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Honorable August B. Landis  
United States Bankruptcy Judge



Entered on Docket  
June 23, 2017

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*Counsel for the Debtor*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
  
PARAGON POOLS,  
  
Debtor.

Case No.: 16-16342-ABL  
Chapter 11

**ORDER: (I) GRANTING FINAL  
APPROVAL OF DISCLOSURE  
STATEMENT; AND (II) CONFIRMING  
DEBTOR'S PLAN OF  
REORGANIZATION**

The Court, having reviewed and considered the *First Amended Disclosure Statement to Accompany Debtor's Plan of Reorganization* ("Disclosure Statement"), ECF No. 94, and *Debtor's First Amended Plan of Reorganization* ("Plan")<sup>1</sup>, ECF No. 93; having conducted a confirmation hearing on June 21, 2017, at 11:00 a.m., with Ryan A. Andersen, Esq. of Andersen Law Firm, Ltd.,

<sup>1</sup> Unless otherwise indicated, all capitalized terms have the meaning as set forth in the Plan.



1 appearing on behalf of the above-captioned debtor (“Debtor”) and with other appearances as noted on  
 2 the record of such hearing; having considered all papers and pleadings filed regarding the Plan,  
 3 including the *Brief in Support of: (I) Final Approval of Disclosure Statement; and (II) Confirmation of*  
 4 *Debtor's Plan of Reorganization*, ECF No. 99, filed by the Debtor; having noted that no creditor or  
 5 party in interests opposed confirmation of the Plan; and having stated its findings of fact and  
 6 conclusions of law on the record at the conclusion of such hearing, pursuant to Fed. R. Bankr. P. 7052,  
 7 made applicable hereto by Fed. R. Bank. P. 9014, such findings of facts and conclusions of law  
 8 incorporated herein by this reference, except to the extent such findings of fact and conclusions of law  
 9 may be modified hereby;

10 **NOW THEREFORE**, the Court **FINDS AND DETERMINES** as follows:<sup>2</sup>

11 1. On November 28, 2016 (“Petition Date”), the Debtor filed its voluntary petition for  
 12 relief under Chapter 11 of title 11 of the U.S. Code (“Bankruptcy Code”), thereby commencing the  
 13 above-captioned bankruptcy case (“Chapter 11 Case”).

14 2. This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. § 1334.  
 15 Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Chapter  
 16 11 Case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

17 3. It is appropriate for the Court to, and therefore the Court does, take judicial notice  
 18 pursuant to Rule 201 of the Federal Rules of Evidence of the docket of the Chapter 11 Case including,  
 19 without limitation, all pleadings and other documents filed in the Debtor’s Chapter 11 Case, all orders  
 20 entered, and all evidence and arguments made, proffered or adduced at, the hearings held before the  
 21 Court during the pendency of this Chapter 11 Case.

22 4. The Disclosure Statement contains adequate information as required by Section 1125(b)  
 23 of the Bankruptcy Code, such that final approval of the Disclosure Statement pursuant to Rule 3017.1  
 24 of the Federal Rules of Bankruptcy Procedure is appropriate.

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 27 <sup>2</sup> To the extent any finding of fact constitutes a conclusion of law, it is adopted as such. To the  
 extent any conclusion of law constitutes a finding of fact, it is adopted as such.

1           5.       The failure to specifically make reference to any particular provision of the Plan in this  
2 Confirmation Order shall not impair or diminish the effectiveness of any such provision.

3           6.       The Plan complies with all applicable provisions of the Bankruptcy Code, including the  
4 requirements of Sections 1122 and 1123(a) of the Bankruptcy Code as incorporated therein, thereby  
5 satisfying the requirements of Section 1129(a)(1) of the Bankruptcy Code.

6           7.       The Plan constitutes a motion by the Debtor to assume those executory contracts and  
7 unexpired leases to which the Debtor is a party. The Debtor's decision regarding the assumption of  
8 such executory contracts and unexpired leases, as authorized by Section 1123(b)(2) of the Bankruptcy  
9 Code and as provided for in Section 5 of the Plan, is a reasonable exercise of sound business judgment  
10 and is in the best interests of the Debtor and the Estate.

11           8.       Pursuant to and in compliance with Sections 1123(b)(3)(A) and (b)(6) of the Bankruptcy  
12 Code, with respect to Sections 9.4 (Releases by Debtor), 9.6 (Injunction), and 9.7 (Exculpation) of the  
13 Plan, the Court finds and concludes that the foregoing provisions: (i) they fall within the jurisdiction  
14 of this Court under 28 U.S.C. § 1334; (ii) they are essential means of implementing the Plan pursuant  
15 to Section 1123(a)(5) of the Bankruptcy Code; (iii) they are integral elements of the transactions  
16 incorporated into the Plan; (iv) they confer a material benefit on, and are in the best interests of, the  
17 Debtor, the Estate, and Creditors; (v) they are important to the overall objectives of the Plan; (vi) they  
18 are consistent with Sections 105, 1123, 1129, and other applicable provisions of the Bankruptcy Code;  
19 (vii) all entities that are benefited by these provisions of the Plan have contributed value to the Debtor  
20 and/or the Estate under the Plan; (viii) the failure to effect these provisions of the Plan would impair  
21 the Debtor's ability to confirm the Plan; and (ix) these provisions are in good faith, fair, equitable,  
22 within the range of reasonableness, in the best interests of the Debtor and its Estate, and are entered  
23 into in good faith and at arms' length.

