of its Contested Claim and its Allowed Claim, a Claimant shall have, as its sole and exclusive remedy against the Debtor, the rights to payment provided under this Plan and shall have no other

rights or remedies and may not, following Consummation, assert any other right against the Debtor, Claimant's estimated and Allowed Claim being fully satisfied by such Debtor's payment obligations described in this Plan, and any amount in excess thereof being fully released, voided and discharged by the Confirmation of this Plan.

**1.31 Fee Claim** means a Claim for fees and expense reimbursements under Sections 330 or 503(b) of the Bankruptcy Code.

**1.32 Filed** means filed with the Bankruptcy Court.

**1.33 Final Order** means an order or judgment, entered by the Bankruptcy Court or other court of competent jurisdiction, that has not been amended, modified or reversed and as to which (i) no stay is in effect, (ii) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing, shall then be pending or, (iii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order shall have been affirmed by the highest court to which such order may be appealed, or certiorari has been denied, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired.

**1.34 General Unsecured Claims** means an Unsecured Claim that is not entitled to priority under §507 of the Bankruptcy Code and is not a Claim relating to Interests.

**1.35 Impaired** means the treatment of an Allowed Claim or Allowed Interest under this Plan unless, with respect to such Claim or Interest, either: (i) this Plan leaves unaltered the legal, equitable, and contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest, or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after occurrence of a default, the Debtor (A) cure any default that occurred before, on or after the commencement of the Chapter 11 Case other than default of the kind specified in Section 365(b)(2) of the Bankruptcy Code; (B) reinstate the maturity of such Claim or Interest as such maturity existed before such default; (C) compensate the holder of such Claim or Interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and (D) do not otherwise alter the legal, equitable or contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest.

**1.36 Interest** means the interests of the general and limited partners in the Debtor.

**1.37 Insider** has the meaning set forth in § 101(31)(C) of the Bankruptcy Code.

**1.38 Lien** means all valid and enforceable liens, security interests, claims and encumbrances against any property of the Estate which are permitted by, or not avoided pursuant to, the Bankruptcy Code.

**1.39 Lontray** means Lontray Enterprises, LLC, the entity that has committed to fund the amount necessary to pay all Allowed Priority Wage Claims, Administrative Claims, Fee Claims and the costs incurred in connection with the disposition of the Property, in its sole discretion, in an amount not to exceed \$525,000.00. Lontray will be reimbursed such funds together with interest at the rate of 12% per annum, or such other rate as may be determined by the Court, from the first funds available from the proceeds of the sale of the Property.

**1.40 Mechanic's and Materialman's Liens ("M&M Liens")** means any lien asserted by any person under Chapter 53, §53.001, et seq. of the Texas Property Code against the Property owned by the Debtor.

**1.41 Net Recoveries** means the cash and cash equivalents and any other value, or proceeds of settlement, litigation or other disposition of the Causes of Action following payment of any (i) reasonable fees and expenses of the Debtor, including the reasonable fees and expenses of the professionals engaged by the Debtor; (ii) normal and reasonable expenses of administration of the Debtor both pre- and post-confirmation (including the establishment of such reasonable reserves as the Debtor deems appropriate) and the payments permitted by the Plan; and (iii) all taxes, fees, levies, assessments, or other governmental charges incurred by the Debtor.

**1.42 Net Proceeds** means the cash or cash equivalents and any other value, or proceeds arising from the sale or disposition of the Property and other property of the Estate, following repayment of the amount actually advanced by Lontray pursuant to this Plan, and the payment of any and all additional reasonable brokerage commissions, professional fees, legal fees, accounting fees, marketing and sale expenses, title fees, taxes, levies, assessments, other governmental charges, or any other type of expense, fee or cost incurred in connection with the disposition of such assets.

**1.43 Other Priority Claims** means and includes all Priority Claims except Administrative Claims, Priority Tax Claims, and Priority Wage Claims.

**1.44 Order** means an order or judgment of the Bankruptcy Court.

**1.45 Person** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.

**1.46 Petition Date** means February 4, 2008.

**1.47 Plan** means this Plan of Reorganization for Crosswinds at Lone Star Ranch 1000, Ltd. as it may be amended or modified from time to time as permitted herein or in accordance with Section 1127 of the Bankruptcy Code.

**1.48 Plan Documents** means this Plan and the Disclosure Statement, and any and all other documents necessary to effectuate this Plan, and all exhibits and attachments to any of the foregoing.

**1.49 Plan Proponent** means the Debtor.

**1.50 Plan Rate** means the prime rate of Bank of America, N.A. in effect at Confirmation, plus one percent (1%) or such other rate of interest as is determined by the Bankruptcy Court.

**1.51 Priority Claim** means all Claims entitled to priority under section 507(a)(2)-(a)(7) and (a)(9) of the Bankruptcy Code.

**1.52 Priority Tax Claim** means all Claims for Taxes entitled to priority under section 507(a)(8) of the Bankruptcy Code, and shall include all Tax Claims secured by assets of the Estate.

**1.53 Priority Wage Claim** means all Claims for wages entitled to priority under section 507(a)(3) of the Bankruptcy Code.

**1.54 Pro Rata** means, with reference to any distribution on account of an Allowed Claim or Allowed Interest, the proportion that an Allowed Claim or Allowed Interest in a particular Class bears, respectively, to the aggregate amount of all Claims or Interests in such Class, including Contested Claims or Contested Interests which are not Disallowed Claims or Disallowed Interests as of the date of such calculation.

**1.55 Property** means the real property owned by the Debtor known as Phillip's Creek Ranch consisting of approximately 1000 acres of land located in Denton County, Texas as more particularly described in the legal description attached to this Plan as Exhibit "A."

**1.56 Reorganized Debtor** means the entity Crosswinds at Lone Star Ranch 1000, Ltd. as same may be renamed or formed on and after the Confirmation Date.

**1.57 Schedules** means those schedules and statements of financial affairs Filed by the applicable Debtor under Federal Rule of Bankruptcy Procedure 1007, as same may be amended from time to time.

**1.58 Secured Claim (or Allowed Secured Claim)** means an Allowed Claim that is secured by a lien on or security interest in property in which any of the Estates has an interest, or that is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of a Claimant's interest in such Estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be.

**1.59 Subordinated Claim** means all Claims, if any, (i) arising from fines, penalties or punitive damages, (ii) arising from rescission of a purchase or sale of a security of the Debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under §502 of the Bankruptcy Code on account of such a claim, (iii) subordinated to general unsecured claims under §510(b) or (c) of the Bankruptcy Code or (iv) contractually subordinated to any secured or general unsecured claim.

