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**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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In re	Bankruptcy No. 10-32433 (RKM)
HRAF HOLDINGS, LLC, and	Bankruptcy No. 10-32436 (RKM)
HARBOR REAL ASSET FUND, LP,	
Debtors.	Jointly Administered under Case No. 10-32433
	Chapter 11

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**FIRST AMENDED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: September 26, 2011

HRAF Holdings, LLC and Harbor Real Asset Fund, LP, debtors-in-possession in the above-captioned jointly administered bankruptcy case, hereby propose the following joint plan of reorganization under Section 1121 of Title 11 of the United States Code. The following shall constitute a separate plan of reorganization proposed by each of the foregoing debtors.

## **ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION**

### **SECTION A. DEFINED TERMS**

For purposes of this Plan, the following terms shall have the meanings specified in this Article 1. A term used but not defined herein, which is also used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code.

**1.1** “Administrative Expense Claim” shall mean a Claim that is Allowed under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation,

**1.1.1** All fees and expenses of Professionals Allowed pursuant to an Order of the Bankruptcy Court, and

**1.1.2** all fees and charges assessed against the Estates pursuant to 28 U.S.C. § 1930.

**1.2** “Allowed” shall mean, with reference to any Claim:

**1.2.1** a Claim that has been listed by the Debtors in their Schedules and (i) is not listed as disputed, contingent or unliquidated, and (ii) is not a Claim as to which a proof of claim has been filed;

**1.2.2** a Claim as to which a timely proof of claim has been filed by the Bar Date and either (i) no objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery, has been made on or before any applicable deadline, or (ii) if an objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery has been interposed, the extent to which such Claim has been allowed (whether in whole or in part) by a Final Order;

**1.2.3** a Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and allowed in accordance with Section 502(h) of the Bankruptcy Code; or

**1.2.4** any Claim expressly designated as an “allowed” Claim under this Plan or pursuant to the Confirmation Order.

**1.3** “Avoidance Actions” shall mean Causes of Action arising or held by the Estate under Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws.

**1.4** “Bank” shall mean and refer to Loan Acquisitions Group, LLC, which is the successor-in-interest to Bank of America, N.A. and the current holder of the promissory note and related loan documents originally executed and delivered by the Debtors in favor of Bank of America, N.A.

**1.5** “Bankruptcy Case” or “Case” shall mean the above-captioned jointly administered bankruptcy case of the Debtors, Case No. 10-32433. “Bankruptcy Cases” or “Cases” shall mean the above-captioned bankruptcy cases of the Debtors pending in the Bankruptcy Court.

**1.6** “Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Cases.

**1.7** “Bankruptcy Court” or “Court” shall mean the United States Bankruptcy Court for the District of Utah in which the Bankruptcy Cases are pending and, to the extent of any reference under 28 U.S.C. § 157, the unit of such District Court specified pursuant to 28 U.S.C. § 151.

**1.8** “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, and any local rules of the Bankruptcy Court.

**1.9** “Bar Date” shall mean: (i) January 12, 2011 with respect to a Claim against the Estate other than a Claim of a Governmental Unit; and (ii) March 8, 2011 with respect to a Claim against the Estate of a Governmental Unit.

**1.10** “Black Ridge Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Washington County, State of Utah, at or about 250 Tonaquint Dr., Saint George, UT.

**1.11** “Bogus Basin Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Boise County, State of Idaho, at or about Bogus Basin Ski Resort.

**1.12** “Business Day” shall mean any day other than a Saturday, Sunday or legal holiday recognized in the State of Utah.

**1.13** “Canyon Vine Cove Property” means and refers to the real property and improvements owned by HRAF and located in Salt Lake County, State of Utah at or about 14233 S. Canyon Vine Cove, Draper, UT.

**1.14** “Cash” shall mean lawful currency of the United States of America (including wire transfers, cashier’s checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders).

**1.15** “Causes of Action” shall mean, without limitation, any and all actions, causes of action, defenses, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims or proceedings to recover money or property and

demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise, including, without limitation, Avoidance Actions.

**1.16** “Cedar Valley Property” means and refers to the real property and improvements, if any, currently titled in the name of Strawberry Holdings, LLC and in which Harbor holds a first priority Lien interest, located in Iron County, State of Utah at or about Cedar Valley Acres Subdivision.

**1.17** “Claim” shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation, (i) any right to payment, whether or not such right is reduced to judgment, and whether or not such right is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, or is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**1.18** “Class” shall mean those classes designated in Article III of this Plan.

**1.19** “Code” shall mean Title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Cases.

**1.20** “Costs of Sale” shall have the meaning provided in section 5.13.1 of the Plan.

**1.21** “Collateral” shall mean any property or interest in property of the Estates subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

**1.22** “Confirmation Date” shall mean the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Bankruptcy Cases.

**1.23** “Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to the provisions of the Bankruptcy Code, and any supplementary orders of the Bankruptcy Court issued in furtherance of the Plan.

**1.24** “Contingent or Unliquidated Claim” shall mean any Claim for which a proof of claim has been filed with the Bankruptcy Court but which was not filed in a sum certain, or which has not occurred and is dependent upon a future event that has not occurred or may never occur, and which has not been Allowed.

**1.25** “Creek Road Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Salt Lake County, State of Utah at or about 7390 Creek Road, Suite 203, Sandy, UT.

**1.26** “Debtor” or “Debtors” shall mean and refer to, singularly or collectively as the context may require, HRAF Holdings, LLC and Harbor Real Asset Fund, LP and, from and after the Effective Date, shall mean and refer to the Reorganized Debtor.

**1.27** “Deer Canyon Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Wasatch County, State of Utah, sometimes referred to as Lots 1, 2, 3, 4, 5, 11, 12, 13, 14 and 15, Deer Canyon Preserve Phase 1.

**1.28** “Dimple Dell Property” means and refers to the real property and improvements owned by HRAF and located in Salt Lake County, State of Utah at or about 10658 S. Dimple Dell Rd., Sandy, UT.

**1.29** “Disclosure Statement” shall mean the disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, in the form approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

**1.30** “Disputed Claim” shall mean:

**1.30.1** if no proof of claim relating to a Claim has been filed, a claim that is listed in the Schedules as unliquidated, disputed or contingent; or

**1.30.2** if a proof of claim relating to a Claim has been filed, a Claim as to which a timely objection or request for estimation, or request to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, has been made, or which is otherwise disputed by the Debtors, or the Reorganized Debtor in accordance with applicable law, which objection, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by Final Order; or

**1.30.3** a Claim which is a Contingent or Unliquidated Claim.

**1.31** “Disputed Claim Amount” shall mean the amount set forth in the proof of claim relating to a Disputed Claim or an amount estimated pursuant to an order of the Bankruptcy Court in respect of a Disputed Claim in accordance with Section 502(c) of the Bankruptcy Code.

**1.32** “Disputed Claims Reserve” shall have the meaning set forth in Section 6.4 hereof.

**1.33** “Distribution Record Date” shall mean the Confirmation Date.

**1.34** “Effective Date” shall mean the date which is 30 days after the Confirmation Date, or if such date is not a Business Day, the next succeeding Business Day; provided, however, that if, as of such date, all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 of the Plan have not been satisfied or waived, then the first Business Day immediately following the day upon which all such conditions have been satisfied or waived.

**1.35** “Equity Interest” shall mean any membership interest or the interest of any holder of common or preferred equity securities of either of the Debtors or of any general or limited partnership interest in either of the Debtors, and all options, warrants and rights, contractual or otherwise, to acquire any such equity securities or to acquire

any general or limited partnership interest in either of the Debtors, as such interests exist immediately prior to the Effective Date.

**1.36** “Estate” or “Estates” shall mean the respective estates of the Debtors arising pursuant to Section 541 of the Bankruptcy Code. From and after the Effective Date, “Estate” shall mean and refer to the consolidated estate of the Reorganized Debtor as defined under this Plan, including all property of both Debtors which was part of their pre-confirmation estates pursuant to Section 541 of the Bankruptcy Code.

**1.37** “Final Order” shall mean an order or judgment which has not been reversed, stayed, modified or amended and, as to which (i) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending, or (ii) if appeal, review, reargument or certiorari of the order has been sought, the order has been affirmed or the request for review, reargument or certiorari has been denied and the time to seek a further appeal, review, reargument or certiorari has expired, and as a result of which such order shall have become final and nonappealable in accordance with applicable law; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

**1.38** “Final Distribution Date” shall mean the earlier of (a) one hundred eighty (180) days after the Debtors have completed the liquidation of all Real Property and other assets, or (b) September 9, 2015.

**1.39** “Final Sales Period” shall mean the period ending September 9, 2015.

**1.40** “General Unsecured Claim” shall mean a Claim that is not a Secured Claim or that is not entitled to priority of payment under Section 507 of the Bankruptcy Code.

**1.41** “Harbor” shall mean Harbor Real Asset Fund, LP.

**1.42** “Haven Estates Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Uintah County, State of Utah at or about 500 W. 750 S., Vernal, UT.

**1.43** “HRAF” shall mean HRAF Holdings, LLC.

**1.44** “Initial Distribution Date” shall mean the date that is 30 days after the Effective Date, or the next succeeding Business Day if such thirtieth day is not a Business Day.

**1.45** “Interim Distribution Date” shall mean each of the following dates: (a) the nine month anniversary of the Effective Date; (b) the eighteen month anniversary of the Effective Date; (c) the twenty-four month anniversary of the Effective Date; and (d) the thirty month anniversary of the Effective Date.

**1.46** “LaColonia Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Coachella, California at or about Parcel I & II, Phase 2, La Colonia Subdivision.

**1.47** “Lien” shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; except that a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, 549 or 553 of the Bankruptcy Code shall not constitute a Lien.

**1.48** “Makaha Beach Property” means and refers to the real property and improvements, if any, owned by Harbor and located in Honolulu County, State of Hawaii and sometimes referenced as Tax Parcel No. 1-8-4-010-060-0000.

**1.49** “Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, Governmental Unit or political subdivision thereof.

**1.50** “Participants” shall have the meaning provided in section 3.26 of this Plan.

**1.51** “Participated Loans” shall have the meaning provided in section 3.26 of this Plan.

**1.52** “Participated Property” shall have the meaning provided in section 3.26 of this Plan.

**1.53** “Participation Interests” shall have the meaning provided in section 3.26 of this Plan.

**1.54** “Participation Proceeds” shall have the meaning provided in section 4.26.3 of this Plan.

**1.55** “Petition Date” shall mean September 9, 2010.

**1.56** “Plan” shall mean this *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, including, without limitation, the exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time, including pursuant to the Confirmation Order.

**1.57** “Plan Rate” shall mean the interest rate determined pursuant to 28 USC. § 1961 as of the Petition Date.

**1.58** “Powder Mountain Condo Pads” means and refers to the real property and improvements, if any, owned by HRAF and located in Weber County, State of Utah at or about (i) Parcel A, TIN #23-12-120, Parcel B, .505 acres, Tin #23-12-106, Parcel C, .682 acres, TIN #23-12-107, Parcel D, TIN #23-12-119 and Parcel E, TIN #23-12-105.

**1.59** “Powder Mountain Lots” means and refers to the real property and improvements, if any, owned by HRAF and located in Weber County, State of Utah at or

about (i) Parcel A, TIN #23-12-120, Parcel B, .505 acres, Tin #23-12-106, Parcel C, .682 acres, TIN #23-12-107, Parcel D, TIN #23-12-119 and Parcel E, TIN #23-12-105.

**1.60** “Priority Claims” shall mean any and all Claims (or portions thereof), if any, entitled to priority under Section 507(a) of the Bankruptcy Code other than Administrative Expense Claims.

**1.61** “Priority Tax Claims” shall mean any Claim of a Governmental Unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

**1.62** “Pro Rata” shall mean a proportionate share of the total distribution made at any particular time under this Plan to the holders of Allowed Claims in a Class, such that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of such Allowed Claim is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims in such Class to the total of all Allowed Claims in such Class.

**1.63** “Professionals” shall mean (i) those Persons employed pursuant to an order of the Bankruptcy Court in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (ii) those Persons for which compensation and reimbursement is allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

**1.64** “Promontory Lots” means and refers to the 4 individual lots together with improvements, if any, owned by HRAF and located in Summit County, State of Utah at or about 8270, 8101, 8223 N. Sunrise Loop and 7521 Fiddlers Hollow, Park City, UT.

**1.65** “Real Property” means and refers to: (a) the parcels of real property identified on Schedule A; (b) any other real property owned by one of the Debtors on the Effective Date or in which one of the Debtor’s acquires ownership or another interest on or before the Final Distribution Date; or (c) any real property upon which either of the Debtors has, or prior to the Final Distribution Date obtains, a lien interest.

