

SO ORDERED.



Dated: May 27, 2011

A handwritten signature in black ink, appearing to read "Redfield T. Baum, SR.", is written over a horizontal line.

REDFIELD T. BAUM, SR  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
THE DISTRICT OF ARIZONA

In re:

LONE TREE INVESTMENTS, LLC  
PINE CANYON GOLF, L.L.C.  
MOUNTAIN VISTA AT PINE CANYON, L.L.C.  
ELK PASS, L.L.C.  
DEER CREEK CROSSING, L.L.C.  
CREEKSIDE VILLAGE HOMES, LLC

Debtors.

Chapter 11 Proceedings

Case No. 2:10-bk-26776-RTBP  
Case No. 2:10-bk-26779-RTBP  
Case No. 2:10-bk-26785-RTBP  
Case No. 2:10-bk-26790-RTBP  
Case No. 2:10-bk-26792-RTBP  
Case No. 2:10-bk-26794-RTBP

Joint Administration under  
Case No. 2:10-bk-26776-RTBP

This filing applies to:

- ☒ ALL DEBTORS  
☐ SPECIFIED DEBTORS.

**ORDER CONFIRMING THE  
DEBTORS' SECOND AMENDED  
JOINT PLAN OF REORGANIZATION  
DATED MAY 23, 2011 AND VACATING  
HEARINGS SET FOR JULY 6 AND  
SEPTEMBER 12, 13 & 14, 2011**

This matter having come before the Court on the *Second Amended Joint Plan of Reorganization Dated May 23, 2011* (the "Plan") filed by Lone Tree Investments, LLC ("Lone Tree"), Creekside Village Homes, LLC ("Creekside"), Elk Pass, L.L.C. ("Elk Pass"), Mountain Vista at Pine Canyon, L.L.C. ("Mountain Vista"), Deer Creek Crossing, L.L.C. ("Deer Creek") and Pine Canyon Golf, L.L.C. ("Pine Canyon Golf") (collectively, the "Debtors") in the above-captioned jointly-administered bankruptcies, and the Court having determined that notice of the Plan and the attendant disclosure statement was full and proper, and all objections to the Plan having been withdrawn or otherwise resolved by the terms hereof, and upon consideration of all matters of record the Court finding that the Plan satisfies the requirements of 11 U.S.C. § 1129 and should be confirmed,

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

2. Confirmation of the Plan is a “core” proceeding under 28 U.S.C. § 157(b)(2).

3. As set forth below, the Plan fully satisfies all applicable requirements of 11 U.S.C. § 1129.

4. The Plan complies with all applicable provisions of the United States Bankruptcy Code.

5. The Debtors, as the proponents of the Plan, have complied with all applicable provisions of the United States Bankruptcy Code.

6. The Plan was proposed in good faith, and not by any means forbidden by law.

7. Any payments made, or to be made, under the Plan, for services or for costs and expenses incurred in connection with the Debtors’ bankruptcy or the Plan, or incident to either, have been approved by, or are subject to the approval of, the Court as reasonable.

8. The Debtors have disclosed the identity and affiliations of any individuals proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the Debtors and their entry upon or continuation in those duties is consistent with the interests of creditors and public policy.

9. The Debtors have disclosed the identity of any insider that will be employed or retained by the reorganized Debtors, and the nature of the compensation any such insider is to receive.

10. No governmental regulatory commission has jurisdiction over the rates charged by the Debtors, and therefore the requirements of Section 1129(a)(6) are not applicable to the Plan.

11. Each holder of a claim or interest included in a class that is impaired under the Plan has either accepted the Plan, or will receive or retain under the Plan, on account of such claim or interest, property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors’ estates were liquidated under Chapter 7 of the Bankruptcy Code.

1           12.     Although not all impaired classes voted to accept the Plan, as set forth below, the  
2 Plan complies with the provisions of 11 U.S.C. § 1129(b) with respect to each such class.

3           13.     Except to the extent that they agree to an alternative treatment, under the Plan, the  
4 holders of all claims entitled to a priority pursuant to 11 U.S.C. § 507 will be paid in full on the  
5 effective date, or as soon thereafter as such claims are allowed by the Court, with the exception of  
6 holders of claims entitled to a priority pursuant to 11 U.S.C. § 507(a)(8), which, at the Debtors'  
7 option, may be paid, on account of such claims, deferred cash payments over a period ending not  
8 later than five years after the date of the order for relief and in a manner that is not less favorable  
9 than the most favored non-priority unsecured claim provided for by the Plan.