**1.60 Taxes** means and includes all federal, state, county and local income, ad valorem, excise, stamp and other taxes of any type or nature whatsoever.

**1.61 Tax Claims** means any and all Secured or Priority Claims of any Entity for the payment of any Taxes (a) accorded a priority pursuant to §§507(a)(8) of the Code (but excluding all Claims for post-petition interest and pre-petition and post-petition penalties all of which interest and penalties, pre-confirmation and post-confirmation, shall be (i) deemed disallowed and (ii) fully discharged on the Confirmation Date); or (b) secured by valid Liens on assets of the Debtor existing on the Confirmation Date (but excluding all Claims for post-petition interest and pre-petition and post-petition penalties, all of which interest and penalties shall be (i) deemed disallowed and (ii) discharged on Confirmation Date). Additionally, all Liens securing Tax Claims shall be deemed and legally treated as released, voided and discharged on the Confirmation Date.

**1.62 Unsecured Creditor** means the holder of a Claim that is not secured by a Lien and includes General Unsecured Claims, an Administrative Claim, a Priority Claim, or a Priority Tax Claim.

## ARTICLE II

### TREATMENT OF NON-CLASSIFIED CLAIMS

This Plan does not classify Claims against the Debtor having priority as specified in Section 507 of the Bankruptcy Code, which Claims shall be treated as follows:

#### **2.01 Administrative Claims:**

- (a) **In General.** Each holder of an Administrative Claim except as otherwise set forth in this Article 2 (and specifically excluding Priority Tax Claims as set forth in Section 2.2 below) shall receive from the Trust either: (i) with respect to Administrative Claims which are Allowed Claims on the Effective Date, the amount of such holder's Allowed Claim in one cash payment as soon as practicable after the Effective Date; (ii) with respect to Administrative Claims which become Allowed Claims after the Effective Date, the amount of such holder's Allowed Claim in one cash payment from unencumbered assets, as soon as practicable after such claim becomes an Allowed Administrative Claim; or (iii) such other treatment agreed upon by the Debtor and such holder.
- (b) **Fee Claims.** Each professional person whose retention with respect to the Debtor's Chapter 11 Case has been approved by the Bankruptcy Court or who holds, or asserts, an Administrative Claim that is a Fee Claim shall be required to file with the Bankruptcy Court a final fee application within sixty (60) days after the Effective Date and to serve notice thereof on all parties entitled to such notice. The failure to file timely any such application as required under this Section 2.01(b) of this Plan shall result in the Fee Claim being forever barred and discharged. A Fee Claim, with respect to which a fee application has been properly Filed pursuant to this Section 2.01(b) of this Plan, shall become an Administrative Claim only to the extent allowed by Final Order.
- (c) **Administrative Claims Bar Date.** Any other person or Entity who claims to hold an Administrative Claim (other than a Fee Claim) shall be required to file with the Court an application for payment within sixty (60) days after the Effective Date and to serve notice thereof on all parties entitled to such notice. The failure to file timely the application as required under this Section 2.01(c) of this Plan shall result in the Claim being forever barred and discharged. An Administrative Claim with respect to which an application has been properly Filed pursuant to this Section 2.01(c) of this Plan and to which no timely objection has been filed or an objection has been filed but overruled by the Court, shall become an Allowed Administrative Claim to the extent such claim is allowed by Final Order.

#### **2.02 Administrative and Priority Tax Claims:**

- (a) **Administrative Tax Claims.** Each holder of an Administrative Claim that is an Allowed Claim for Taxes for which the Debtor is responsible for the period during which the Debtor's Chapter 11 Case is being administered, and

any other Taxes of the Debtor payable pursuant to Section 507(a)(1) of the Bankruptcy Code, if any, shall be paid the Allowed Amount of such holder's Claim in cash, in full, as soon as practicable after the Effective Date.

- (b) **Priority Tax Claims.** Each Allowed Tax Claim (as defined above) shall be paid by Reorganized Debtor in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code, over a period not exceeding six years after the assessment date of such Allowed Tax Claim, commencing as soon as funds are available, with interest accruing thereon from and after the Effective Date at the Plan Rate.

**2.03 Other Priority Claims.** Each Other Priority Claim, shall be paid by the Reorganized Debtor in accordance with Section 1129(a).

**2.04 U.S. Trustee Fees.** All fees payable under 28 U.S.C. § 1930 shall be paid in cash in full by the Reorganized Debtor.

### **ARTICLE III**

#### **DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

For purposes of repayment of the Debtor's indebtedness under the Plan, the Claims and Interests are divided into the following classes:

**3.01 Class 1: Priority Wage Claims.** This Class consists of Allowed Claims, if any, for priority wages under §507(a)(3) of the Code including wages, salaries, commissions, vacation, severance, and sick leave pay to the extent incurred within 90 days before the Petition Date and to the extent of \$10,000 per individual.

**3.02 Class 2: AmTrust Bank's Secured Claims.** This Class consists of the Allowed Secured Claims of AmTrust Bank.

**3.03 Class 3: Fugro Consultants, LP's Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of Fugro Consultants, LP.

**3.04 Class 4: Huitt-Zollars, Inc.'s Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of Huitt-Zollars, Inc.

**3.05 Class 5: JL Myers Co.'s Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of JL Myers Co..

**3.06 Class 6: Jowell Corp.'s Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of Jowell Corp.

**3.07 Class 7: LH Lacy Company, Ltd.'s Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of LH Lacy Company, Ltd.

**3.08 Class 8: Roger Davis Construction Service's Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of Roger Davis Construction Service.

**3.09 Class 9: TBG Partners' Secured Claims.** This Class consists of the Allowed Secured Claims, if any, of TBG Partners.

**3.10 Class 10: Secured Tax Claims.** This Class consists of the Allowed Secured Claims of any states and or relevant municipalities and government entities for sales or property taxes that are entitled to automatic first lien priority pursuant to their state laws or are entitled to secured status by virtue of the value of the collateral that is located in such state.

**3.11 Class 11: General Unsecured Claims.** This Class consists of Allowed Unsecured Claims other than the Unsecured Claim of RFC.