**1.66** “Reorganized Debtor” shall mean the consolidated Debtors as reorganized on the Effective Date pursuant to the terms of this Plan.

**1.67** “Royal Pointe Property” means and refers to the real property and improvements, if any, owned by HRAF and located in the City of Live Oak, County of Columbia, State of Florida, consisting of approximately 35 lots in the Royal Pointe Subdivision.

**1.68** “Schedules” shall mean the schedules of assets and liabilities, the list of holders of interests and the statements of financial affairs filed by the Debtors under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists and statements have been or may be supplemented or amended from time to time.

**1.69** “Secured Claim” shall mean any Claim that is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with



Section 506(a) of the Bankruptcy Code, or, in the event that such Claim is a claim of setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.

**1.70** “Southgate Townhomes” means and refers to the real property and improvements, if any, owned by HRAF and located in Washington County, State of Utah at or about 2200 South Circle Dr., St. George, UT.

**1.71** “Stoney Creek Property” means and refers to the real property and improvements, if any, owned by HRAF and located in Taney County, Missouri at or about Gretna Road, Branson, MO.

**1.72** “Subordinated Claim” means a Claim that is subordinated to other classes of Claims by agreement, consent or order of the Bankruptcy Court.

**1.73** “Washington County Property” means and refers to the real property and improvements, if any, owned by Harbor and located in Washington County, State of Utah, more particularly known as Tax Parcel or Tax Serial Number SG-6-2-36-2002.

**1.74** “Water Stock” means and refers to the fourteen (14) shares of stock of Midway Irrigation Company, and all rights related thereto, owned by Harbor.

## **SECTION B. RULES OF CONSTRUCTION**

**1.75** **Capitalized Terms.** Unless otherwise provided, any capitalized terms used in the Plan shall have the meaning set forth in Article 1.

**1.76** **Other Terms.** All terms not defined in this Article 1 or otherwise defined in the Plan, but that are defined in the Code or the Rules shall have the meaning ascribed by the Code or the Rules. For convenience, terms defined in the Code may be capitalized in the Plan, and the Plan sometimes may include a cross-reference to the Code. Neither the failure to capitalize any such term, nor the failure to include a Code cross-reference, however, shall modify the meaning or use of such term as defined in the Code.

**1.77** **References Generally.** All references to an “article” or “articles” are to articles in the Plan. All references to a “section” or “sections” designated by capital letters are to the section and all numbered paragraphs within such section. All references to a “section,” “paragraph,” “sections” or “paragraphs” designated by numbers are to the individual numbered sections or numbered paragraphs in the Plan. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular Section, sub-Section or clause contained in the Plan.

**1.78** **Incorrect Cross-References.** The definitions contained in Article 1 of this Plan, and other articles and sections of this Plan, provide a plethora of specific cross-references to other articles, sections and subsections. Certain cross-references inadvertently may be misstated or incorrect. To the extent a definition or other provision in this Plan misstates a cross-reference, the mistake should not render the definition or

other provision or this Plan ambiguous or invalid. Rather, the Plan should be construed as if the correct cross-reference had been made.

**1.79 References to Documents, Headings or Exhibits.** Any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions shall mean that such document shall be substantially in such form or substantially on such terms and conditions. Any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented. Unless otherwise specified in a particular reference, all references in the Plan to Articles, Sections, Subsections and Exhibits are references to Articles, Sections, Subsections and Exhibits of or to the Plan.

**1.80 General Rules of Construction.** The headings at the beginning of each paragraph or section this Plan are solely for convenience and may not be used or construed in any manner to interpret, define, change, modify, amend, alter or restrict the substance of the Plan. Unless the context requires otherwise, singular nouns and pronouns used in this Plan shall be deemed to include the plural and vice versa. Pronouns of one gender or the neuter shall be deemed to include the equivalent pronouns of the other gender or the neuter. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the terms of this Plan.

**1.81 Computation of Time.** In computing any period of time prescribed or allowed in the Plan, Bankruptcy Rule 9006(a) shall apply. Among other things, to the extent a deadline or due date falls on a weekend or holiday, the deadline or due date shall be the next business day that is neither a weekend nor a holiday.

## **ARTICLE 2 TREATMENT OF ALLOWED ADMINISTRATIVE EXPENSE CLAIMS AND ALLOWED PRIORITY TAX CLAIMS**

**2.1 Non-Classification.** As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified for the purposes of voting on, or receiving distributions under, the Plan. All such Claims are instead treated separately in accordance with the terms in this Article II.

### **2.2 Administrative Expense Claims.**

**2.2.1 General.** Except as otherwise agreed to by the Debtors and the holder of an Allowed Administrative Expense Claim, each such holder shall be paid in full in Cash on the later of (i) the date such Allowed Administrative Expense Claim becomes due in accordance with its terms, and (ii) the Effective Date. If the Debtors dispute any portion of an Administrative Expense Claim, the Debtors shall pay such Claim within 30 days after the entry of a Final Order with respect to the allowance of such disputed Administrative Expense Claim.

**2.2.2 U.S. Trustee's Fees.** The United States Trustee's quarterly fees shall be paid in full without prior approval pursuant to 28 U.S.C. § 1930 on or before the Effective Date.

### **2.2.3 Professional Compensation and Expense Reimbursement Claims.**

2.2.3.1 Each Professional of the Debtors and/or the Reorganized Debtor may request that its fees and expenses be paid in accordance with the procedures set forth in the order of the Bankruptcy Court approving the Disclosure Statement. Such Professional shall file a final application for the allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date no later than thirty days after the Effective Date. Any award granted by the Bankruptcy Court shall be paid (i) within ten days of the entry of the order of the Bankruptcy Court approving such award, unless a stay is obtained, or (ii) upon such other terms as may be mutually agreed upon between such holder of an Allowed Administrative Expense Claim and the Debtors.

2.2.3.2 All fees and expenses of Professionals for services rendered after the Confirmation Date in connection with the Bankruptcy Cases and the Plan including, without limitation, those relating to the occurrence of the Effective Date, shall be paid by the Reorganized Debtor upon receipt of reasonably detailed invoices therefore in such amounts and on such terms as such Professional and the Reorganized Debtor may agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

**2.2.4 Source of Payment of Administrative Expenses.** Subject to the availability of Cash, Allowed Administrative Expenses of the Debtors shall be paid from the amounts or reserves established under sections 6.1.3.8, 6.1.3.9, 6.1.4.8 and 6.1.4.9 of this Plan, or from any other unencumbered assets of the Reorganized Debtor.

**2.3 Priority Tax Claims.** At the sole election of the Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall be paid either (i) upon such terms as may be agreed to between the Reorganized Debtor and such holder of an Allowed Priority Tax Claim, (ii) in full in Cash on the later of the Effective Date or the date that such Allowed Priority Tax Claim would have been due if the Bankruptcy Case had not been commenced, or (iii) in four equal annual Cash payments, beginning on September 9, 2012 and ending on the Final Distribution Date, totaling the amount of such Allowed Priority Tax Claim, plus interest at the rate prescribed by Bankruptcy Code § 511.

## **ARTICLE 3 CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

Claims, other than Administrative Expense Claims and Priority Tax Claims, shall be classified for all purposes, including voting on, confirmation of, and distribution pursuant to the Plan, as follows:

### **SECTION A. UNSECURED CLAIMS AGAINST HRAF**

**3.1 Class 1 – Priority Claims (HRAF).** Class 1 shall consist of all Allowed Priority Claims as against HRAF.

**3.2 Class 2 – General Unsecured Claims (HRAF).** Class 2 shall consist of all Allowed non-priority Unsecured Claims against HRAF, including the Allowed Claim of the Bank.

## **SECTION B. TAX CLAIMS SECURED BY REAL PROPERTY**

**3.3 Class 3 – Secured Claim of Boise County.** Class 3 shall consist of the Allowed Secured Claim of Boise County. Boise County holds an Allowed Claim secured by the Bogus Basin Property.

**3.4 Class 4 – Secured Claim of Columbia County Tax Collector.** Class 4 shall consist of the Allowed Secured Claim of Columbia County. Columbia County holds an Allowed Claim secured by the Royal Pointe Property.

**3.5 Class 5 – Secured Claim of Honolulu County.** Class 5 shall consist of the Allowed Secured Claim of Honolulu County. Honolulu County holds an Allowed Claim secured by the Makaha Beach Property.

**3.6 Class 6 – Secured Claim of Iron County.** Class 6 shall consist of the Allowed Secured Claim of Iron County. Iron County holds an Allowed Claim secured by the Cedar Valley Property.

**3.7 Class 7 – Secured Claim of Salt Lake County Treasurer.** Class 7 shall consist of the Allowed Secured Claim of the Salt Lake County Treasurer. Salt Lake County holds an Allowed Claim secured by the Creek Road Property, the Canyon Vine Cove Property and the Dimple Dell Property.

**3.8 Class 8 – Secured Claim of Summit County.** Class 8 shall consist of the Allowed Secured Claim of Summit County. Summit County holds an Allowed Claim secured by the Promontory Lots and the Deer Canyon Property.

**3.9 Class 9 – Secured Claim of Taney County Collector.** Class 9 shall consist of the Allowed Secured Claim of Taney County Collector. Taney County holds an Allowed Claim secured by the Stoney Creek Property.

**3.10 Class 10 – Secured Claim of Uintah County.** Class 10 shall consist of the Allowed Secured Claim of Uintah County. Taney County holds an Allowed Claim secured by the Haven Estates Property.

**3.11 Class 11 – Secured Claim of Wasatch County Corporation.** Class 11 shall consist of the Allowed Secured Claim of Wasatch County Corporation. Wasatch County holds an Allowed Claim secured by the Deer Canyon Property.

**3.12 Class 12 – Secured Claim of Washington County.** Class 12 shall consist of the Allowed Secured Claim of Washington County. Washington County holds an Allowed Claim secured by the Black Ridge Property and the Southgate Property owned by HRAF, and the Washington County Property owned by Harbor.

**3.13 Class 13 – Secured Claim of Weber County.** Class 13 shall consist of the Allowed Secured Claim of Weber County. Weber County holds an Allowed Claim secured by the Powder Mountain Lots and the Powder Mountain Condo Pads.

#### **SECTION C. OTHER SECURED CLAIMS AGAINST HRAF**

**3.14 Class 14 – Secured Claim of Creek Road Owners Association.** Class 14 shall consist of the Allowed Secured Claim of the Creek Road Owners Association.

**3.15 Class 15 – Secured Claim of Jordanelle Special Services District.** Class 15 shall consist of the Allowed Secured Claim of Jordanelle Special Services District.

**3.16 Class 16 – Secured Claim of The Promontory Conservancy.** Class 16 shall consist of the Allowed Secured Claim of the Promontory Conservancy.

**3.17 Class 17 – Secured Claim of Reynolds Brothers Construction.** Class 17 shall consist of the Allowed Secured Claim of Reynolds Brothers Construction. Reynolds Brothers Construction alleges that its Claim is secured by the Dimple Dell Property, which Claim and/or Lien is or may be disputed or challenged by the Debtors.

**3.18 Class 18 – Miscellaneous Secured Claims (HRAF).** Class 18 shall consist of the Allowed Secured Claim of any other holder of an Allowed Secured Claim against HRAF that is not specifically classified in another Class.

#### **SECTION D. OTHER SECURED CLAIMS AGAINST HARBOR**

**3.19 Class 19 – Secured Claim of the Bank.** Class 19 shall consist of the Allowed Claim of the Bank that is secured by a Lien upon certain of Harbor's personal property, including without limitation Harbor's membership interest in and right to profits distributions from HRAF.

**3.20 Class 20 – Secured Claim of Kenneth and Richelle Patey.** Class 20 shall consist of the Allowed Secured Claim of Kenneth and Richelle Patey. As more particularly described in Proof of Claim 9-1, filed in Harbor's Case on January 12, 2011, Mr. and Mrs. Patey alleges that they hold a Claim and that their Claim is secured by the Water Stock. The Claim and/or Lien of Mr. and Mrs. Patey is or may be disputed or challenged by the Debtors.

**3.21 Class 21 – Miscellaneous Secured Claims (Harbor).** Class 21 shall consist of the Allowed Secured Claim of any other holder of an Allowed Secured Claim against Harbor that is not specifically classified in another Class.

#### **SECTION E. UNSECURED CLAIMS AGAINST HARBOR**

**3.22 Class 22 – Priority Claims (Harbor).** Class 22 shall consist of all Allowed Priority Claims as against Harbor.

**3.23 Class 23 – General Unsecured Claims (Harbor).** Class 23 shall consist of all Allowed non-priority Unsecured Claims against Harbor.