10          14.     Without consideration of any acceptance of the Plan by an insider, at least one class  
11 of claims that is impaired under the Plan voted to accept the Plan, thereby satisfying the  
12 requirements of 11 U.S.C. § 1129(a)(10).

13          15.     The Plan is feasible, in that confirmation of the Plan is not likely to be followed by  
14 further liquidation or the need for additional financial reorganization of the Debtors.

15          16.     All fees payable under § 1930 of title 28 of the United States Code have been paid,  
16 or, pursuant to the Plan, will be paid on the effective date of the Plan.

17          17.     The provisions of 11 U.S.C. § 1129(a)(13), concerning the continued provision of  
18 retiree benefits, do not apply to the Debtors or the Plan.

19          18.     The provisions of 11 U.S.C. § 1129(a)(14), concerning domestic support  
20 obligations, do not apply to the Debtors or the Plan.

21          19.     The Debtors are not individuals, and as such, the provisions of 11 U.S.C.  
22 § 1129(a)(15) do not apply to the Plan.

23          20.     The Debtors are moneyed businesses or commercial corporations, and as such, the  
24 provisions of 11 U.S.C. § 1129(a)(16) are not applicable to the Plan.

25          21.     The Plan does not discriminate unfairly and is fair and equitable with respect to each  
26 class of claims or interests that is impaired under, and has not accepted, the Plan.

27          22.     In particular, with respect to each class of secured claims that did not vote to accept  
28

1 the Plan, the Plan provides that the holders of such claims shall retain the liens securing their claims  
2 to the extent of the allowed amount of such claims, and shall receive on account of such claims  
3 deferred cash payments totaling at least the allowed amount of such claims, of a value, as of the  
4 effective date of the Plan, of at least the value of such holder's interest in the estate's interest in  
5 such property.

6 23. The designation of classes made in the Plan is based upon the substantial similarity  
7 of the claims contained therein. The classification of claims in the Plan is reasonable, was done in  
8 good faith, and was not used for the purpose of affecting the vote of any class, or for any other  
9 improper purpose.

10 24. The solicitation of ballots accepting the Plan was carried out in good faith and in  
11 compliance with the provisions of the Bankruptcy Code.

12 25. The *Amended Ballot Report* filed by the Debtors, in accordance with Local Rule  
13 3018-1, properly classified and counted the acceptances and rejections of the Plan.

14 Based on the foregoing, and all other germane matters of record,

15 **IT IS HEREBY ORDERED AS FOLLOWS:**

16 26. The Plan, as modified herein, is hereby confirmed by the Court.

17 27. All objections to confirmation of the Plan which have not been withdrawn are  
18 hereby overruled on their merits.

19 28. The Debtors are authorized and empowered to do all acts and execute any and all  
20 documents necessary to implement the Plan.

21 29. The modifications to the Plan set forth in this Order are not materially adverse to any  
22 party in interest, do not require noticing a new disclosure statement or new balloting, are expressly  
23 approved by the Court, and are hereby fully made part of the Plan.

24 30. The settlement between the Debtors and Silverleaf as authorized by the *Stipulated*  
25 *Order Approving Settlement Between Debtors and Silverleaf* is hereby approved and incorporated into  
26 the Plan pursuant to 11 U.S.C. § 1123 and Rule 9019 of the Federal Rules of Bankruptcy  
27 Procedure.  
28

1           31.     The treatment of Class 3-A, found in Section IV(C) beginning on page 9 of the Plan,  
2 shall be replaced, in its entirety, with the following:<sup>1</sup>

3           This Class consists of the Allowed Secured Claim of Silverleaf  
4 Acquisition Holdings, LLC (“Silverleaf”), as successor-in-interest to  
5 Johnson Bank (the “Silverleaf Claim”), which is secured by a first-  
6 position lien on certain of the Debtors’ real property. The Silverleaf  
Claim, as compromised by Silverleaf by and through a formal  
settlement agreement with the Debtors and Flagstaff Acquisitions,  
L.L.C. (“FAL”), will be treated and paid as follows:

- 7           1.)     \$7,000,000 (“Payment Tranche One”) shall bear interest from  
8 May 25, 2011 at the rate of 9.56 percent until paid by Debtors  
to Silverleaf.
- 9           2.)     Until Payment Tranche One and all interest due thereon have  
10 been paid in full, the net proceeds of sales of the collateral  
11 held by Silverleaf will be paid 50% to Silverleaf and 50% to  
12 the Debtors to be retained and used by them solely for the  
13 operation of their businesses at Pine Canyon, including the  
14 payment of any balance due under the FAL Loan, as defined  
15 below, but shall not be distributed, loaned, or paid to any  
16 direct or indirect owner of the Debtors without prior notice to,  
and written consent of, Silverleaf. If there is no balance on  
the FAL Loan, as defined below, then the Debtors are  
required to use excess cash, less a reasonable reserve, to pay  
down Payment Tranche One. For the closing of each such  
sale, FAL will provide a release of its deed of trust without  
compensation therefor.
- 17          3.)     So long as the following benchmarks are met (unless waived  
18 in writing by Silverleaf), the terms set forth above shall  
19 remain in place until May 24, 2014:
  - 20           a.     The Debtors shall have net sales of real property  
21 totaling at least \$2,500,000 on or prior to May 24,  
22 2012; and
  - 23           b.     The Debtors shall have net sales of real property  
24 totaling at least \$5,500,000 on or prior to May 24,  
25 2013.
  - 26           c.     (The amount referred to in subsection (b) above  
includes the amount in subsection (a) above.)
- 27          4.)     Payment Tranche One and all interest accrued thereon shall be  
28 due and payable on or before May 24, 2014 (the “Maturity  
Date”); provided however, that, should either of the  
benchmarks identified in Section 3 above not be met, the

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<sup>1</sup> This Court has previously granted, in open court, the Johnson Bank Motion to Substitute Silverleaf in the Bank’s place as the real party-in-interest under Federal Rule of Civil Procedure 25, made applicable to this case pursuant to Federal Bankruptcy Rule 9014(c).

1 Maturity Date shall be accelerated to the date such benchmark  
2 is not met.

3 5.) Should Debtors fail to meet the benchmarks described in  
4 Section 3 above or fail to pay Payment Tranche One and all  
5 interest thereon on or prior to the Maturity Date, the following  
6 shall occur, each of which is material and each of which shall  
7 be deemed to occur concurrently:

- 8 a. The Debtors shall provide Silverleaf with either a deed  
9 in lieu of foreclosure or an assignment of the  
10 beneficial interest in the subdivision trust (or such  
11 other document as Silverleaf might reasonably request  
12 to evidence transfer of Silverleaf's collateral to it  
13 without the need for foreclosure proceedings) at the  
14 time of execution of a settlement agreement  
15 incorporating the terms hereof, which shall be held in  
16 an escrow account to be opened by Silverleaf and  
17 which shall be subject to escrow instructions mutually  
18 acceptable to the Debtors, Silverleaf and FAL;
- 19 b. Silverleaf shall accept such deed in lieu of foreclosure  
20 or an assignment of the beneficial interest in the  
21 subdivision trust and promptly record it with the  
22 Coconino County (Arizona) Recorder's Office;
- 23 c. Silverleaf shall pay FAL the total amount due under  
24 the FAL Loan;
- 25 d. FAL will provide Silverleaf with a deed of release and  
26 reconveyance of the FAL Deed of Trust.
- 27 e. With respect to paragraph 5(b) above, at Silverleaf's  
28 option, it may elect to conduct a foreclosure sale,  
either judicial or non-judicial, instead of accepting the  
deed in lieu of foreclosure or an assignment of the  
beneficial interest in the subdivision trust but, in such  
event, the actions described in subsections c and d  
above shall occur prior to the initiation of such action.

21 6.) At any time after May 25, 2013 but prior to the Maturity Date,  
22 the Debtors, at their option, may extend the Maturity Date to  
23 May 24, 2015 upon payment to Silverleaf of a fee equal to  
24 two basis points of the then outstanding principal balance of  
Payment Tranche One (the "Extension Fee"), which  
Extension Fee shall not be applicable to Payment Tranche  
One.