**3.12 Class 12: Unsecured Claim of Residential Funding Company, LLC ("RFC").** This Class consists of the Allowed Unsecured Claims of Residential Funding Company, LLC. The asserted Claims of RFC are classified separately from all other Unsecured Claims because (a) RFC was the Debtor's mezzanine lender prepetition pursuant to a Loan Agreement and Promissory Note executed on or about September 7, 2005; (b) the Promissory Note, in the original principal amount of \$19,000,000.00 bears interest at the non-default rate of 17%; (c) incident to the mezzanine financing, RFC received an assignment of the partnership interests of the Debtor via an Assignment of Partnership Interest (Security Agreement); and (d) pursuant to said Assignment, RFC asserted prepetition that it had the right to receive distributions and exercise certain enumerated voting rights and therefore RFC may be subject to treatment under this Plan as an Insider of the Debtor; and (e) the Debtor may have one or more Causes of Action against RFC based on RFC's prepetition conduct at the time in which RFC was a person in control of the Debtor.

**3.13 Class 13: Unsecured Subordinated Claims.** This Class consists of the Subordinated Claims of any Creditor.

**3.14 Class 14: Interests of Equity Security Holders.** The Plan Proponent designates a Class consisting of the holders of the partnership interests in the Debtor as of the Petition Date.

## **ARTICLE IV**

### **PROVISIONS FOR SATISFACTION OF CLAIMS AND INTERESTS**

The Claims and Interests as classified in Article III hereof shall be satisfied in the manner set forth in this Article IV. The treatment of, and the consideration to be received by, Entities holding Allowed Claims against and/or Allowed Interests in the Debtor pursuant to this Plan shall be in full satisfaction of their respective Allowed Claims against and Allowed Interests in the Debtor, but shall not affect the liability of any other Entity on such Claim or Interest.

**4.01 Class 1: Priority Wage Claims.** Claims in Class 1 will be paid 100% of the Allowed Amount of their Claims by the Reorganized Debtor.

**4.02 Class 2: AmTrust Bank's Secured Claim.** The Allowed Secured Claim of AmTrust will be satisfied in full from the Net Proceeds from the sale of its collateral, in accordance with the priority of its liens and any Allowed M&M Liens, up to the Allowed Amount of its Allowed Secured Claim. AmTrust will retain its liens on its collateral until its collateral has been sold at which time its liens will be secured by the Net Proceeds of the sale until it receives the payment on its Allowed Secured Claim. The Allowed Secured Claim of AmTrust will include reasonable attorneys fees and



other expenses provided its loan documents approved by the Court and interest of the non-default rate specified in the loan documents.

**4.03 Class 3: Fugro Consultants, LP's Secured Claim.** The Allowed Secured Claim of Fugro Consultants, LP ("Fugro"), if any, will be satisfied in full by the sale of the collateral on which Fugro asserts an M&M Lien, in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of Fugro's Allowed Secured Claim. Fugro will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Lien will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that Fugro does not hold a valid M&M Lien and is therefore not entitled to an Allowed Secured Claim against the Debtor, any Allowed Claim of Fugro shall be treated in Class 11 as a General Unsecured Claim.

**4.04 Class 4: Huitt-Zollars, Inc.'s Secured Claims.** The Allowed Secured Claim of Huitt-Zollars, Inc. ("H-Z"), if any, will be satisfied in full by the sale of the collateral on which H-Z asserts an M&M Lien, in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of H-Z's Allowed Secured Claim. H-Z will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Lien will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that H-Z does not hold a valid M&M Lien and is therefore not entitled to an Allowed Secured Claim against the Debtor, any Allowed Claim of H-Z shall be treated in Class 11 as a General Unsecured Claim.

**4.05 Class 5: JL Myers Co.'s Secured Claim.** The Allowed Secured Claim of JL Myers Co. ("JLM"), if any, will be satisfied in full by the sale of the collateral on which JLM asserts an M&M Lien, in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of JLM's Allowed Secured Claim. JLM will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Lien will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that JLM does not hold a valid M&M Lien and is therefore not entitled to an Allowed Secured Claim against the Debtor, any Allowed Claim of JLM shall be treated in Class 11 as a General Unsecured Claim.

**4.06 Class 6: Jowell Corp.'s Secured Claim.** The Allowed Secured Claim of Jowell Corp. ("Jowell"), if any, will be satisfied in full by the sale of the collateral on which Jowell asserts an M&M Lien, in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of Jowell's Allowed Secured Claim. Jowell will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Lien will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that Jowell does not hold a valid M&M Lien and is therefore not entitled to

an Allowed Secured Claim against the Debtor, any Allowed Claim of Jowell shall be treated in Class 11 as a General Unsecured Claim.

**4.07 Class 7: LH Lacy Company, Ltd.'s Secured Claims.** The Allowed Secured Claim of LH Lacy Company, Ltd. ("LH Lacy"), if any, will be satisfied in full by the sale of the collateral on which LH Lacy asserts an M&M Lien in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of LH Lacy's Allowed Secured Claim. LH Lacy will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Liens will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that LH Lacy does not hold a valid M&M Lien and is therefore not entitled to an Allowed Secured Claim against the Debtor, any Allowed Claim of LH Lacy shall be treated in Class 11 as a General Unsecured Claim.

**4.08 Class 8: Roger Davis Construction Service's Secured Claims.** The Allowed Secured Claim of Roger Davis Construction Service ("RDSCS"), if any, will be satisfied in full by the sale of the collateral on which RDSCS asserts an M&M Lien in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of RDSCS's Allowed Secured Claim. RDSCS will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Lien will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that RDSCS does not hold a valid M&M Lien and is therefore not entitled to an Allowed Secured Claim against the Debtor, any Allowed Claim of RDSCS shall be treated in Class 11 as a General Unsecured Claim.

**4.09 Class 9: TBG Partners' Secured Claims.** The Allowed Secured Claim of TBG Partners ("TBG"), if any, will be satisfied in full by the sale of the collateral on which TBG asserts an M&M Lien in accordance with the statutory priority afforded its Allowed Secured Claim arising from its M&M Lien, the Allowed Secured Claim of AmTrust Bank, and any other Allowed Secured Claim(s) of other holders of M&M Liens as set forth in the Texas Property Code, up to the Allowed Amount of TBG's Allowed Secured Claim. TBG will retain its M&M Lien, if any, on its collateral until its collateral has been sold at which time its M&M Lien will be secured by the Net Proceeds of the sale until it receives payment on its Allowed Secured Claim. If it is determined by the Bankruptcy Court that TBG does not hold a valid M&M Lien and is therefore not entitled to an Allowed Secured Claim against the Debtor, any Allowed Claim of TBG shall be treated in Class 11 as a General Unsecured Claim.