## **SECTION F. EQUITY INTERESTS**

**3.24 Class 24 – Equity Interests in Harbor.** Class 24 shall consist of all Equity Interests in Harbor.

**3.25 Class 25 – Equity Interest in HRAF.** Class 25 shall consist of the Equity Interest in HRAF held by Harbor.

## **SECTION G. PARTICIPATION INTERESTS**

**3.26 Class 26 – Participation Interests.** Class 26 shall consist of the claims or interests (the “Participation Interests”) of loan participants (the “Participants”) in the participated loans (the “Participated Loans”) and certain parcels of Real Property, all listed on Schedule A attached hereto (the “Participated Property”), which claims or interests are evidenced by, among other documents, Claim 10-1 filed in Harbor’s Case, and Claim 119-1 filed in HRAF’s Case.

## **SECTION H. SUBORDINATED CLAIMS**

**3.27 Class 27 – Subordinated Claims.** Class 27 shall consist of all Allowed Claims that are subordinated to the other Classes of Claims by agreement, consent or order of the Bankruptcy Court.

# **ARTICLE 4 TREATMENT OF CLAIMS AND EQUITY INTERESTS**

## **SECTION A. UNSECURED CLAIMS AGAINST HRAF**

### **4.1 Class 1 - Priority Claims (HRAF).**

**4.1.1 Impairment and Voting.** Class 1 is impaired under the Plan. The holders of Allowed Class 1 Claims shall be entitled to vote to accept or reject the Plan.

**4.1.2 Payment.** The holders of Allowed Class 1 Claims shall be paid the full amount of their claim as of the Petition Date. The holders of Allowed Class 1 Claims shall not be paid post-petition interest on their Claims.

**4.1.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 1 Claim, each holder of an Allowed Class 1 Claim shall receive Cash in an amount equal to such Allowed Class 1 Claim on or before the Interim Distribution Date first occurring at least sixty days after such Priority Claim becomes an Allowed Priority Claim.

#### **4.2 Class 2 – General Unsecured Claims (HRAF).**

**4.2.1 Impairment and Voting.** Class 2 is impaired under the Plan. The holders of Allowed Class 2 Claims shall be entitled to vote to accept or reject the Plan.

**4.2.2 Payment.** The holders of Allowed Class 2 Claims shall be paid the full amount of their claim as of the Petition Date. The holders of Allowed Class 2 Claims shall not be paid post-petition interest on their Claims.

**4.2.3 Distributions.** Subject to the limitations described in section 6.1.3.11, the holders of Allowed Class 2 Claims shall be paid, pro rata, (a) from time to time, but in any event at least on the Initial Distribution Date and the subsequent Interim Distribution Dates, to the extent that a full or partial distribution of Cash is available on such dates, and (b) on or before the Final Distribution Date.

### **SECTION B. TAX CLAIMS SECURED BY REAL PROPERTY**

#### **4.3 Class 3 - Secured Claim of Boise County**

**4.3.1 Impairment and Voting.** Class 3 is impaired under the Plan. The holders of Allowed Class 3 Claims shall be entitled to vote to accept or reject the Plan.

**4.3.2 Payment.** The holders of Allowed Class 3 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.3.3 Distributions.** As Collateral which secures a portion of the Class 3 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 3 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 3 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 3 Claims shall retain their Liens until their Claims are paid in full.

#### **4.4 Class 4 - Secured Claim of Columbia County.**

**4.4.1 Impairment and Voting.** Class 4 is impaired under the Plan. The holders of Allowed Class 4 Claims shall be entitled to vote to accept or reject the Plan.

**4.4.2 Payment.** The holders of Allowed Class 4 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.4.3 Distributions.** As Collateral which secures a portion of the Class 4 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 4 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 4 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 4 Claims shall retain their Liens until their Claims are paid in full.

**4.5 Class 5 - Secured Claim of Honolulu County.**

**4.5.1 Impairment and Voting.** Class 5 is impaired under the Plan. The holders of Allowed Class 5 Claims shall be entitled to vote to accept or reject the Plan.

**4.5.2 Payment.** The holders of Allowed Class 5 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.5.3 Distributions.** As Collateral which secures a portion of the Class 5 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 5 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 5 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 5 Claims shall retain their Liens until their Claims are paid in full.

**4.6 Class 6 - Secured Claim of Iron County.**

**4.6.1 Impairment and Voting.** Class 6 is impaired under the Plan. The holders of Allowed Class 6 Claims shall be entitled to vote to accept or reject the Plan.

**4.6.2 Payment.** The holders of Allowed Class 6 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.6.3 Distributions.** As the Collateral which secures a portion of the Class 6 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 6 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 6 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law,



such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 6 Claims shall retain their Liens until their Claims are paid in full.

**4.7 Class 7 - Secured Claim of Salt Lake County.**

**4.7.1 Impairment and Voting.** Class 7 is impaired under the Plan. The holders of Allowed Class 7 Claims shall be entitled to vote to accept or reject the Plan.

**4.7.2 Payment.** The holders of Allowed Class 7 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.7.3 Distributions.** As Collateral which secures a portion of the Class 7 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 7 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 7 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 7 Claims shall retain their Liens until their Claims are paid in full.

**4.8 Class 8 - Secured Claim of Summit County.**

**4.8.1 Impairment and Voting.** Class 8 is impaired under the Plan. The holders of Allowed Class 8 Claims shall be entitled to vote to accept or reject the Plan.

**4.8.2 Payment.** The holders of Allowed Class 8 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.8.3 Distributions.** As Collateral which secures a portion of the Class 8 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 8 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 8 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 8 Claims shall retain their Liens until their Claims are paid in full.

#### **4.9 Class 9 - Secured Claim of Taney County**

**4.9.1 Impairment and Voting.** Class 9 is impaired under the Plan. The holders of Allowed Class 9 Claims shall be entitled to vote to accept or reject the Plan.

**4.9.2 Payment.** The holders of Allowed Class 9 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.9.3 Distributions.** As Collateral which secures a portion of the Class 9 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 9 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 9 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 9 Claims shall retain their Liens until their Claims are paid in full.

#### **4.10 Class 10 - Secured Claim of Uintah County**

**4.10.1 Impairment and Voting.** Class 10 is impaired under the Plan. The holders of Allowed Class 10 Claims shall be entitled to vote to accept or reject the Plan.

**4.10.2 Payment.** The holders of Allowed Class 10 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.10.3 Distributions.** As Collateral which secures a portion of the Class 10 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 10 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 10 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 10 Claims shall retain their Liens until their Claims are paid in full.

#### **4.11 Class 11 - Secured Claim of Wasatch County**

**4.11.1 Impairment and Voting.** Class 11 is impaired under the Plan. The holders of Allowed Class 11 Claims shall be entitled to vote to accept or reject the Plan.

**4.11.2 Payment.** The holders of Allowed Class 11 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.11.3 Distributions.** As Collateral which secures a portion of the Class 11 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 11 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 11 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 11 Claims shall retain their Liens until their Claims are paid in full.

#### **4.12 Class 12 - Secured Claim of Washington County**

**4.12.1 Impairment and Voting.** Class 12 is impaired under the Plan. The holders of Allowed Class 12 Claims shall be entitled to vote to accept or reject the Plan.

**4.12.2 Payment.** The holders of Allowed Class 12 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.12.3 Distributions.** As Collateral which secures a portion of the Class 12 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 12 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 12 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 12 Claims shall retain their Liens until their Claims are paid in full.

#### **4.13 Class 13 - Secured Claim of Weber County**

**4.13.1 Impairment and Voting.** Class 13 is impaired under the Plan. The holders of Allowed Class 13 Claims shall be entitled to vote to accept or reject the Plan.

**4.13.2 Payment.** The holders of Allowed Class 13 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.13.3 Distributions.** As Collateral which secures a portion of the Class 13 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the

Reorganized Debtor, the Class 13 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 13 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 13 Claims shall retain their Liens until their Claims are paid in full.

## **SECTION C. OTHER SECURED CLAIMS AGAINST HRAF**

### **4.14 Class 14 - Secured Claim of Creek Road Owners Association.**

**4.14.1 Impairment and Voting.** Class 14 is impaired under the Plan. The holders of Allowed Class 14 Claims shall be entitled to vote to accept or reject the Plan.

**4.14.2 Payment.** The holders of Allowed Class 14 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest from and after the Effective Date at the Plan Rate.

**4.14.3 Distributions.** As Collateral which secures a portion of the Class 14 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 14 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 14 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 10 Claims shall retain their Liens until their Claims are paid in full.

### **4.15 Class 15 - Secured Claim of Jordanelle Special Services District.**

**4.15.1 Impairment and Voting.** Class 15 is impaired under the Plan. The holders of Allowed Class 15 Claims shall be entitled to vote to accept or reject the Plan.

**4.15.2 Payment.** The holders of Allowed Class 15 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest from and after the Effective Date at the Plan Rate.

**4.15.3 Distributions.** As Collateral which secures a portion of the Class 15 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 15 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 15 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy

law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 15 Claims shall retain their Liens until their Claims are paid in full.

**4.16 Class 16 - Secured Claim of The Promontory Conservancy.**

**4.16.1 Impairment and Voting.** Class 16 is impaired under the Plan. The holders of Allowed Class 16 Claims shall be entitled to vote to accept or reject the Plan.

**4.16.2 Allowed Claim Amount.** The Claim of The Promontory Conservancy is secured by ten separate Promontory Lots, some of which have been or will be sold prior to the Effective Date. The Promontory Conservancy shall receive an Allowed Claim of \$9,000 per lot, plus the right to charge an additional \$750 per lot owned by HRAF per quarter from and after July 1, 2011 (provided that HRAF is the title owner of the lot for the majority of the calendar quarter at issue), with such additional homeowner's association fees accruing and being added to the Allowed Claim. The Promontory Conservancy shall not have a right to recover any transfer fees.

**4.16.3 Payment.** The holders of Allowed Claims in Class 16 shall be paid in full the amounts specified in the preceding paragraph.

**4.16.4 Distributions.** As Collateral which secures a portion of the Class 16 Claim is sold, the Reorganized Debtor will pay the portion of the Allowed Secured Claim attributable to such Collateral. The Class 16 Claims will be paid (a) as to Promontory Lots sold prior to the Effective Date, on or before the Effective Date, or (b) in connection with future sales of Promontory Lots, immediately upon the closing of the sale of the Collateral. The holders of Allowed Class 16 Claims shall retain their Liens until their Claims are paid in full.

**4.17 Class 17 - Secured Claim of Reynolds Brothers Construction**

**4.17.1 Impairment and Voting.** Class 17 is impaired under the Plan. The holders of Allowed Class 17 Claims shall be entitled to vote to accept or reject the Plan.

**4.17.2 Payment.** The holders of Allowed Class 17 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.17.3 Distributions.** As Collateral which secures a portion of the Class 17 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 17 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 17 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the

property from tax sale. The holders of Allowed Class 17 Claims shall retain their Liens until their Claims are paid in full.

#### **4.18 Class 18 – Miscellaneous Secured Claims (HRAF)**

**4.18.1 Impairment and Voting.** Class 18 is impaired under the Plan. The holders of Allowed Class 18 Claims shall be entitled to vote to accept or reject the Plan.

**4.18.2 Payment.** The holders of Allowed Class 18 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.18.3 Distributions.** As Collateral which secures a portion of the Class 18 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 18 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 18 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 18 Claims shall retain their Liens until their Claims are paid in full.

### **SECTION D. OTHER SECURED CLAIMS AGAINST HARBOR**

#### **4.19 Class 19 – Secured Claim of the Bank.**

**4.19.1 Impairment and Voting.** Class 19 is impaired under the Plan. The holders of Allowed Class 19 Claims shall be entitled to vote to accept or reject the Plan.

**4.19.2 Allowed Claim Amount.** The Bank Claim is Allowed in the amount of \$10,673,388.43 as of the Petition Date, plus interest from the Petition Date through the Effective Date at the rate of eight percent (8%) per annum, plus the Bank's reasonable attorneys' fees and costs incurred from September 9, 2010 to the Effective Date (with the amount to be determined by stipulation of the Debtors and the Bank or, if necessary, an order of the Court), less any pre-confirmation payments paid by the Debtors to or for the benefit of the Bank (the "Bank's Claim"). The Bank's Claim shall bear interest from and after the Effective Date at the rate of seven percent (7%) per annum.

**4.19.3 Liens.** The Bank's Allowed Claim against Harbor is secured by certain of Harbor's personal property, including, without limitation, Harbor's membership interest in and right to receive member distributions from HRAF. The holders of Allowed Class 19 Claims shall retain their Liens until their Claims are paid in full.