25 7.) At any time prior to the Maturity Date (as such may be  
26 accelerated pursuant to Section 4 above or extended pursuant  
27 to Section 6 above), the Debtors shall have the right to "put"  
28 the Pine Canyon project to Silverleaf. Such "put" shall be in  
writing and shall be given to Silverleaf with a minimum of  
120 days' notice prior to the effective date of the "put." On or  
prior to the effective date of the "put," each of the following

shall occur, each of which is material and each of which shall be deemed to occur concurrently:

- a. The Debtors shall provide Silverleaf with a deed in lieu of foreclosure, or an assignment of the beneficial interest in the subdivision trust (or such other document as Silverleaf might reasonably request to evidence transfer of Silverleaf's collateral to it without the need for foreclosure proceedings), at the time of execution of a settlement agreement incorporating the terms hereof which shall be held in an escrow account to be opened by Silverleaf and which shall be subject to escrow instructions mutually acceptable to the Debtors, Silverleaf and FAL;
- b. Silverleaf shall accept such deed in lieu of foreclosure or assignment of the beneficial interest in the subdivision trust and promptly record it with the Coconino County (Arizona) Recorder's Office;
- c. Silverleaf shall pay FAL the total amount due under the FAL Loan;
- d. FAL will provide Silverleaf with a deed of release and reconveyance of the FAL Deed of Trust.
- e. With respect to paragraph 7(b) above, at Silverleaf's option, it may elect to conduct a foreclosure sale, either judicial or non-judicial, instead of accepting the deed in lieu of foreclosure or an assignment of the beneficial interest in the subdivision trust but, in such event, the actions described in subsections c and d above shall occur prior to the initiation of such action.

8.) After Payment Tranche One is paid in full, the net proceeds of sales of the collateral subject to the Silverleaf deed of trust shall be paid as follows:

- a. First 100% to FAL in an amount equal to the total amount of the FAL Loan, as defined below, plus interest;
- b. Then, at all times when the balance of the FAL Loan is at zero, 60% to Silverleaf and 40% to FAL until Silverleaf receives, pursuant to this Section 8(b), \$10,000,000; and
- c. Thereafter, all profits shall be shared 50% to Silverleaf and 50% to FAL.

9.) Nothing in this compromise of claims and in this order itself is intended to effectuate a merger of Silverleaf's lien and title interests, such interests to remain separate and distinct at all times.



10.) At all times that profits are being shared pursuant to Section 8 above, the Debtors and Silverleaf shall reasonably cooperate and share information regarding the Pine Canyon development and, prior to the time that profits are to be shared pursuant to Section 8 above, Silverleaf and the Debtors will agree to a definition of "profits," a mechanism for such information sharing, for dispute resolution and for other matters as may then arise.

11.) At all times during the term of the final settlement agreement entered into by the Debtors, FAL, and Silverleaf, the Debtors shall meet with Silverleaf on at least a quarterly basis (unless such meeting is waived by Silverleaf) to discuss the Pine Canyon development, its budget, etc., and to agree to minimum prices for the real property inventory owned by the Debtors. The Debtors agree that, after such minimum prices are established, no such real property shall be sold for less than 90% of the applicable minimum price without the prior written consent of Silverleaf, which will be given or denied by Silverleaf within twenty-four hours of written request for such consent. Should no consent or denial be received within such twenty-four hour period, Silverleaf will be deemed to have approved the sale for the price indicated in the request.

32. The settlement agreement between the Debtors, FAL and Silverleaf is to be reduced to a formal written agreement. To the extent there is any dispute between the provisions in that settlement agreement and this Order, the terms in the separate settlement agreement shall control.

33. The treatment of Class 4, found in Section IV(D) on page 14 of the Plan, shall be replaced, in its entirety, with the following:

This Class consists of the unsecured claim of San Francisco Peaks Associates LP ("San Francisco Peaks"). By stipulation of the Debtors and San Francisco Peaks, this claim will be allowed in the amount of \$108,000, and paid as part of Class 9 below. San Francisco Peaks does not hold a lien on any of the Debtors' real property and, immediately upon confirmation of the Plan, shall take whatever actions are necessary to release and withdraw any recorded documents that indicate otherwise.