**4.10 Class 10: Secured Tax Claims.** Claims in Class 10 shall be paid in full from the Net Proceeds of the sale of those assets to which tax liens have validly attached. Interest accrues on the Allowed Secured Tax Claims at the Plan Rate from the later of the delinquency date or the Petition Date. The holders of the Allowed Secured Tax Claims shall retain their liens to secure payment of the Allowed Secured Tax Claims. The liens shall be released upon full satisfaction of the Allowed Secured Tax Claims.

**4.11 Class 11: General Unsecured Claims.** Holders of Allowed Claims in Class 11 will be paid by the Reorganized Debtor their Pro Rata share, based upon the Allowed Amount of their Claims, of the Net Recoveries and Net Proceeds after satisfaction of all Allowed Secured Claims in

Classes 2-10. Payments to Class 11 shall be made as soon as practicable after the Effective Date. If any Claims asserted in Class 11 are subordinated, they shall be treated in Class 13.

**4.12 Class 12: Unsecured Claim of Residential Funding Company, LLC (“RFC”).** Holders of Allowed Claims in Class 12 will be paid by the Reorganized Debtor the Allowed Amount of their Claims from the Net Recoveries and Net Proceeds after satisfaction of all Allowed Secured Claims in Classes 2-10 and all Allowed General Unsecured Claims in Class 11. If any Claims asserted in Class 12 are subordinated, they shall be treated in Class 13.

**4.13 Class 13: Subordinated Claims.** Claims in Class 13 will be paid by the Reorganized Debtor a Pro Rata share of any funds remaining from the Net Recoveries and Net Proceeds after satisfaction of all Allowed Secured Claims in Classes 2-10 and payment of all other Allowed Unsecured Claims.

**4.14 Class 14: Equity Security Holders.** Holders of Interests in Class 14 will be paid by the Reorganized Debtor their Pro Rata share, in accordance with their pre-petition partnership interests, of any funds remaining from the Net Recoveries and Net Proceeds after satisfaction of all Allowed Secured Claims in Classes 2-10 and payment of Allowed Administrative Claims, Priority Claims, and all other Allowed Unsecured Claims and Subordinated Claims.

## **ARTICLE V**

### **DESIGNATION OF THE CLASSES OF CLAIMS IMPAIRED UNDER THIS PLAN**

**5.01 Impairment.** For purposes of Plan solicitation, all Classes of Claims except Class 1 are Impaired and are, therefore, entitled to cast ballots on this Plan.

## **ARTICLE VI**

### **MEANS FOR IMPLEMENTATION OF PLAN**

**6.01 Funding of the Plan.** As stated above, Lontray has committed to fund the amount necessary under this Plan to pay all Allowed Priority Wage Claims, Administrative Claims, Fee Claims and costs incurred in connection with the disposition of the Property in an amount not to exceed \$525,000.00. It is anticipated that the loan from Lontray will close immediately upon the Confirmation Order becoming a Final Order so that funds will be available for payment to Creditors, as necessary, on the Effective Date and thereafter. Lontray is ready, willing and financially able to make the payments it has committed to fund under the Plan. The loan from Lontray will provide the funds necessary to implement the Plan, *to wit*: the employment of a real estate broker, the marketing of the Property for sale, and other amounts as needed to carry out the orderly sale of the Property and all assets of the Debtor for the highest and best price. Lontray will be reimbursed such funds together with interest as set forth herein from the first funds available from the proceeds of the sale of the Property.

**6.02 Sale of the Property.** If not already engaged by the Debtor prior to Confirmation, the Reorganized Debtor shall, promptly following the Confirmation Date, engage a reputable, licensed real estate broker, to assist in the sale of the Property pursuant to this Plan. Such broker shall, with the assistance and advice of the Reorganized Debtor, take all reasonable and prudent steps

to market the Property for sale at the highest and best price. Such broker will receive as compensation a commission commensurate with the commercially reasonable market rate for brokerage fees incident to a sale of undeveloped real estate similar to the Property in North Texas. While every effort will be made to close a sale of the Property as expeditiously as possible, the Reorganized Debtor estimates that the sale process contemplated herein, including the marketing of the Property, selection of a purchaser, and closing of a sale, will take approximately six (6) months. All costs incurred in connection with the maintenance, marketing, and ultimate disposition of the Property, including all reasonable brokerage commissions, professional fees, legal fees, accounting fees, marketing and sale expenses, title fees, taxes, levies, assessments, other governmental charges, or any other type of expense, fee or cost incurred in connection with the disposition of the Property shall initially be paid from the funds advanced by Lontray and earmarked for the purposes set forth in this Plan. In the event that the Property has not been sold six (6) months after the Effective Date, and such time period has not been extended by the Court, holders of Allowed Secured Claims shall be entitled to exercise their lien rights.

**6.03 Disposition of the Net Proceeds from the Sale of the Property.** As detailed in this Plan, the Allowed Secured Claims of AmTrust and the Allowed Secured Claims of holders of M&M Liens will be satisfied in full from the Net Proceeds, in accordance with the statutory priority of their respective liens as set forth in the Texas Property Code, up to the Allowed Amount of their Allowed Secured Claims. In the event that the Net Proceeds from the sale of the Property are sufficient to satisfy in full the asserted Secured Claim of AmTrust and the asserted Secured Claims of all holders of M&M Liens, the Bankruptcy Court shall conduct proceedings to determine the validity and amount of the Class 2 Allowed Secured Claim of AmTrust and the validity and amount of the Class 3 - Class 10 Allowed Secured Claims arising from each of the asserted M&M Liens, and the Class 2 Allowed Secured Claim of AmTrust, if any, and the Class 3 - Class 10 Allowed Secured Claims of holders of valid M&M Liens, if any, shall be paid in full from the Net Proceeds promptly after the closing of the sale of the Property. In the event, however, that the Net Proceeds from the sale of the Property are insufficient to satisfy in full the asserted Secured Claim of AmTrust and the asserted Secured Claims of all holders of M&M Liens, the Bankruptcy Court shall conduct proceedings to determine (a) the validity and amount of the Class 2 Allowed Secured Claim of AmTrust and the validity and amount of the Class 3 - Class 10 Allowed Secured Claims arising from each of the asserted M&M Liens; and (b) the relative priorities of the Secured Claims arising from the asserted liens of AmTrust and each of the M&M Liens in accordance with the statutory priority of their respective liens as set forth in the Texas Property Code. The Net Proceeds from the sale of the Property will then be distributed to the holders of Allowed Secured Claim in accordance with such determinations as to priority made by the Bankruptcy Court. Any Deficiency Claim of AmTrust or any holder of an M&M Lien will be treated as a General Unsecured Claim in Class 12.