**4.19.4 General Unsecured Claim Against HRAF.** The Bank also holds an Allowed General Unsecured Claim as against HRAF in the amount of

\$10,673,388.43. The Bank's Allowed Class 2 Claim arises pursuant to a written guaranty executed by HRAF in favor of the Bank.

**4.19.5 Payment.** The Bank's Class 19 Claim shall be paid in full by the Reorganized Debtor on or before the Final Distribution Date. Payments by the Reorganized Debtor of the Bank's Allowed Class 2 Claim (General Unsecured Claim against HRAF) shall constitute a dollar-for-dollar credit against and reduce the Reorganized Debtor's obligation to pay the Bank's Allowed Class 19 Claim (Secured Claim against Harbor).

**4.19.6 Distributions.** The Class 19 Claim shall be paid in full, with accrued interest, not later than the Final Distribution Date. Subject to the payments, priorities and reserves established under sections 6.1.3 and 6.1.4 of this Plan, the Debtors may make payments of available Cash to the Bank or its successor-in-interest from time-to-time, but in any event at least on the Initial Distribution Date and the subsequent Interim Distribution Dates, to the extent that a full or partial distribution of Cash is available on such dates, through any combination of (a) sale, liquidation or distribution of the Debtors' assets, (b) collection of the Debtors' accounts receivable, (c) collection of rents payable to the Debtors, (d) financing or refinancing of the Real Property on a first-priority lien basis, (e) the incurrence of debt by HRAF and/or Harbor on a secured or unsecured basis, or (f) raising additional equity capital by Harbor or HRAF, subject to the Bank's liens in any asset of the Debtors, or the Bank's whole or partial release of such liens.

**4.19.7 Release of Liens and Encumbrances.** The bank shall release all "negative pledge agreements" and any other record encumbrance against any individual parcel of Real Property of HRAF or Harbor at or before the closing of any sale of such Real Property by the Reorganized Debtor. Further, upon request, and to assist the Reorganized Debtor with the sale of property subject to a lien of the Bank, the Bank may execute a document releasing its lien, interest or encumbrance, if any, in or against property in which the Bank may have or claim a lien, so long as the Bank receives the applicable reserve or distribution of Cash pursuant to sections 6.1.3.5, 6.1.3.6, 6.1.4.5 or 6.1.4.6.

#### **4.20 Class 20 - Kenneth and Richelle Patey.**

**4.20.1 Impairment and Voting.** Class 20 is impaired under the Plan. The holders of Allowed Class 20 Claims shall be entitled to vote to accept or reject the Plan.

**4.20.2 Payment.** The holders of Allowed Class 20 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.20.3 Distributions.** As Collateral which secures a portion of the Class 20 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 20 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 20 Claims shall be paid in

full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 20 Claims shall retain their Liens until their Claims are paid in full.

#### **4.21 Class 21 – Miscellaneous Secured Claims (Harbor)**

**4.21.1 Impairment and Voting.** Class 21 is impaired under the Plan. The holders of Allowed Class 21 Claims shall be entitled to vote to accept or reject the Plan.

**4.21.2 Payment.** The holders of Allowed Class 21 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.21.3 Distributions.** As Collateral which secures a portion of a Class 20 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 21 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 21 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 21 Claims shall retain their Liens until their Claims are paid in full.

### **SECTION E. UNSECURED CLAIMS AGAINST HARBOR**

#### **4.22 Class 22 – Priority Claims (Harbor)**

**4.22.1 Impairment and Voting.** Class 22 is impaired under the Plan. The holders of Allowed Class 22 Claims shall be entitled to vote to accept or reject the Plan.

**4.22.2 Payment.** The holders of Allowed Class 22 Claims shall be paid the full amount of their claim as of the Petition Date. The holders of Allowed Class 22 Claims shall not be paid post-petition interest on their Claims.

**4.22.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 22 Claim, each holder of an Allowed Class 22 Claim shall receive Cash in an amount equal to such Allowed Class 22 Claim on or before the later of (a) the Interim Distribution Date first occurring at least sixty days after such Priority Claim becomes an Allowed Priority Claim, or (b) the date on which the Reorganized Debtor has Cash available for distribution to the holders of Priority Claims.



#### **4.23 Class 23 – General Unsecured Claims (Harbor)**

**4.23.1 Impairment and Voting.** Class 23 is impaired under the Plan. The holders of Allowed Class 23 Claims shall be entitled to vote to accept or reject the Plan.

**4.23.2 Payment.** The holders of Allowed Class 23 Claims shall be paid the full amount of their claim as of the Petition Date to the extent the Reorganized Debtor has sufficient Cash remaining after distributions to the holders of Secured Claims and Priority Claim. The holders of Allowed Class 23 Claims shall not be paid post-petition interest on their Claims.

**4.23.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 23 Claim, each holder of an Allowed Class 23 Claim shall receive Cash in an amount equal to such Allowed Class 23 Claim on or before the Final Distribution Date, provided that the Reorganized Debtor has sufficient Cash available for distribution to the holders of Allowed Unsecured Claims. If the Reorganized Debtor does not have sufficient Cash to pay in full all Allowed Unsecured Claim, then it shall distribute the Cash pro rata to the holders of Allowed Claims in Class 23. No holders of Class 24 Interests shall receive distributions unless and until the holders of Allowed Class 23 Claims have been paid in full.

### **SECTION F. EQUITY INTERESTS.**

#### **4.24 Class 24 – Equity Interests in Harbor.**

**4.24.1 Impairment and Voting.** Class 24 is impaired under the Plan. The holders of Allowed Class 24 Interests shall be entitled to vote to accept or reject the Plan.

**4.24.2 Distributions.** Each record holder of Equity Interest in Harbor shall retain its interest in Harbor, or its successor in interest, as a Reorganized Debtor.

#### **4.25 Class 25 – Equity Interests in HRAF.**

**4.25.1 Impairment and Voting.** Class 25 is impaired under the Plan. The holders of Allowed Class 25 Interests shall be entitled to vote to accept or reject the Plan.

**4.25.2 Distributions.** Until the payment in full of the Class 19 Claim of the Bank, each record holder of Equity Interest in HRAF shall retain its interest in HRAF, or its successor in interest, as a Reorganized Debtor. After the payment in full of the holders of all Allowed Claims against HRAF (and after all amounts specified in sections 6.1.3.1 through 6.1.3.11, below, have been paid, reserved or set aside), any and all remaining Cash shall be distributed to the holders of Class 25 Interests according to their respective equity ownership interests.

**4.25.3 Distributions Directly to the Bank.** The Bank holds a Lien upon, among other things, the Class 25 Interests and upon Harbor's right, as the holder of such interests, to receive member distributions. Except as otherwise agreed by the Bank in writing, all distributions to the holders of Class 25 Interests shall be paid directly to the Bank until the Bank's Class 19 Secured Claim has been paid in full.

## **SECTION G. PARTICIPATION INTERESTS.**

### **4.26 Class 26 – Participation Interests.**

**4.26.1 Impairment and Voting.** Class 26 is impaired under the Plan. The holders of Allowed Class 26 Claims shall be entitled to vote to accept or reject the Plan.

**4.26.2 Impairment.** Class 26 is impaired under the Plan. Each holder of a Participation Interest is entitled to vote to accept or reject the Plan.

**4.26.3 Payment.** Upon a sale of any Participated Property and pursuant to sections 6.1.3.7 and 6.1.4.7 of this Plan, the pro rata portion, if any, of the net sales proceeds realized by the Reorganized Debtor after making the payment and setting aside the reserves described in sections 6.1.3.1 through 6.1.3.6 or sections 6.1.4.1 through 6.1.4.6 of this Plan, as the Case may be, and to which the Participants hold a claim or interest as shown on Schedule A (the "Participation Proceeds") shall be paid to the Participants.

#### **4.26.4 Distributions.**

**4.26.4.1 *Proceeds from Sales of Participated Property Prior to the Effective Date.*** All Participation Proceeds shall be paid to the Participants entitled thereto no later than the Initial Distribution Date.

**4.26.4.2 *Proceeds from Sales of Participated Property After the Effective Date.*** From and after the Effective Date, all Participation Proceeds shall be paid directly to the Participants at closing from the sale of Participated Property.

## **SECTION H. SUBORDINATED CLAIMS**

### **4.27 Class 27 – Subordinated Claims.**

**4.27.1 Impairment and Voting.** Class 27 is impaired under the Plan. The holders of Allowed Class 27 Claims shall be entitled to vote to accept or reject the Plan.

**4.27.2 Payment.** The holders of Allowed Class 27 Claims shall be paid the full amount of their claim as of the Petition Date to the extent the Reorganized Debtor has sufficient Cash remaining after distributions to the

holders of Secured Claims, Class 22 Priority Claims and Class 20 and 23 Unsecured Claims. The holders of Allowed Class 27 Claims shall not be paid post-petition interest on their Claims.

**4.27.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 27 Claim, each holder of an Allowed Class 27 Claim shall receive Cash in an amount equal to such Allowed Class 27 Claim on or before the Final Distribution Date, provided that the Reorganized Debtor has sufficient Cash available for distribution to the holders of Allowed Subordinated Claims. If the Reorganized Debtor does not have sufficient Cash to pay in full all Allowed Unsecured Claim, then it shall distribute the Cash pro rata to the holders of Allowed Claims. No holders of Class 24 Interests shall receive distributions unless and until the holders of Allowed Class 27 Claims have been paid in full.

## **SECTION I. TREATMENT OF CLAIMS GENERALLY**

**4.28 Satisfaction of Claims and Release.** As of the Effective Date, all Claims against the Debtors shall be released except as provided in the Plan.

**4.29 No Assumed Liability.** Except as otherwise expressly set forth in the Plan, the Reorganized Debtor shall not assume or be liable for any Claims

**4.30 Debtors Reserve the Right to Dispute Claims and Liens Notwithstanding Specific Classification.** Excepting only the Class 16 Claim of Promontory Conservancy, the Class 19 Claim of the Bank and the Class 26 Participation Interests, the Debtors and/or the Reorganized Debtor, as the case may be, reserve the right to challenge the Claim or Lien or any creditor or interest holder. As an example, the Debtors anticipate that they may object to the Claims and/or Liens of both Reynolds Brothers Construction (Class 17) and of Kenneth and Richelle Patey (Class 20) notwithstanding that such Claims are classified in the Plan as Secured Claims. If the Debtors or the Reorganized Debtor do object to Claims (separately classified or otherwise) and their objections are sustained, such Claims will not be "Allowed" and, thus, will not be entitled to any distribution under this Plan notwithstanding that such Claims may have been specifically classified.

**4.31 Disputed Claims.** Notwithstanding any other provision of this Plan, no Cash or property shall be distributed under the Plan on account of any Disputed Claim until the Claim is Allowed. As provided in section 6.5 of this Plan, the Reorganized Debtor shall establish a Disputed Claim Reserve with respect to Disputed Claims. Cash and property to be distributed on account of Disputed Claims shall be held by the Reorganized Debtor until such Claims are Allowed or disallowed by Final Order. At the option of the Reorganized Debtor, Cash which is held in Disputed Claim Reserve may be held in the Reorganized Debtor's current operating account, may be deposited into one or more segregated, interest bearing bank accounts, or may be used to purchase a short term certificate of deposit or another short term investment. Upon the later of (a) the date on which the holder of the Disputed Claim first becomes entitled to payment or distribution under the Plan, or (b) thirty (30) days after a Disputed Claim becomes Allowed, the holder shall receive a distribution from the Disputed Claims Reserve based

upon the Allowed amount of the Claim, plus a proportionate amount of any interest earned thereon, and, thereafter, shall participate in any further distributions under the Plan as the holder of an Allowed Claim. Any cash or property remaining in the Disputed Claims Reserve after the resolution of all disputes by Final Order shall be distributed in accordance with the Plan.

## **ARTICLE 5 MEANS FOR EXECUTION OF THE PLAN**

**5.1 Revesting of Property.** Except as otherwise provided in this Plan, the Reorganized Debtor, as of the Effective Date, shall be vested with all of the separate assets of the Debtors' Estates.

**5.2 Avoidance Actions and Other Claims.** Without limiting the foregoing, the Reorganized Debtor shall be vested with all claims and causes of action of such Debtor including, without limitation, those claims arising under sections 510, 541, 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code.

**5.3 Bankruptcy Case Administration.** Except as otherwise provided in this Plan, from and after the Effective Date and continuing through the date on which a final decree closing the Bankruptcy Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Reorganized Debtor shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Bankruptcy Case. In addition to the foregoing, for all matters arising under or related to the Bankruptcy Case, the Reorganized Debtor shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction, (ii) be entitled to notice and opportunity for hearing, (iii) participate in all matters brought before the Bankruptcy Court, including but not limited to adversary proceedings, and (iv) receive notice of all applications, motions and other papers and pleadings before the Bankruptcy Court.