34. The treatment of Class 7, found in Section IV(G) on page 16 of the Plan, shall be replaced, in its entirety, with the following:

This Class consists of the Allowed Unsecured Claim of Flagstaff Acquisitions, LLC arising from Pre-Petition Advances to the Debtors for business operations. The Claim of Flagstaff Acquisitions, LLC is listed in the Schedules in the approximate principal amount of \$17,800,000. This Claim shall be determined by the Bankruptcy Court or agreement of Flagstaff Acquisitions, LLC and the Debtors. The provisions in the Second Amended Plan which provided that the allowed claims of FAL "shall be paid in full after the Allowed



1 Secured claim of Silverleaf” is deleted. The Allowed Unsecured  
2 Claim of FAL shall be paid in accordance with the provisions of the  
3 treatment of Class 3A allowed claims, in that the allowed claims of  
4 FAL shall share in the 60%/40% split and the 50%/50% split with  
Silverleaf as set forth in paragraph 31(8), b. and c. of this Order..  
Interest will accrue and will be paid at the Plan Rate. This Class is  
impaired under the Plan.

5 35. The treatment of Class 8, found in Section IV(H) on page 16 of the Plan, shall be  
6 shall be replaced, in its entirety, with the following:

7 This Class consists of the Allowed Unsecured Claim of O’Connor  
8 Investment Partnership arising from Pre-Petition Advances to the  
Debtors for business operations. The Claim of O’Connor Investment  
9 Partnership is listed in the Schedules in the approximate amount of  
\$1,000,000. This Claim shall be determined by the Bankruptcy Court  
10 or agreement of O’Connor Investment Partnership and the Debtors.  
The provisions in the Second Amended Plan which provided that the  
11 allowed claims of O’Connor Investment Partnership “shall be paid in  
full after the Allowed Secured claim of Silverleaf...” is deleted. The  
12 Allowed Unsecured Claim of O’Connor Investment Partnership shall  
be paid in accordance of the provisions of the treatment of Class 3A  
13 allowed claims, in that the allowed claims of O’Connor shall share  
in the 60%/40% split and the 50%/50% split with FAL, as set forth in  
14 paragraph 31(8) b. and c. of this Order. Interest will accrue and will  
be paid at the Plan Rate. This Class is impaired under the Plan.

15 36. The section of the Plan entitled “Implementation and Funding,” found at Section  
16 V(A) on page 17, shall be replaced in its entirety with the following:

17 Notwithstanding anything in the Plan to the contrary, FAL (an  
18 affiliate of the debtors) will be granted a first-position lien on all  
property currently subject to the lien of Silverleaf’s deed of trust  
19 (except Elk Pass Unit 46) to secure a revolving credit facility of up to  
\$7,000,000 extended to the Debtors (the “FAL Loan”). The lien will  
20 be evidenced by a deed of trust in favor of FAL recorded with the  
Coconino County Recorder’s Office (the “FAL Deed of Trust”). The  
21 amounts outstanding on the FAL Loan will bear interest from the  
date advanced until paid at the rate of 6.86%. The Debtors shall be  
22 able to draw on the FAL Loan to cover (a) all reasonable and  
necessary operating expenses of the businesses run by the Debtors  
23 (but not for any improvement of undeveloped parcels, vertical  
product or spec homes) and (b) all payments due by Debtors under  
24 their Confirmed Plan of Reorganization.

25 37. As set forth in the Plan with respect to class 3-C, the claim of Ally Financial, fka  
26 GMAC, shall be allowed in the amount of \$28,491.54, which represents the balance owing as of  
27 March 16, 2011, and such claim shall accrue interest at the rate of 5% per annum.

38. Promptly upon its entry, the Debtors shall serve a notice of the entry of this Order upon all creditors, equity holders, and parties-in-interest.

39. The hearings set by the Court for July 6, 2011 at 11:00 A.M. to resolve the motions in *Limine* filed by Silverleaf, and the hearings set regarding confirmation of the Plan on September 12, 13 and 14, 2011 are hereby vacated.

40. Notwithstanding the provisions of Rule 3020(e) of the Federal Rules of Bankruptcy Procedure, this confirmation order shall not be stayed.

DATED \_\_\_\_\_.

Honorable Redfield T. Baum  
United States Bankruptcy Judge