**6.04 The M&M Lien Escrow.** While the Debtor has consistently maintained its belief that equity exists in the Property over and above the amount of all asserted Secured Claims (including the asserted Claims of AmTrust and the asserted Claims of the holders of M&M Liens) and all asserted Unsecured Claims, the ultimate purchase price for the Property and, therefore, the Net Proceeds from the sale of the Property will not be known until the completion of the marketing and sale process outlined above and the closing of a sale. In the event that the Net Proceeds from the sale of the Property are insufficient to satisfy in full the asserted Secured Claim of AmTrust and the asserted Secured Claims of all holders of M&M Liens, the Reorganized Debtor shall place a portion of the Net Proceeds (in an amount equal to at least the amount necessary to pay all asserted Secured Claims of the holders of the M&M Liens) into an escrow account (the “**M&M Lien Escrow**”). Upon determination by the Bankruptcy Court of the relative priorities of the Secured

Claims arising from the asserted liens of AmTrust and each of the M&M Liens in accordance with the statutory priority scheme set forth in the Texas Property Code, the funds held in the M&M Lien Escrow will then be distributed to the holders of Allowed Secured Claims in accordance with the ruling of the Bankruptcy Court.

**6.05 Disposition of Estate Assets Other than the Property.** The Reorganized Debtor will sell or otherwise dispose of in a commercially reasonable manner all other assets of the Estate. The assets of the Estate other than the Property that are subject to liens, if any, will be liquidated by the Reorganized Debtor in accordance with the priorities under the Code and under state law as soon as possible.

**6.06 Management of the Reorganized Debtor.** At this time, it is contemplated that the Reorganized Debtor shall remain organized as a limited liability partnership, and the General Partner of the Reorganized Debtor will be Crosswinds at Frisco 2000 GP, LLC and the limited partner will be Tay Land, LLC, both of which entities are controlled by Bernie Gliberman. Mr. Gliberman has indicated a willingness to act as the Manager for the general partner of the Reorganized Debtor has agreed to abide by and act in conformity with the duties and obligations of the Reorganized Debtor as set forth in this Plan.

**6.07 Authority for Settlement of Causes of Action.** The Reorganized Debtor, with the advice of its counsel, shall, in its sole and absolute discretion, be authorized to compromise and settle any of the Causes of Action, without Court approval, at any time, and for any consideration that it believes to be reasonable and in the Creditors' best interests.

**6.08 Termination of the Committees.** On the Effective Date, the Committee shall cease to exist and have no further status as a party in interest except for purposes of prosecuting any application(s) for Fee Claims, in which event the Committee shall cease to exist immediately after the final resolution of such Fee Claims.

**6.09 Consummation/Effective Date of the Plan.** For all purposes, Consummation (and substantial consummation and the Effective Date of this Plan) shall occur the instant upon which (i) the sale of the Property is closed and the purchase price for the Property has been paid by the purchaser of the Property to the Reorganized Debtor; and (ii) distribution of cash or property has commenced to any class of Creditors, which distribution shall occur as expeditiously as possible after the closing of the sale of the Property, at which time this Plan shall be deemed fully consummated and on which date this Plan shall be fully effective.

## **ARTICLE VII** **DUTIES AND OBLIGATIONS OF THE REORGANIZED DEBTOR**

**7.01 Duties of the Reorganized Debtor: Sale of the Property.** The Reorganized Debtor shall have the duty and responsibility to oversee the sale of the Property and the sale or disposition of all other assets of the Estate. The Reorganized Debtor shall ensure that all such sales, and specifically the sale of the Property, are conducted in accordance with the terms and conditions set forth in this Plan.

**7.02 Duties of the Reorganized Debtor: Investigation and Pursuit of Causes of Action.** The Reorganized Debtor shall administer the assets of the Estate and have the authority to

investigate, initiate or continue all litigation involving the Causes of Action make the payments to Creditors as provided in this Plan, and to take any and all other actions deemed necessary and appropriate to effectuate this Plan.

**7.03 General Duties of the Reorganized Debtor.** Further and additionally, except as otherwise provided in this Plan, the Reorganized Debtor shall have all of the following rights and powers:

- (a) Receive and hold, to have exclusive possession and control thereof as permissible under applicable law, maintain and administer the Property and all other assets of the Estate on and after the Confirmation Date;
- (b) Employ, retain or replace professional persons, including attorneys, accountants, appraisers, investment advisors, expert witnesses, insurance adjustors, or other persons whose services may be necessary or advisable, in the judgment of the Reorganized Debtor, to advise or assist in the discharge of the duties under this Plan, or otherwise in the exercise of any powers vested in the Reorganized Debtor under this Plan or as the Court may direct and to pay to such professionals reasonable compensation (in this regard, the Reorganized Debtor may employ professionals employed by the Debtor or the Committee);
- (c) Collect, compromise, settle or discharge any claim of the Debtor and pursue, in its discretion, as the designated representative of the Debtor, to either judgment, order, compromise or settlement, any of the Causes of Action, and to defend any counterclaims, cross-actions or other offsets;
- (d) Distribute in accordance with this Plan the cash and proceeds from the sale, liquidation, settlement, prosecution or other distribution of the Property, all other property of the Estate and the Causes of Action;
- (e) Seek a determination from the Court of the Allowed Amount of any Claim or Interest against the Debtor, including filing objections thereto and pursuing any contest or adversary proceedings with regard thereto and entering into any compromise or settlement thereof, and to execute any contract, including, without limitation, any release in connection with any such compromise or settlement;
- (f) Maintain possession of the originals of any and all instruments and documents pertaining to the Property prior to its sale, all other property of the Estate, and any liabilities of the Debtor;
- (g) Pay all reasonable expenses incurred in connection with the administration of the Estate;
- (h) Calculate and make distribution to holders of Allowed Claims all as set forth in this Plan;