**5.4 Continuation of Business Operations.** From and after the Effective Date of the Plan, the Reorganized Debtor is authorized to continue its normal business operations and enter into such transactions as it deems advisable, free of any restriction or limitation imposed under any provision of the Bankruptcy Code, except to the extent otherwise provided in the Plan.

**5.5 Continuation of Anti-Discrimination Provisions of Bankruptcy Code.** A governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Debtors, the Reorganized Debtor, or another Person with whom the Debtors or the Reorganized Debtor have been or are associated or affiliated, solely because of the commencement, continuation, or termination of the Bankruptcy Cases or because of any provision of the Plan or the legal effect of the Plan, and the Confirmation Order will constitute an express injunction against any such discriminatory treatment by a governmental unit.

**5.6 Administration of the Estate.** The Reorganized Debtor shall administer the consolidated Estate after consummation of the Plan. The Reorganized Debtor shall hold all rights, powers, and duties of a trustee of the Estate under Chapter 11 of the Bankruptcy Code. The Reorganized Debtor shall reduce all property of the Estate and Causes of Action to Cash, and distribute such Cash pursuant to the provisions of this Plan. The Reorganized Debtor shall use such Cash to pay the holders of Claims until such Cash is exhausted.

**5.7 Liquidation of Remaining Property.**

**5.7.1 Generally.** Following the Effective Date, the Reorganized Debtor shall conduct an orderly liquidation of the remaining property of the consolidated Estate consistent with the terms of the Plan.

**5.7.2 HRAF Equity Interest.** The Reorganized Debtor shall not dissolve or liquidate the Class 25 Equity Interest unless and until the Class 19 Claim of the Bank has been paid in full.

**5.7.3 Liquidation of Real Property.** The Reorganized Debtor will use its best efforts to sell as much of the Real Property and Water Stock and other assets of the Estate, if any, as is necessary to satisfy the Allowed Claims of the Bank, and to satisfy the Allowed Claims of other creditors.

**5.8 Consolidation of the Debtors and Their Estates.** Except as expressly set forth in this Plan, on the Effective Date, the Estates shall be deemed consolidated pursuant to Bankruptcy Code § 1123(a)(5).

**5.8.1 Effect of Consolidation.** The consolidation of the Estates shall include, but shall not be limited to, the following:

5.8.1.1 Unless otherwise specified in the Plan, duplicate Claims filed by a single creditor against both Debtors or Estates shall be disallowed. Creditors are entitled to only one Claim against the Reorganized Debtor and but a single satisfaction of the Claim. Any joint or several liability of the Debtors shall be deemed to be one obligation of the Reorganized Debtor.

5.8.1.2 Any Claims of Harbor against HRAF and vice-versa shall be deemed released and discharged on the Effective Date. This release and discharge includes, without limitation, any Avoidance Actions and any set-off rights. The Debtors do not believe that any such inter-debtor claims exist.

5.8.1.3 Administrative Claims and operating expenses incurred by either Debtor or by the Reorganized Debtor may be paid from the assets of the consolidated Reorganized Debtor irrespective of which Debtor may have incurred, or may be liable for, such expense.

**5.8.2 Pre-Confirmation Priorities in Distribution Are Preserved.** Excepting only Administrative Expense Claims (which shall be borne by both Debtors and/or the Reorganized Debtor on a consolidated basis) the pre-Confirmation Date priorities in distribution held by creditors and interest holders of HRAF and Harbor shall be preserved. As an example, the holders of Class 1 and Class 2 Claims shall be entitled to be paid from the proceeds of Real Property and other assets owned by HRAF, and the Bank shall be entitled to distribution on account of its Class 19 Claim, before the holders of Class 22 and Class 23 Claims may share in the proceeds of Real Property or other cash of HRAF.

**5.8.3 Consolidation Shall Not Correct Defective Claims.** The consolidation of the plan shall not benefit any creditor that may have filed a claim that was defective prior to consolidation. As an example, a creditor might have filed a proof of claim against HRAF, but held a claim against Harbor. Such a claim should be disallowed as against HRAF and the Reorganized Debtor. Consolidation of the Debtors and their Estates shall not protect such a defective claim against an objection by the Reorganized Debtor. If the proof of claim was defective prior to consolidation of the Debtors, such Claim should be disallowed.

**5.8.4 Use of Either Name.** The Reorganized Debtor may conduct business in the name of HRAF, Harbor or both, as the Reorganized Debtor may determine on a case-by-case basis in its sole and absolute discretion.

**5.8.5 Formalizing Consolidation.** The Reorganized Debtor may, but is not required to, formalize the consolidation of HRAF and Harbor by filing articles of merger, articles of dissolution or other corporate filings with applicable state and federal authorities, as the Reorganized Debtor may determine in its sole and absolute discretion. The Reorganized Debtor may do so at any time on or after the Effective Date, or may elect never to do so.

**5.8.6 Tax Filings.** The Reorganized Debtor may file separate returns for HRAF and Harbor, or may file a consolidated return for the consolidated Reorganized Debtor, as it determines in its sole and absolute discretion and/or as may be suggested by the Reorganized Debtor's tax preparers and/or tax advisors.

**5.9 Marketing and Sale of Assets.** The Reorganized Debtor shall be solely responsible, and shall be vested with all power and authority to sell as many of the consolidated Estate's assets and properties as it determines to be necessary or advisable to allow for payment in full of Allowed Claims as provided in this Plan. The Reorganized Debtor shall use its best efforts to sell sufficient assets and properties to pay in full Allowed Claims, subject to the terms and conditions of this Plan.

**5.10 Real Estate Professionals.** Upon the Effective Date and as frequently thereafter as the Reorganized Debtor deems appropriate, the Reorganized Debtor shall review the performance of the real estate brokers and agents retained to list and sell the Real Property. In the exercise of its business judgment, and without notice or a hearing, the Reorganized Debtor may extend the contracts with such brokers and agents on such terms and conditions as it deems appropriate, or may retain another broker or

agent on terms it deems appropriate. No broker or agent whose services have been terminated by the Debtors or the Reorganized Debtor shall receive a commission or other compensation as a result of the sale of property in which such broker or agent did not directly participate. Finally, the Reorganized Debtor shall direct adjustments to listing prices for assets as it, in its sole and complete discretion, deems appropriate to satisfy its obligations under this Plan.

**5.11 Reorganized Debtor's Discretion to Sell Real Property and Other Assets.** Schedule A to the Plan identifies the respective parcels of Real Property owned by the Debtors. The Reorganized Debtor shall have absolute discretion in determining when, how and at what price to sell the Real Property. Further, the Reorganized Debtor need not obtain an Order from the Court, nor the consent of the Bank or any other person to consummate a sale of the Real Property. The Reorganized Debtor shall have discretion to sell and liquidate assets other than Real Property on such terms, and for such amounts, as it deems appropriate without first obtaining an Order from the Court or the consent of the Bank or any other person.

**5.12 Sales Free and Clear of Liens, Claims and Interests.**

**5.12.1 Sales Shall Be Free and Clear without Entry of a Sale Order.** All sales by the Reorganized Debtor of Real Property shall, pursuant to the Order confirming this Plan, expressly be free and clear of liens, claims and interests pursuant to sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code, with any applicable liens or interests to attach to the Cash proceeds of the sale. No notice, hearing or further order shall be necessary for such sales to be free and clear with the protection of sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code.

**5.12.2 The Reorganized Debtor May Obtain a Sale Order on Shortened Notice.** Nevertheless, the Reorganized Debtor may obtain an order expressly providing that the sale of any particular parcel of Real Property is free and clear pursuant to sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code. Such an Order may be entered without a hearing pursuant to Local Rule 9013-2 upon "negative notice" pursuant to Bankruptcy Code §§ 363(f) and/or 1123(a)(5)(D). Notice shall be appropriate and sufficient if mailed to the holders of all Claims secured or allegedly secured by the Property at least fourteen (14) days before the date conditionally available for hearing, and if the notice gives the holders of Liens or Interests ten calendar days from the date of filing or mailing to file an objection.

**5.12.3 Liens Attach to Proceeds.** Liens, encumbrances, and other interests (subject to any recovery awarded pursuant to section 506(c) of the Bankruptcy Code) shall attach to the proceeds of the sale subject to the distribution provisions and priorities of the Plan.

**5.13 Relief Under Section 506(c).**

**5.13.1 Automatic Relief.** Without the need for notice, hearing or Order, the Reorganized Debtor shall be authorized and entitled to recover from the

proceeds of sale and to pay at closing the actual closing costs, broker's commissions (up to six percent of the gross sales price) and other ordinary and reasonable expenses incurred by the Debtors and/or the Reorganized Debtor in connection with marketing an asset for sale and closing the sale ("Costs of Sale").

**5.13.2 Additional Relief.** The Reorganized Debtor may seek recovery of additional reasonable, necessary costs and expenses of preserving, or disposing of, property pursuant to Bankruptcy Code § 506(c) (beyond the automatic relief afforded under section 5.13.1), either before or after the Effective Date, upon notice and opportunity for hearing pursuant to Local Rule 9013-2. Notice shall be appropriate and sufficient if mailed to the holders of all Claims secured or allegedly secured by the Property at least fourteen (14) days before the date conditionally available for hearing, and if the notice gives the holders of Liens or Interests ten calendar days from the date of filing or mailing to file an objection.

**5.14 Sale for Amount Insufficient to Pay Outstanding Liens.** Subject to the express limitations, if any, delineated under this Plan, the Reorganized Debtor may market and sell Real Property and other property of the Estate notwithstanding the fact that the proceeds of sale will be insufficient to pay Costs of Sale and Liens of holders of Allowed Secured Claims on said property.

**5.14.1 Notice of the Sale.** If the Reorganized Debtor desires to sell Real Property or other assets for a price less than the amount necessary to pay in full all Costs of Sale and Liens against the property, then the Reorganized Debtor shall file with the Court a "Notice of Proposed Sale" identifying (a) the Real Property or other property to be sold, (b) the proposed gross sale price, (c) the closing costs, commissions and other costs of sale that may reduce the gross sale price at closing, (d) the identity of the buyer(s), and (e) the nature and amount of any actual or claimed liens or interests. The Reorganized Debtor shall mail (or may deliver electronically pursuant to the CM/ECF system) the Notice of Proposed Sale the same day it is filed on: (i) the Bank (until the Bank is paid in full); (ii) the Office of the United States Trustee; and (iii) the Holder of any Claim secured by the property to be sold. Any party in interest may file a motion with the Court to prohibit the sale; provided, however, that any such motion must be filed no less than ten calendar days after the filing of the Notice of Proposed Sale and must be scheduled for hearing no later than thirty days after the date of the filing of the motion. In the absence of a timely filed motion or an order prohibiting the sale entered within thirty days after the filing of the motion, the Reorganized Debtor shall be authorized to consummate the proposed transaction without need for hearing, an order or consent.

**5.14.2 Rights Under Bankruptcy Code § 363(k).** If the Reorganized Debtor gives notice of its intent to sell Real Property or other assets for a price less than the amount necessary to pay in full all Costs of Sale and Liens against the property, then the holders of an Allowed Secured Claim with a Lien on the property to be sold that acted to preserve its rights under section 363(k), as required under section 5.16 of this Plan, shall have ten calendar days after the



filing of the Notice of Proposed Sale in which to exercise its right under Bankruptcy Code § 363(k).

**5.14.3 Failure to Respond Deemed Acceptance of Sale.** If, after the expiration of ten calendar days from the filing of the Notice of Proposed Sale, the holder of an Allowed Secured Claim has not exercised its rights under section 363(k) and has not filed an objection to the sale, then the creditor shall be deemed to have approved and accepted the sale, and all such rights and objections shall be deemed waived. The Reorganized Debtor may consummate the sale without further notice, opportunity for hearing or order. Alternatively, the Reorganized Debtor may request *ex parte*, and the Bankruptcy Court may enter, an order approving the sale free and clear of all liens, claims and interests without further notice or opportunity for hearing.

**5.15 Employment of Professionals.** The Reorganized Debtor may employ attorneys, accountants, or other professionals as it may deem appropriate and pay such professionals reasonable fees and expenses. Professionals employed by the Reorganized Debtor after the Confirmation Date shall not be subject to Bankruptcy Court approval, their compensation shall not be subject to Bankruptcy Court approval, and their employment shall not be subject to the disinterestedness requirements of the Bankruptcy Code.