- (i) Sue and be sued, including filing and defending contested matters and adversary proceedings in the Court and actions or other proceedings in any other court or before any administrative agency and to pursue or defend any appeal from any judgment or order therefrom, including, without limitation, pursuing claims of the Debtor, filing suit or adversary proceedings or contested matters in connection therewith and defending any counterclaims, cross-actions or other offsets in connection therewith and entering into any compromise, settlement, release, discharge or dismissal of any of the claims;
- (j) Release, convey or assign any right, title or interest in or about the Property and all other property of the Estate;
- (k) Abandon and charge off as worthless, in whole or in part, those actions which in the judgment of the Reorganized Debtor, are in whole or in part uncollectible;
- (l) Pay taxes and excises lawfully owing by or chargeable against the Debtor or property in the possession or control of the Reorganized Debtor and to take any action necessary or advisable to obtain the prompt determination of any such tax liability;
- (m) Exercise on behalf of the Debtor every power granted to a trustee under the Bankruptcy Code, including the rights and benefits afforded by §§ 108 and 546 of the Bankruptcy Code, which may increase the enumerated powers of the Reorganized Debtor otherwise granted herein, and engage in any and all other activities, not in violation of any other terms of the Plan, which, in the judgment of the Reorganized Debtor, are necessary or appropriate for the proper liquidation, management, investment and distribution of the assets of the Debtor in accordance with the provisions of and to effectuate the provisions of the Plan, and to perform such other tasks as the Bankruptcy Court may direct.

**7.04 Investment of Funds.** The Net Proceeds, Net Recoveries and all proceeds and other cash (except for amounts which the Reorganized Debtor determines, in its sole discretion, are needed for immediate payments and distributions) shall be invested and reinvested by the Reorganized Debtor in United States Treasury Bills or in certificates of deposits, demand deposit or interest-bearing accounts of banking institutions or such other investments as shall be prudent and appropriate under the circumstances, in such amounts and upon such terms as a reasonable and prudent fiduciary would select and with a view toward sufficient liquidity to make the distributions contemplated by this Plan. All interest earned on such proceeds and other cash shall be distributed in accordance with this Plan.

**7.05 Books and Records.** The Reorganized Debtor and its agents shall keep or cause to be kept books containing a description of all Claims, assets, receipts, disbursements and escrows, which records shall be open to inspection at all reasonable times upon reasonable request of any Creditor.

**7.06 Payment of Reorganized Debtor's Fees and Expenses.** The Reorganized Debtor may establish reasonable reserves and accounts at banks and other financial institutions, in a clearly

specified fiduciary capacity, into which cash and property may be deposited and checks drawn or withdrawals made to pay or distribute such amounts as permitted or required for reasonable fees, expenses and liabilities pursuant to the Reorganized Debtor's duties and obligations this Plan. Such funds shall not be subject to any claim by any entity except as provided under this Plan. All reasonable fees and expenses of the Reorganized Debtor, and its agents and employees incurred in connection with (i) the objection to, and settlement, liquidation and payment of claims and interests against the Debtor; (ii) the liquidation, sale or other disposition of the Property and all other property of the Estate; or (iii) administering the Estate and completion of the Plan shall, subject to the review and approval of the Reorganized Debtor, be paid.

**7.07 Compensation of Persons Employed by the Reorganized Debtor in Connection with Effectuating the Plan.** All persons or entities employed by the Reorganized Debtor in connection with fulfilling its obligations and duties under this Plan shall be entitled to reasonable compensation subject to the review and consent of the Reorganized Debtor.

**7.08 Liability of the Reorganized Debtor.** No recourse shall ever be had, directly or indirectly, against the Reorganized Debtor by legal or equitable proceedings or by virtue of any statute or otherwise, or by virtue of any deed of trust, mortgage, pledge or note, or by virtue of any promises, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Reorganized Debtor for any purposes authorized under this Plan, it being expressly understood and agreed that all such liabilities, covenants and agreements of the Reorganized Debtor, whether in writing or otherwise, shall be enforceable only against and be satisfied only by the assets of the Debtor's Estate, and every undertaking, contract, covenant or agreement entered into in writing by the Reorganized Debtor in connection with this Plan may provide expressly against the liability of the Reorganized Debtor except as set forth in this Plan. The Reorganized Debtor shall not be liable for any act it may do or admit to do in connection with this Plan while acting in good faith. The Reorganized Debtor shall not be liable in any event except for in the case of gross negligence or willful fraud or misconduct.

## **ARTICLE VIII**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**8.01 Treatment of Executory Contracts.** The Debtor has previously rejected various Executory Contracts. The Reorganized Debtor, as successor to the Debtor, shall, upon the advice and consent of the purchaser of the Property, additionally determine whether to assume or reject as of the Effective Date all remaining Executory Contracts. All motions to assume or reject Executory Contracts shall be filed with the Court within ten (10) days after the Effective Date.

**8.02 Cure of Defaults.** Either the purchaser of the Property or the Reorganized Debtor shall cure all defaults existing under any assumed Executory Contract pursuant to the provisions of §§ 1123(a)(5)(G) and 365(b) of the Code, by paying the amount, if any, determined by the Court required to be paid in order to assume such Executory Contract. Payment of such amounts shall be made by either the purchaser of the Property or the Reorganized Debtor as a condition to assumption of any Executory Contract unless the party to such Executory Contract agrees to different terms.

**8.03 Claims for Damages.** Each person who is a party to an Executory Contract rejected pursuant to this Article shall be entitled to file, not later than thirty (30) days after the Effective Date,



which is the deemed date of such rejection, a proof of claim for damages alleged to arise from the rejection of the Executory Contract to which such person is a party. A copy of such Claim shall be sent to the Reorganized Debtor. The Court shall determine any objections to asserted rejection damages claims, unless they are otherwise resolved. All Allowed Claims for rejection damages shall be treated as General Unsecured Claims.

## **ARTICLE IX**

### **PROVISIONS REGARDING DISTRIBUTIONS AND OBJECTIONS TO CLAIMS**

**9.01 Reserves.** Prior to any distribution, the Reorganized Debtor shall establish adequate reserves for the administration of the Estate and the effectuation of the Plan and for any Contested Claims that may become Allowed Claims after the Effective Date. The Reorganized Debtor shall also comply with the terms of this Plan regarding the M&M Lien Escrow, if necessary.

**9.02 No Distributions Pending Allowance or Estimation of Claims.** No payments or distributions shall be made with respect to all or any portion of a Contested Claim unless and until such Claim becomes an Allowed Claim, or Allowed Interest, as determined by Final Order. No holder of a Claim shall be entitled to any payment under the Plan if such holder has retained property of the Estate.

**9.03 Reserve for Certain Distributions.** The Reorganized Debtor shall reserve funds adequate to properly treat Contested Claims pending the resolution of the objection to such Claim.