**5.16 Rights Under Section 363(k).**

**5.16.1 Notice Required to Preserve Right; Automatic Waiver.** The holder of any Allowed Secured Claim that wishes to preserve its rights under section 363(k) of the Bankruptcy Code must file with a Court written notice of its intent to reserve such rights no later than thirty days after the Confirmation Date. The notice must identify the dollar amount that such creditor is willing to credit bid and the particular property or asset to which the credit bid amount is allocable. Failure to file such a notice on or before said deadline shall constitute a permanent and irrevocable waiver of all rights under section 363(k).

**5.16.2 Reorganized Debtor's Right to Quit-Claim Property in Satisfaction.** Notwithstanding any other provision of this Plan, the Reorganized Debtor shall have the right to quit-claim the property or asset identified in the Creditor's notice to such Creditor and, thereby, obtain a satisfaction of the Claim of such Creditor equal to the amount of the credit bid identified in the Creditor's notice. To the extent any junior liens or interests exist or may exist in the asset quit-claimed to the Creditor under this section, the transfer shall be without prejudice to and shall not result in a merger of title or extinguishment of such Creditor's senior lien or other interest.

**5.16.3 Right to Credit Bid Limited.** No Creditor shall have the right to "credit bid" under section 363(k) unless the price for which the Debtor proposes to sell a particular parcel of Real Property or other asset is less than the amount of the Creditor's Allowed Secured Claim.

**5.17 Ability to Incur Debt.** Except as otherwise provided in this Plan, the Reorganized Debtor may incur debt after the Effective Date on a secured or unsecured basis without further notice, opportunity for hearing or order.

## **ARTICLE 6 IMPLEMENTATION OF THE PLAN**

### **6.1 Use and Allocation of Cash.**

**6.1.1 Use Generally.** Except as otherwise provided in this ARTICLE 6, the Reorganized Debtor may use Cash, including cash realized upon the liquidation of Real Property and other assets, in any manner consistent with this Plan.

**6.1.2 Membership Distributions to Harbor.** Except as otherwise provided in this Plan, any Cash distributed to Harbor on account of its Equity Interest in HRAF shall be paid to the Bank until the Class 19 Claim of the Bank has been paid in full. Once the Class 19 Claim of the Bank has been paid, Harbor may use Cash distributed to it by HRAF without any limitations except those imposed under this Plan.

**6.1.3 Proceeds of Real Property and Other Cash of HRAF.** The gross proceeds of sale of any Real Property (whether sold before or after the Effective Date) and any and all other Cash held, received or realized by HRAF will be reserved, held and used as follows and in the following order of priority:

**6.1.3.1 Undisputed Taxes and Assessments** - first, in payment of undisputed real property taxes and undisputed homeowners association assessments due as of the closing, if any;

**6.1.3.2 Reserve for Disputed Taxes and Assessments** - second, set aside in reserve for potential payment of disputed real property taxes and disputed homeowners association assessments, if any;

**6.1.3.3 Broker's Commissions** - third, in payment of any commissions, finders fees, or similar type expenses payable to licensed real estate brokers or agents involved in the particular sale transaction, in an amount not to exceed 6% in the aggregate of the gross sales proceeds;

**6.1.3.4 Closing Costs** - fourth, payment of normal and customary closing costs incidental to the closing of the sale of the Real Property (including, in states where attorneys normally handle closings, such fees and expenses);

**6.1.3.5 Undisputed Liens** – fifth, payment of any undisputed liens or encumbrances against the Real Property;

6.1.3.6 *Reserve for Disputed Liens* – sixth, in the event a lien or encumbrance is disputed either formally or informally by the Reorganized Debtor but the Reorganized Debtor's objection or challenge to the lien or claim has not yet been sustained, set aside in reserve for payment of applicable liens or encumbrances against the Real Property;

6.1.3.7 *Payment of Participants* – seventh, upon sales of Participated Property, payment to the Participants in an amount sufficient to satisfy in full the net pro rata interest of the Participants in the Participation Proceeds;

6.1.3.8 *Payment of Pre-Confirmation Professional Fees and Administrative Expenses* – eighth, in payment of administrative expenses due and payable as of the Effective Date, including compensation to the attorneys and other professionals of HRAF and Harbor for all Allowed pre-confirmation fees and costs;

6.1.3.9 *Reserve for Administrative Expenses* – ninth, (a) as of the Effective date, the gross sum of \$200,000 from all pre-Effective Date sales and other receipts, plus (b) from and after the Effective Date, ten percent (10%) of the gross proceeds from sales of Real Property, shall be reserved and made available for payment of the Debtors' administrative and operating expenses (including the post-confirmation fees and expenses of professionals), as determined by the Reorganized Debtor in its sole and absolute discretion;

6.1.3.10 *Payment of Class 1 Priority Claims (HRAF)* – tenth, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 1 Priority Claims against HRAF, with a pro rata reserve for any disputed Priority Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full;

6.1.3.11 *Payment of Class 2 General Unsecured Claims (HRAF)* – eleventh, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 2 General Unsecured Claims against HRAF, with a pro rata reserve for any disputed Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full;

6.1.3.12 *Distributions in Payment of the Bank's Class 19 Claim* – twelfth, after the foregoing amounts are paid or reserved, Cash distributions to the Bank on account of its Allowed Class 19 Claim and its right to direct payment of distributions made to the members of HRAF, until such Claim has been paid in full; and

6.1.3.13 *Remainder Used to Pay Operating Expenses or Distributed to Creditors of Harbor* – after the foregoing amounts are paid or reserved, any remaining Cash may be used as determined by the

Reorganized Debtor in its sole and absolute discretion, either (a) to pay reasonable and necessary operating expenses of the Reorganized Debtor, or (b) to make a Cash distributions to creditors of Harbor.

**6.1.4 Proceeds of Real Property and Other Cash of Harbor.** The gross proceeds of sale of any Real Property (whether sold before or after the Effective Date) and any and all other Cash held, received or realized by Harbor (including cash distributed to Harbor pursuant to paragraph 6.1.3.13(b)) will be reserved, held and used as follows and in the following order of priority:

6.1.4.1 *Undisputed Taxes and Assessments* - first, in payment of undisputed real property taxes and undisputed homeowners association assessments due as of the closing, if any;

6.1.4.2 *Reserve for Disputed Taxes and Assessments* - second, set aside in reserve for potential payment of disputed real property taxes and disputed homeowners association assessments, if any;

6.1.4.3 *Broker's Commissions* - third, in payment of any commissions, finders fees, or similar type expenses payable to licensed real estate brokers or agents involved in the particular sale transaction, in an amount not to exceed 6% in the aggregate of the gross sales proceeds;

6.1.4.4 *Closing Costs* - fourth, payment of normal and customary closing costs incidental to the closing of the sale of the Real Property (including, in states where attorneys normally handle closings, such fees and expenses);

6.1.4.5 *Undisputed Liens* – fifth, payment of any undisputed liens or encumbrances against the Real Property;

6.1.4.6 *Reserve for Disputed Liens* – sixth, in the event a lien or encumbrance is disputed either formally or informally by the Reorganized Debtor but the Reorganized Debtor's objection or challenge to the lien or claim has not yet been sustained, set aside in reserve for payment of applicable liens or encumbrances against the Real Property;

6.1.4.7 *Payment of Participants* – seventh, upon sales of Participated Property (if any is owned by Harbor), payment to the Participants in an amount sufficient to satisfy in full the net pro rata interest of the Participants in the Participation Proceeds;

6.1.4.8 *Payment of Pre-Confirmation Professional Fees and Administrative Expenses* – eighth, in payment of administrative expenses due and payable as of the Effective Date, including compensation to the attorneys and other professionals of HRAF and Harbor for all Allowed pre-confirmation fees and costs;

6.1.4.9 *Reserve for Administrative Expenses* –ninth, ten percent (10%) of the gross proceeds from sales of Real Property, rents and/or any other receipts, shall be reserved and made available for payment of the Debtors' administrative and operating expenses (including the post-confirmation fees and expenses of professionals), as determined by the Reorganized Debtor in their sole and absolute discretion;

6.1.4.10 *Payment of Class 22 Priority Claims (Harbor)* – tenth, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 22 Priority Claims against Harbor, with a pro rata reserve for any disputed Priority Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full;

6.1.4.11 *Payment of Class 23 General Unsecured Claims (Harbor)* – eleventh, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 23 General Unsecured Claims against Harbor, with a pro rata reserve for any disputed Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full; and

6.1.4.12 *Remainder Used to Pay Operating Expense or Distributed to the Holders of Class 24 Interests* – after the foregoing amounts are paid or reserved, any remaining Cash may be used as determined by the Reorganized Debtor in its sole and absolute discretion, either (a) to pay reasonable and necessary operating expenses, or (b) to make a Cash distribution to the holders of Allowed Class 24 Interest, pro rata.

## **6.2 Method of Distributions Under the Plan.**

**6.2.1 In General.** Subject to Bankruptcy Rule 9010, all distributions under the Plan to be made by the Reorganized Debtor to the holder of each Allowed Claim shall be mailed by first class mail, postage prepaid, to the address of such holder as listed on the Schedules as of the Distribution Record Date, unless the Reorganized Debtor has been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or notice of transfer of claim filed by such holder that provides an address for such holder different from the address reflected on the Schedules. The Reorganized Debtor shall have no obligation to locate such holders whose distributions or notices are properly mailed but nevertheless returned.

**6.2.2 Form of Distributions.** Any payment of Cash made by the Reorganized Debtor pursuant to the Plan shall be made by check; provided, however, that after the occurrence of the Effective Date, the Reorganized Debtor is not obligated to make any Cash payment under the Plan unless the payment exceeds ten dollars (\$10); provided, further, that Cash equal to 100% of the distributions to which the holder of a Claim would be entitled under the Plan if the payment to such holder was less than or equal to ten dollars (\$10) shall be maintained in a reserve (the "Small Payment Reserve") for the benefit of such

holder until an aggregate of at least ten dollars is payable to such holder and at such time the holder shall receive a payment equal to 100% of the distributions to which it would otherwise be entitled.

**6.2.3 Distributions to be on Business Days.** Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

**6.2.4 Distributions to Holders as of the Distribution Record Date.** As of the close of business on the Distribution Record Date, the claims register shall be closed. The Reorganized Debtor shall have no obligation to recognize any transfer of any Claims occurring after the close of business on the Distribution Record Date, and shall instead be entitled to recognize and deal for all purposes under the Plan with only those holders of record as of the close of business on the Distribution Record Date.

**6.3 Objections to Disputed Claims.** Any objections to Claims against the Estates of HRAF or Harbor may be prosecuted by the Reorganized Debtor or any other party in interest. Except as otherwise provided by order of the Bankruptcy Court, the Reorganized Debtor or any other party in interest may file an objection to any Claim until 180 days after the Effective Date. Upon motion filed within such one hundred eighty (180) days, the Bankruptcy Court may extend the period within which to object to a Claim for a reasonable period of time, not to exceed an additional one hundred eighty (180) days. Any Claim to which no timely objection has been filed shall be deemed an Allowed Claim.

**6.4 Estimation of Claims.** The Debtors or the Reorganized Debtor may, at any time either prior to or after the Effective Date, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall have jurisdiction to estimate such Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. The Debtors and the Reorganized Debtor shall be entitled to request that the Bankruptcy Court determine either the Allowed amount of such Claim or a maximum limitation on such Claim. If the Bankruptcy Court determines the maximum limitation of such Claim, such determination shall not preclude the Debtors or Reorganized Debtor from pursuing any additional proceedings to object to any ultimate payment of such Claim. If the Bankruptcy Court determines the Allowed amount of such Claim, the amount so determined shall be deemed the amount of the Claim for all purposes under this Plan. All such proceedings are cumulative and not exclusive remedies.

**6.5 Disputed Claims Reserve.**

**6.5.1 Establishment.** The Reorganized Debtor shall maintain a reserve (the "Disputed Claims Reserve") equal to 100% of the distributions to which holders of Disputed Claims would be entitled under the Plan if such Disputed Claims were Allowed Claims or such lesser amount as required by a Final Order.

**6.5.2 Distributions Upon Allowance of Disputed Claims.** The holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Initial

Distribution Date shall receive distributions of Cash from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to such holder under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Initial Distribution Date. No holder of a Disputed Claim shall have any claim against the Disputed Claims Reserve or the Reorganized Debtor with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no holder of a Disputed Claim shall have any right to interest on such Disputed Claim.

**6.6 Reversion of Unclaimed Checks and Disputed Claims Reserve.** The following amounts shall revert and be vested in the Estate free and clear of any claim or interest of any holder of a Claim under the Plan: (i) the amount of any checks issued for distributions under the Plan that remain uncashed for a period of one year after the date of such distribution, and (ii) to the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim Amount, the excess of the amount of Cash in the Disputed Claims Reserve attributable to such Disputed Claim over the amount of Cash actually distributed on account of such Disputed Claim.

**6.7 Cash Payments and Time Bar.** Cash distributions made by the Reorganized Debtor shall be by checks drawn on a domestic bank, and promptly mailed, postage prepaid. Any check issued to pay an Allowed Claim will be null and void if such check is not negotiated within ninety (90) days of its issuance. All Claims that the Reorganized Debtor attempt to pay with a check that becomes void hereunder will be barred and disallowed, and all rights to such distribution by such Creditor shall be forfeited. The Reorganized Debtor will retain the funds resulting from such void checks for the benefit of other Creditors and will distribute such funds to such other Creditors under the Plan.

**6.8 Retention and Preservation of Claim Objections and Causes of Action.** Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, upon entry of the Confirmation Order, the Debtors' and the Reorganized Debtor's rights to object to all Claims and Interests asserted against the Estate and all of the Debtors' or Estates' Causes of Action, including without limitation: (1) the Debtors' Causes of Action asserted in any adversary proceeding, U.S. District Court litigation, state court proceeding, or any other proceeding which is pending as of the Confirmation Date; (2) all Claims and Causes of Action disclosed in the Schedules which are incorporated herein by reference; (3) all Claims and Causes of Action described in the Disclosure Statement; (4) any Claims and Causes of Action contained in any contested matter or objection to Claim pending on the Confirmation Date; and (5) any and all other Claims and Causes of Action that the Debtors hold pre-confirmation, including, but not limited to, Claims for unpaid accounts receivable, shall vest in the Reorganized Debtor, and the Reorganized Debtor is appointed and authorized to pursue such objections and such causes of action. Notwithstanding anything else in the Plan to the contrary, no provision in this Plan is intended or shall be construed to preclude or otherwise bar the Debtors or the Reorganized Debtor from pursuing any claims arising under chapter 5 of the

Bankruptcy Code or under other applicable law. Among other things, no Person sued pursuant to sections 547, 548, 549, 550, 553 of the Bankruptcy Code or otherwise may argue that confirmation of this Plan precludes such claim on grounds of res judicata, issue preclusion or otherwise.

**6.9 No Release or Waiver.** Unless a Claim or Cause of Action against any Person is expressly waived or released in the Plan or any Final Order of the Bankruptcy Court, the Debtors expressly reserve such Claim or Cause of Action for later adjudication (including without limitation, Claims and Causes of Action not specifically identified or which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts and circumstances which may change or be different from those which the Debtors now believes to exist) and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claims preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Claims or Causes of Action upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such Claims or Causes of Action have been expressly released in the Plan or any other Final Order of the Bankruptcy Court.

## **ARTICLE 7 VOTING ON THE PLAN**

**7.1 Voting of Claims.** Each holder of an Allowed Claim in an impaired Class which retains or receives property under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

**7.2 Nonconsensual Confirmation.** If any impaired Class entitled to vote shall not accept the Plan by the requisite statutory majorities provided in Sections 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any impaired class is deemed to have rejected the Plan, the Debtors reserve the right (i) to confirm the Plan under Section 1129(b) of the Bankruptcy Code, and (ii) to amend the Plan in accordance with Section 11.6 hereof to the extent necessary to obtain entry of a Confirmation Order.

## **ARTICLE 8 EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**8.1 Assumption of Executory Contracts and Leases.** The following Executory Contracts and Leases (collectively, the "Assumed Contracts") are assumed pursuant to section 365 of the Bankruptcy Code in accordance with their terms, unless (a) alternative terms are agreed to by the non-Debtor party or parties to such Executory Contracts or Lease or (b) alternative terms are specified in the Plan:

**8.1.1** All existing written lease agreement, if any, under which Harbor or HRAF is landlord;



**8.1.2** All existing settlement agreements with borrower or guarantors of Harbor or HRAF, if any; and

**8.1.3** All existing executory contracts or agreements set forth in a written document entitled "Schedule of Assumed Contracts and Leases," provided such Schedule is filed with the Bankruptcy Court at least fifteen (15) days prior to the Confirmation Date.

**8.2 Rejection of Executory Contracts.** Except for the Assumed Contracts, any and all Executory Contracts and unexpired leases that have not been either assumed and assigned or rejected prior to the Effective Date are rejected by the Debtors (the "Rejected Contracts"), and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code.

**8.3 Plan Does Not Supersede Prior Orders; Prior Motions Incorporated.** This Plan does not supersede any Final Order of the Bankruptcy Court pursuant to which one of the Debtors has either assumed or rejected an executory contract or unexpired lease. Unless expressly provided herein to the contrary, all such Final Orders are deemed incorporated herein, and all such executory contracts and leases shall be deemed assumed or rejected as specified in such Order. Any motion to assume or reject an executory contract or lease filed by the Debtors prior to the Confirmation Date shall be deemed incorporated into paragraphs 8.1 or 8.2, as applicable.

**8.4 Approval of Assumption of Executory Contracts and Unexpired Leases.** Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed as of the Effective Date of the Plan.

**8.5 Cure Claims.** The Debtors shall file with the Bankruptcy Court, and serve upon all counterparties to executory contracts to be assumed pursuant to this Article, not later than thirty days before the Confirmation Date, a proposed Cure Schedule. The counterparties to such executory contracts may file any objections to the Debtors' proposed cure amounts, which objections must state with specificity the basis for any objection, including the counterparties' proposed cure amount, any documentary evidence supporting the objection, and a detailed basis for the objection, not later than fifteen days before the Confirmation Date. The Bankruptcy Court shall determine any disputes concerning cure claims at the confirmation hearing.

**8.6 Rejection Damage Claims.** If the rejection of an Executory Contract or unexpired lease by one of the Debtors pursuant to Section 8.2 hereof results in a claim for damages to the other party or parties to such contract or lease, any claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estate, or its respective properties or agents, successors, or assigns, including the Reorganized Debtor, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Reorganized Debtor on or before forty-five (45) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which proofs of claim timely are filed will be treated as General Unsecured Claims under Class 2 or

Class 23, as applicable, subject to the provisions of the Plan. The Reorganized Debtor shall have the right to object to any such rejection damage claims filed in accordance with this section.

**8.7 Post-Petition Agreements Unaffected By Plan.** Except as otherwise expressly provided herein, nothing contained in the Plan shall alter, amend or supersede any agreements or contracts entered into by the Debtors after the Petition Date that were otherwise valid, effective and enforceable against the Debtors as of the Confirmation Date. The Reorganized Debtor shall be deemed to be substituted for any Debtor in such contract or agreement, as applicable, and the Reorganized Debtor shall have all right, title and interest of the Debtors under such contract or agreement as if the Reorganized Debtor had been the original contracting party thereunder.

## **ARTICLE 9 CONDITIONS PRECEDENT TO EFFECTIVE DATE**

**9.1 Conditions Precedent to Effectiveness.** The Plan shall not become effective, and the Effective Date shall not occur, unless and until the following conditions shall have been satisfied or waived:

**9.1.1** the Confirmation Order, in form and substance reasonably acceptable to the Debtors, shall have been entered by the Bankruptcy Court and shall have become a Final Order;

**9.1.2** all actions, other documents and agreements necessary to implement the Plan shall have been executed, delivered and, if necessary, properly recorded, and shall have become effective;

**9.1.3** the Court shall have entered orders (or there shall be agreements satisfactory to the Debtor) concerning Claims, any Liens asserted by holders of Claims, and any interests in the Debtor (which may be orders included within the Confirmation Order) that, in the sole discretion of the Debtors are required for the feasibility and implementation of the Plan; and

**9.1.4** the consolidated Estate shall have sufficient Cash to meet all Cash funding obligations under the Plan required to be made on the Effective Date and the Initial Distribution Date.

**9.2 Failure of Conditions Precedent.** Notwithstanding anything in this Plan to the contrary, the conditions set forth in Section 9.1 above must be satisfied or waived on or before April 15, 2012. In the event that the conditions set forth in Section 9.1 above are not satisfied on or before April 15, 2012, then the Plan shall be deemed revoked and withdrawn, the Confirmation Order shall be deemed vacated, and Section 11.8 of the Plan shall apply.

**9.3 Waiver of Conditions.** The Debtors may waive one or more of the conditions precedent to the effectiveness of the Plan set forth in Section 9.1 above, except that the Debtors may not waive the condition that the Estates will have sufficient

Cash to meet all payment and funding obligations under the Plan on the Effective Date and the Initial Distribution Date.

## **ARTICLE 10 RETENTION OF JURISDICTION**

**10.1 Retention of Jurisdiction.** After the Effective Date, the Bankruptcy Court shall have original jurisdiction of all matters arising in, arising under or related to the Bankruptcy Case or Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, including but not limited to the following specific matters:

**10.1.1 Executory Contracts.** The Court shall retain jurisdiction (a) to hear and determine any and all pending applications for the rejection or assumption of executory contracts and unexpired leases, and (b) to hear and determine any and all Claims resulting from the rejection of any executory contract or unexpired lease, and any objections to such Claims.

**10.1.2 Litigation.** The Court shall retain jurisdiction to hear and determine any and all adversary proceedings, applications, contested matters and other litigated matters pending on the Confirmation Date or filed thereafter, including any and all claims that might be filed by the Reorganized Debtor under chapter 5 of the Code.

**10.1.3 Distributions.** The Court shall retain jurisdiction to ensure that the distributions to holders of Claims are accomplished as provided herein.

**10.1.4 Determine Claims Arising Post-Confirmation.** The Court shall retain jurisdiction to determine any Claim or liability to a Governmental Unit which may be asserted as a result of the transactions contemplated herein.

**10.1.5 Tax Claims.** The Court shall retain jurisdiction to hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code.

**10.1.6 Objections to Claims.** The Court shall retain jurisdiction (a) to hear and determine any objections to Claims filed both before and after the Confirmation Date, (b) to allow or disallow any Claim in whole or in part, (c) to decide any controversies as to the classification of any Claims and/or (d) to estimate any Disputed Claim.

**10.1.7 Stay or Reversal of Confirmation.** The Court shall retain jurisdiction to enter and implement such orders as may be appropriate in the event Confirmation of the Plan is for any reason stayed, reversed, revoked, modified or vacated.

**10.1.8 Compensation.** The Court shall retain jurisdiction to hear and determine all applications by Professionals and others for compensation and reimbursement of expenses.

**10.1.9 Plan Modification.** The Court shall retain jurisdiction to hear applications, if any, to modify the Plan in accordance with § 1127 of the Bankruptcy Code. After Confirmation of the Plan, the Reorganized Debtor may also, so long as it does not adversely affect the interests of Creditors, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Order of Confirmation, in such manner as may be necessary to carry out the purpose and effect of the Plan.

**10.1.10 Plan Disputes.** The Court shall retain jurisdiction to hear and determine disputes arising in connection with the Plan or its implementation, including without limitation disputes relating to the execution of agreements, documents or instruments required to be executed pursuant to the terms of the Plan, or arising under or relating to the interpretation of agreements, documents or instruments executed in connection with the Plan.

**10.1.11 Plan Implementation.** The Court shall retain jurisdiction to construe and to take any action to enforce the Plan and issue such orders as may be necessary for the implementation, execution and consummation of the Plan.

**10.1.12 Plan Corrections.** The Court shall retain jurisdiction to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan.

**10.1.13 Creditors' Disputes.** The Court shall retain jurisdiction to take any action to resolve any disputes arising out of or relating to any Claim, to hear and determine other issues presented by or arising under the Plan, and to take any action to resolve any disputes of Creditors with respect to their Claims.

**10.1.14 Other Matters.** The Court shall retain jurisdiction to determine such other matters and for such other purposes as may be provided in the Order of Confirmation or that are not inconsistent with chapter 11 of the Bankruptcy Code.

**10.2 Exclusive Jurisdiction.** The retention of jurisdiction provided for in this Plan shall be exclusive with respect to all matters set forth in section 10.1 hereof so as to preserve for the Reorganized Debtor the benefits of the Plan, subject to the Court's power under section 305 of the Bankruptcy Code or 28 U.S.C. § 1334(c) to abstain as to all or part of any proceeding.

**10.3 Effectuating Orders.** The Bankruptcy Court shall enter all judgments, partial judgments, and Orders necessary to effectuate or enforce the Plan, any term therein or as reasonably requested by any party intended as a direct beneficiary of a material provision of the Plan. Such Orders and decrees may include a permanent injunction effectuating all actions, releases, assignments, transfers and waivers required by the Plan.