**9.04 Distributions from the Claim Reserve.** In the event that any amounts held in reserve remain after all objections to Contested Claims have been resolved, the Reorganized Debtor shall make distributions of such funds on a Pro Rata basis pursuant to the terms of this Plan.

**9.05 Unclaimed Distributions.** Any proceeds or other cash held for the benefit of any holder of an Allowed Claim, if unclaimed by the distributee within three months after the distribution, shall be redeposited and made available for other Allowed Claims and Allowed Interests, and all liability and obligations of the Debtor and the Reorganized Debtor to such distributee with respect thereto shall thereupon cease.

**9.06 Treatment of Contingent or Unliquidated Claims.** Until such time as a contingent Claim becomes fixed and Allowed, such Claim shall be treated as a Contested Claim for purposes related to voting, allowance, and distributions under this Plan. The Bankruptcy Court upon request by the Debtor or, after the Confirmation Date, by the Reorganized Debtor, shall in a summary proceeding for each such contingent Claim or unliquidated Claim, by estimation determine the allowability of each such contingent or unliquidated Claim.

**9.07 Form of Payments.** Payment to be made by the Reorganized Debtor pursuant to this Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank. The Reorganized Debtor may disregard, and elect to not pay, Allowed Claims whose Pro Rata share of a proposed distribution is less than \$100.00. In such case, the Allowed Amount of such Claims shall be reduced to zero and such funds shall be retained and distributed to holders of Allowed Claims and Allowed Interests in accordance with the terms of this Plan.

## **ARTICLE X**

### **PROVISIONS FOR THE DISCHARGE, SETTLEMENT, AND ADJUSTMENT OF CLAIMS**

**10.01 Reservation of Claims and Causes of Action.** Any and all claims, causes of action, cross claims or counterclaims held or assertable by the Debtor, including but not limited to: (i) the Causes of Action (ii) any claim or cause of action against any holder of a partnership interest in the Debtor whether or not covered under a policy of liability insurance or otherwise; (iii) the Avoidance Actions; and (iv) any and all claims, causes of action, counterclaims, demands, controversies, against third parties on account of costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, and executions of any nature, type, or description which the Debtor have or may come to have, including, but not limited to, negligence, gross negligence, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control, interference with contractual and business relationships, conflicts of interest, misuse of insider information, concealment, disclosure, secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies (both civil and criminal), racketeering activities, securities and antitrust laws violations, tying arrangements, deceptive trade practices, breach or abuse of fiduciary duty, breach of any alleged special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, whether or not in connection with or related to this Plan, at law or in equity, in contract in tort, or otherwise, known or unknown, suspected or unsuspected, are hereby preserved and retained for enforcement by and for the benefit of the Debtor and the Estate effective as of the Confirmation Date. The Reorganized Debtor is appointed as the representative of the Estate pursuant to §1123(b)(3) of the Code to pursue the Causes of Action and shall be the only entity authorized to pursue the Causes of Action. It is the intent of the Plan Proponent that this reservation of claims shall be as broad as permitted by applicable law and shall include all claims, whether or not disclosed in the Debtor's schedules, and shall include any claims referenced in any disclosure statement filed in this Chapter 11 Case.

**10.02 Avoidance Actions.** The Reorganized Debtor is appointed as the representative of the Estate pursuant to §1123(b)(3) of the Code to pursue the Causes of Action and shall be the only entity authorized to pursue actions to recover preferences, fraudulent conveyances, and all other avoidance actions under Chapter 5 of the Bankruptcy Code. Unless such entity consents, or unless otherwise ordered by the Bankruptcy Court, no other party shall have the right or obligation to pursue any such actions. Any creditor determined to have received a transfer that is voidable pursuant to Sections 544, 547, 548, 549, and/or 550 of the Bankruptcy Code or any other applicable law shall be required to remit to the Reorganized Debtor the determined amount of the avoided transfer prior to receiving any distribution.

## **ARTICLE XI**

### **EFFECT OF CONFIRMATION, DISCHARGE, RELEASES, AND INJUNCTION**

**11.01 Vesting of Property.** Confirmation of the Plan shall vest all property of the Debtor in the Reorganized Debtor, including the Property.

**11.02 Property Free and Clear.** Except as otherwise provided in the Plan, all property dealt with by the Plan shall be free and clear of all claims, liens and interests of any party as of the Confirmation of the Plan. This Plan will evidence the release of any and all Liens or encumbrances against all property dealt with by the Plan, unless such Lien or encumbrance is specifically retained in the Plan.

**11.03 Legal Binding Effect; Discharge of Claims and Interests.** The provisions of this Plan shall: (i) bind all Claimants and Interest holders, whether or not they accept this Plan, and (ii) except with respect to Allowed Claims, discharge the Debtor, jointly and severally, from all Claims, claims, debts and liabilities that arose before the Petition Date, and from any Claims, claims, debts and liabilities, including, without limitation, any Claims, claims, debts and liabilities of a kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, that arose, or has been asserted against, the Debtor, jointly or severally, at any time before the entry of the Confirmation Order or that arises from any pre-Confirmation conduct of the Debtor, jointly or severally, whether or not the Claims, claims, debts and liabilities are known or knowable by the Claimant or Interest holder.

**11.04 Effect on Third Parties.** Nothing contained in the Plan or in the documents to be executed in connection with the Plan shall affect any Creditor's rights as to any third party.

**11.05 Satisfaction of Claims and Interests.** Except as otherwise provided by the Plan, the consideration distributed under the Plan shall be in complete satisfaction of all Claims of any Creditor, including Claims arising prior to the Effective Date.

**11.06 Permanent Injunction.** Except as otherwise expressly provided in, or permitted under, this Plan, the Confirmation Order shall provide, among other things, that all Creditors and persons who have held, hold or may hold Claims or Interests, are permanently enjoined on and after the Effective Date against the: (i) commencement or continuation of any judicial, administrative, or other action or proceeding against the Debtor or Reorganized Debtor on account of Claims against or Interests in the Debtor; (ii) enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or Reorganized Debtor or any assets or property of same; or (iii) creation, perfection or enforcement of any encumbrance of any kind against the Debtor or Reorganized Debtor arising from a Claim.

**11.07 Authorization.** All Classes of Creditors that vote to accept the Plan hereby authorize the Reorganized Debtor to act on behalf and in place of such Creditor to the extent provided herein and in any document and instrument delivered hereunder or in connection herewith and to take such other action as may be incidental thereto, including, without limitation, the exercise of any discretion in connection with any determination or decision required for the administration of this Plan and the granting of any waiver, consent, amendment, suspension, supplementation, extension, renewal or other modification with respect to any and all provisions of this Plan on a conditional or unconditional basis.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

**12.01 Request for Relief under Section 1129(b).** In the event any Impaired Class of Interests shall fail to accept this Plan in accordance with Section 1129(a) of the Bankruptcy Code, the Plan Proponent requests the Bankruptcy Court to confirm this Plan in accordance with the provisions of Section 1129(b) of the Bankruptcy Code.

**12.02 Headings.** All headings utilized in this Plan are for convenience and reference only, and shall not constitute a part of this Plan for any other purpose.

**12.03 Claims Based on Partnership Interests in the Debtor.** All Claims asserted, arising from, based upon or related to ownership of a partnership interest of the Debtor shall be treated as a Subordinated Claim.

**12.04 Due Authorization.** Each and every Claimant and Interest holder who elects to participate in the distributions provided for herein warrants that such Claimant or Interest holder is authorized to accept, in consideration of such Claim against or Interest in the Debtor, the distributions provided for in this Plan and that there are not outstanding commitments, agreements, or understandings, expressed or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by such Claimant or Interest holder under this Plan.

**12.05 Authorization of Corporate Action.** All matters and actions provided for under this Plan involving the corporate structure of the Debtor or corporate action to be taken by or required of the Debtor shall be deemed to have occurred and be effective as provided herein, and shall be deemed to be authorized and approved in all respects without any requirement for further action by the partners of the Debtor. Specifically, any amendments to the partnership agreement of the Debtor pursuant to this Plan and all other corporate action on behalf of the Debtor as may be necessary to put into effect or carry out the terms and intent of this Plan and the orders and decrees of the Bankruptcy Court entered in the Chapter 11 Case, may be effected, exercised and taken without further action by the partners of the Debtor, as applicable, with like effect as if effected, exercised and taken by unanimous action of the partners of the Debtor, as applicable.

**12.06 Further Assurances and Authorizations.** The Debtor shall seek such orders, judgments, injunctions, and rulings that may be required to carry out the intentions and purposes, and to give full effect to the provisions of, this Plan. All terms and provisions of this Plan shall be construed in favor of the Plan Proponent.

**12.07 Applicable Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas without reference to the laws of other jurisdictions.

**12.08 Privileged Communications; Work Product.** For purposes of any proprietary, confidential or privileged information or communication, including attorney-client privileged communications, and documents that would otherwise constitute attorney work product, the Reorganized Debtor shall succeed to the interest of the Debtor and the Estate, to the extent provided by applicable law.

**12.09 No Interest.** Except as expressly stated in this Plan, or allowed by the Court, no interest, penalty or late charge is to be Allowed on any Claim subsequent to the Petition Date.

**12.10 Post-Confirmation Actions.** After Confirmation, the Reorganized Debtor may, with the approval of the Court, and so long as it does not materially or adversely affect the interest of Creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and effect of the Plan.

**12.11 Notice of Default.** In the event of any alleged default under the Plan, any Creditor or party-in-interest must give a written default notice to the Reorganized Debtor, with copies to counsel of record for the Debtor, specifying the nature of the default. Upon receipt of the default notice, the Reorganized Debtor shall have ten (10) days to cure such default from the time of receipt of the default notice. If such default has not been cured within the applicable time period, the default may be brought to the attention of the Court or any other court of competent jurisdiction.

**12.12 Notices.** All notices, requests, elections or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested.

**12.13 Payment Dates.** Whenever any payment or distribution to be made under the Plan shall be due on a day other than a Business Day, such payment or distribution shall instead be made, without interest, on the next Business Day, except as may be provided in negotiable instruments requiring such payments.

### **ARTICLE XIII**

#### **RETENTION OF JURISDICTION**

**13.1 Bankruptcy Court Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction over these Chapter 11 Cases after Confirmation, notwithstanding Consummation or substantial consummation to hear and determine, as necessary, any and all disputes regarding the priority of all asserted liens against the Property, specifically including any disputes as to priority in payment between and among the asserted liens of AmTrust and the holders of asserted M&M Liens. The Bankruptcy Court shall further retain exclusive jurisdiction over these Chapter 11 Cases after Confirmation, notwithstanding Consummation or substantial consummation for the following purposes:

- (a) to consider and effect any modification of this Plan under Section 1127 of the Bankruptcy Code;
- (b) to hear and determine all controversies, suits and disputes that arise in connection with the interpretation, implementation, effectuation, consummation or enforcement of this Plan;
- (c) to hear and determine all requests for compensation and/or reimbursement of expenses for the period commencing on the Petition Date through the Confirmation Date;
- (d) to hear and determine all objections to Claims and Interests, and to determine the appropriate classification of any Claim or Interest, and other controversies, suits and

disputes that may be pending at or initiated after the Confirmation Date, except as provided in the Confirmation Order;

- (e) to hear and determine all Causes of Action;
- (f) to consider and act on such other matters consistent with this Plan as may be provided in the Confirmation Order;
- (g) to make such orders as are necessary and appropriate to carry out and implement the provisions of this Plan;
- (h) to approve the reasonableness of any payments made or to be made, within the meaning of Section 1129(a)(4) of the Bankruptcy Code;
- (i) to exercise the jurisdiction granted pursuant to Section 505(a) and (b) of the Bankruptcy Code to determine any and all federal, state, Commonwealth, local and foreign tax liabilities of, and any and all refunds of such taxes paid by the Debtor;
- (j) to hear and determine any issues or matters in connection with any property not timely claimed as provided in this Plan; and
- (k) to determine any and all motions, applications, adversary proceedings and contested matters whether pending in the Case as of the Effective Date or brought subsequently by the Reorganized Debtor.

Nothing contained in this Plan shall be construed so as to limit the rights of the Reorganized Debtor to commence or prosecute any claim in any court of competent jurisdiction.

**DATED: May 5, 2008.**

**CROSSWINDS AT LONE STAR RANCH 1000, LTD.**

By: Crosswinds at Frisco 1000 GP, LLC, It's General Partner

By: Bentley Management, LLC

By: /s/ Bernard Gliberman

Bernard Gliberman, Manager

Frank J. Wright

C. Ashley Ellis

**WRIGHT GINSBERG BRUSILOW P.C.**

14755 Preston Road, Suite 600

Dallas, Texas 75254

972/788-1600

972/702-0662

**ATTORNEYS FOR DEBTOR**

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