#### **10.4 Closure of the Case.**

**10.4.1 Closing the Bankruptcy Case.** As soon as the Reorganized Debtor determines that there is no further need for administration of the Case by the Bankruptcy Court, the Case shall be closed pursuant to 11 U.S.C. § 350 upon (i) the filing of a final report, (ii) after twenty (20) days notice to parties-in-interest, and (iii) the entry of an appropriate Order by the Court closing the Case.

**10.4.2 Post-Confirmation Payments to United States Trustee.** Until entry of an Order closing, dismissing or converting the Bankruptcy Case, any quarterly payments due to the office of the United States Trustee after the Effective Date of the Plan shall be paid in accordance with 28 U.S.C. § 1930(a)(6) by the Reorganized Debtor.

**10.4.3 Reopening Case.** At any time, the Reorganized Debtor may obtain entry of an order reopening the Bankruptcy Case to obtain any relief or order from the Bankruptcy Court consistent with section 10.1. Although the Reorganized Debtor may seek such relief on an ex parte basis, the Reorganized Debtor shall give notice of the motion or other request to the US Trustee.

### **ARTICLE 11 MODIFICATION OF THE PLAN**

**11.1 Revocation or Withdrawal of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Estates or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Estates.

**11.2 Amendments Prior to Confirmation.** Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with Section 1125 of the Bankruptcy Code.

**11.3 Amendments After Confirmation.** The Plan may be altered, amended or modified at any time before or after the Confirmation Date and before substantial consummation, provided that (a) the Plan, as altered, amended or modified, satisfies the requirements of the Bankruptcy Code and (b) the Bankruptcy Court approves such modifications after such notice, and under such circumstances, as the Court determines to be fair and equitable.

**11.4 Effect on Acceptance Requirements.** The holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if (a) such Person fails timely to object to the proposed alteration, amendment or modification, or (b) in the event an objection is timely filed, the Court determines the proposed alteration, amendment or modification does not materially and adversely

change the treatment of the Claim of such holder. The Debtors may correct any defect or omission in this Plan and any exhibit hereto without notice to holders of Claims insofar as it does not materially and adversely affect the interests of any such holders.

**11.5 Effect of Modification.** Every modification of the Plan will supersede all previous versions of the Plan when such modification becomes effective. Previous superseded versions of the Plan will be deemed to be in the nature of a withdrawn or rejected settlement proposal, and will be of no evidentiary or substantive effect for any purpose whatsoever.

## **ARTICLE 12 STAYS, INJUNCTIONS AND RELEASES**

**12.1 Continuation of Injunctions or Stays until Effective Date.** All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Further, unless the Plan provides otherwise, any injunctions or stays ordered by the Bankruptcy Court shall continue in effect through and after the Effective Date.

**12.2 Injunction Relating to the Plan.** As of the Effective Date, all Persons are hereby permanently enjoined from commencing or continuing, in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtors or their Estates, on account of, or respecting any Claims, debts, rights, Causes of Action or liabilities discharged or treated pursuant to the Plan, except to the extent expressly permitted under the Plan. Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present, future, or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan. Further, except as otherwise expressly provided in the Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims against the Debtors, or who have held, hold or may hold any debt or interest relating to the Debtors, are permanently enjoined, from and after the Effective Date, to the maximum extent permitted by law, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, debt or interest against the Debtors or the Reorganized Debtor, or (ii) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the immediate or any mediate transferee of any property distributed pursuant to the Plan or of any putative securities, based upon a claim that the transferor's receipt of such property constituted a fraudulent conveyance, preference, violation of bulk sales or other law, or based upon any other claim that receipt and or distribution of property by transfer pursuant to the Plan is wrongful, whether in law or equity.

**12.3 Broad Injunction.** The intent of paragraph 12.2 is to provide the broadest possible injunction permitted by law and, to the extent permitted by law, to expand the scope of that injunction for the benefit of the Reorganized Debtor to the extent that, at any time after the Effective Date, the law is clarified or changed to permit such a broader injunction. The injunction in the Confirmation Order shall provide that the holders of Claims shall be enjoined from commencing or continuing any such specified

action or proceeding against the Debtors or the Reorganized Debtor with respect to any Claim or property of the Estate, including Claims based in whole or in part on an allegation: (i) that the Debtors breached any contract, with, or any duty or obligation to the Creditor; (ii) that the Debtors were the alter ego or instrumentality of another Person; (iii) that the Debtors made any preferential or fraudulent transfer or any other voidable transfer or payment to any Person; or (iv) that the Debtors are liable for any act or omission. In addition, to the extent that 11 U.S.C. § 524(e) or other applicable law imposes a limit on the scope of the injunction against any holder of Claims, such holder shall be required to marshal such Claims and to exhaust all of the holder's legal and equitable remedies against all other Persons who are jointly or severally liable on such Claims before attempting to enforce such claims against the Reorganized Debtor.

**12.4 Exculpation.** Neither the Reorganized Debtor nor any of its attorneys, accountants or agents shall have or incur any liability to any Creditor for any act or omission in connection with or arising out of their administration of the Plan or the property to be distributed under the Plan, except for willful misconduct, and in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan and shall be fully protected in acting or in refraining from acting in accordance with such advice.

**12.5 Release of Claims.** Except as contemplated by the Plan, the rights afforded to holders of Claims in the Plan shall be in exchange for a complete release, satisfaction and discharge of all Claims against the Debtors and the Reorganized Debtor, and acceptance of such distributions under the Plan shall be deemed irrevocably to release any and all claims of any type, kind or nature against the Debtors and the Reorganized Debtor. Persons deemed to have released claims pursuant to this paragraph shall be forever precluded from asserting against the Debtors, the Reorganized Debtor or its assets any Claim, including any Claim of the type released or deemed released herein.

**12.6 Setoffs.** Except as otherwise provided in this Plan, nothing contained in this Plan shall constitute a waiver or release by the Reorganized Debtor or the Estate of any rights of setoff the Reorganized Debtor or the Estate may have against any Person.

## **ARTICLE 13 DEFAULT AND REMEDIES**

**13.1 Default of Plan; Notice Required.** In the event of any material default of the provisions of this Plan, a creditor or party in interest aggrieved by such default may provide written notice to the Reorganized Debtor and its counsel of record (a "Default Notice"). The Default Notice must describe with specificity the nature of the default alleged and the steps required of the Reorganized Debtor to cure such default.

**13.2 Opportunity to Cure.** The Reorganized Debtor shall have thirty (30) days after receipt by it and its counsel of record of a written Default Notice to cure such default. The aggrieved Person shall take no further action until at least thirty (30) days have passed and the Reorganized Debtor has not cured or substantially complied with the Default Notice. Even after the thirty (30) day period has expired, the Reorganized

Debtor may cure a default at any time, even after an application or motion has been filed by an aggrieved party.

### **13.3 Remedies in the Event of Default.**

**13.3.1 Application to Compel Compliance.** If a material default has occurred and the Reorganized Debtor does not cure such default within thirty (30) days after receipt of a Default Notice, a creditor or party in interest aggrieved by such a material default may apply to the Bankruptcy Court to compel compliance with the applicable provisions of the Plan. Such application must be accompanied by an affidavit or sworn declaration specifying the default, the applicant's compliance with the notice requirements, and the Reorganized Debtor's failure to cure the same as required herein.

**13.3.2 Service of Application.** The application must be served upon (a) the Reorganized Debtor, (b) the Reorganized Debtor's counsel, (c) the United State Trustee, (d) the Bank and/or its successor-in-interest, and (e) the twenty largest unsecured creditors of both Debtors or, if applicable, the Unsecured Creditor's committee(s).

**13.3.3 Determination and Relief by Bankruptcy Court.** The Bankruptcy Court, after notice and a hearing, shall determine whether a default occurred, whether it was and is material, and if a material default occurred, whether such default has been cured. If the Court determines that a material default has occurred and has not been cured, the Court shall determine an appropriate remedy in light of the applicable default, including an order compelling compliance with the pertinent provisions of the Plan. In determining an appropriate remedy, the Court should consider and impose the least severe remedy that will appropriately compensate the aggrieved party or address the default. Neither the section nor any other provision of this Plan, however, shall be construed to provide a Creditor or other Person with the right to recover attorneys' fees from the Reorganized Debtor, in the event of a material default or otherwise.

## **ARTICLE 14 MISCELLANEOUS**

**14.1 Severability.** If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, upon the request of the Debtors, 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 shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alternation or interpretation. The Confirmation Order shall constitute a judicial determination that each



term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable according to its terms.

**14.2 Binding Effect.** The rights, duties and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person. Pursuant to 11 U.S.C. § 1141(a), the provisions of this Plan bind the Reorganized Debtor, any Person issuing securities under the Plan, any Person acquiring property or receiving distributions under the Plan, the counter-parties to any executory contracts or unexpired leases with the Debtors, any and all Creditors or Equity Interest holders of the Debtors, and any and all other Persons referred to or contemplated in this Plan, whether or not the Lien, Claim, Equity Interest or other right of such Person is impaired under the Plan and whether or not such Person has accepted the Plan. To the extent the Bankruptcy Case is converted to chapter 7 or the Reorganized Debtor files a future bankruptcy case, the Claims, Liens, Equity Interests and rights of Creditors and other Persons, as determined and modified by this Plan, shall be final and shall determine the allowed amounts of such claims and interests in the subsequent chapter 7 case or future bankruptcy case.

**14.3 Further Assurances.** Each Person receiving any payment or other benefit under the Plan, including any holder of any Allowed Claim or Equity Interest, shall execute such documents and shall take such other actions (or omit to take actions) as may be necessary or reasonable in order to effectuate the Plan. All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**14.4 Bar Date for Administrative Claims.** All applications for allowance of Administrative Claims other than (a) fees and expenses of Professionals Allowed pursuant to an Order of the Bankruptcy Court, and (b) fees and charges assessed against the Estates pursuant to 28 U.S.C. § 1930, shall be filed not later than thirty days after the Effective Date. All Administrative Claims not filed within thirty days after the Effective Date shall be barred. The deadline in the preceding sentence shall be construed and have the same force and effect as a statute of limitations. The Reorganized Debtor shall provide notice to all creditors listed on the mailing matrix of this bar date within ten days after the Effective Date. The Bankruptcy Court shall determine all Administrative Claims.

**14.5 Notices.** All notices, requests and demands to or upon the Reorganized Debtor shall only be effective if in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and confirmed, addressed as follows:

Harbor Real Asset Fund  
HRAF Holdings LLC  
7659 South Main Street  
Midvale, Utah 84047  
Tel: (801) 208-3701  
Fax: (801) 208-3705

*with a copy to:*

Matthew M. Boley  
Parsons Kinghorn Harris  
111 East Broadway, 11th Floor  
Salt Lake City, Utah 84111  
Tel: (801) 363-4300  
Fax: (801) 363-4378

**14.6 Governing Law.** Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, the rights and obligations arising under this Plan shall be governed by, construed and enforced in accordance with, the laws of the State of Utah, without giving effect to the principles of conflicts of law of such jurisdiction.

**14.7 Post-Confirmation Fees, Final Decree.** The Reorganized Debtor shall be responsible for the payment of any post-confirmation fees due pursuant to 28 U.S.C. § 1930 and the filing of required post-confirmation reports, until a final decree and/or Order closing the Bankruptcy Case is entered.

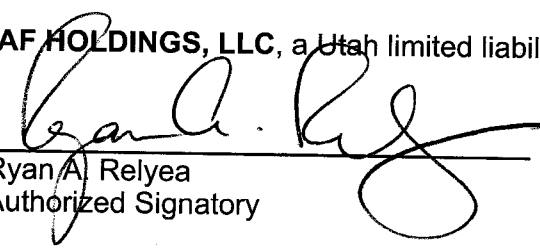
**14.8 Filing of Additional Documents.** On or before substantial consummation of the Plan, the Reorganized Debtor shall file with the Bankruptcy Court any agreements or other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**14.9 Inconsistency.** In the event of any inconsistency between the Plan and the Disclosure Statement, or any other instrument or document created or executed pursuant to the Plan, the terms of the Plan shall govern.

Dated this 26th day of September, 2011

**HRAF HOLDINGS, LLC**, a Utah limited liability

By

  
Ryan A. Relyea  
Authorized Signatory

**HARBOR REAL ASSET FUND, LP**, a  
Delaware limited partnership

By

\_\_\_\_\_  
Ryan A. Relyea  
Authorized Signatory

**PARSONS KINGHORN HARRIS**

/s/ Matthew M. Boley  
George B. Hofmann  
Matthew M. Boley  
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*Attorneys for HRAF Holdings, LLC*

**RAY QUINNEY & NEBEKER P.C.**

/s/ Michael R. Johnson  
Michael R. Johnson  
*Attorneys for Harbor Real Asset Fund, LP*