24           9.       The *Order Approving Settlement Agreement* ("Settlement Order"), ECF No. 69, by  
25 which the Court approved that certain Settlement with Branch Banking and Trust Company ("BB&T"),  
26 is incorporated herein by reference and shall continue in full force and effect. Except as may be  
27





1 provided by this Confirmation Order, the terms and conditions of the Settlement Agreement remain  
2 binding and effective on the parties thereto after the Effective Date.

3 10. The Debtor, as proponent of the Plan, has complied with the applicable provisions of  
4 the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), the Local  
5 Rules of Bankruptcy Practice for the U.S. District Court for the District of Nevada, and orders of this  
6 Court with respect to the Plan.

7 11. Good, sufficient, and timely notice of the Confirmation Hearing has been given to  
8 holders of Claims and Equity Interests and to other parties-in-interest to whom notice is required to be  
9 given.

10 12. The Debtor has complied with Section 1129(a)(2) of the Bankruptcy Code, including  
11 the requirements set forth in Section 1125 and 1126 of the Bankruptcy Code. The solicitation of votes  
12 was made in good faith and in compliance with the applicable provisions of the Bankruptcy Code and  
13 all other rules, laws and regulations, and such solicitation was conducted after disclosure of “adequate  
14 information” as defined in Section 1125 of the Bankruptcy Code. Ballots of Holders of Claims entitled  
15 to vote on the Plan were properly solicited and tabulated in accordance with the order entered by the  
16 Court approving such solicitation of votes. ECF No. 98.

17 13. Given the lack of any objection filed challenging the good faith of the Plan, the Court  
18 may presume good faith pursuant to Bankruptcy Rule 3020(b)(2). The Plan provides the greatest  
19 opportunities to maximize the value of the Estate, and Debtor has exercised sound and reasonable  
20 business judgment through the Plan. As such, the Plan satisfies the requirements of Section 1129(a)(3)  
21 of the Bankruptcy Code.

22 14. Any payment made or to be made under the Plan or by any Person acquiring property  
23 under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Case,  
24 or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or will be  
25 subject to the approval of, the Court as reasonable, thereby satisfying the requirements of Section  
26 1129(a)(4) of the Bankruptcy Code.

27

1           15.     The Debtor’s current officers shall serve in that capacity pending effectuation of the  
2 Plan and thereafter, and thus the Debtor has satisfied the requirements of Section 1129(a)(5) of the  
3 Bankruptcy Code.

4           16.     Section 1129(a)(6) of the Bankruptcy Code is inapplicable.

5           17.     The Plan complies with Section 1129(a)(7) of the Bankruptcy Code in that each holder  
6 of a Claim or Equity Interest will receive and retain under the Plan on account of such Claim or Equity  
7 Security property of a value, as of the Effective Date of the Plan that is not less than the amount that  
8 such holder would so receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy  
9 Code, on such date.

10           18.     In accordance with Section 1129(a)(8) of the Bankruptcy Code, Classes 1 and 4 are  
11 unimpaired under the Plan and therefore have been deemed to have voted to accept the Plan pursuant  
12 to Section 1126(f) of the Bankruptcy Code. Class 2 and Class 3 are impaired under the Plan and have  
13 voted to accept the Plan in accordance with Section 1126(c) of the Bankruptcy Code. Because all  
14 impaired Classes have voted to accept the Plan, the requirements of Section 1129(a)(8) of the  
15 Bankruptcy Code have been satisfied as to all Classes.

16           19.     The Plan’s treatment of Allowed Administrative Claims, Allowed Priority Non-Tax  
17 Claims, and other unclassified priority claims as set forth in Section 507(a) of the Bankruptcy Code  
18 satisfies the requirements set forth in Section 1129(a)(9) of the Bankruptcy Code because, except to  
19 the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the  
20 Plan provides that (i) the Holder of each Allowed Administrative Claim shall be paid in full, in Cash;  
21 and (ii) the Holders of Allowed Secured Tax Claims shall be paid in full, in Cash, or in such amounts  
22 and on such other terms as may be agreed to by the Holders of such Claims and the Debtor, or according  
23 to the ordinary business terms of the Debtor and such Holders.

24           20.     The Plan complies with Section 1129(a)(10) of the Bankruptcy Code in that Class 2 is  
25 an impaired Class that has voted to accept the Plan, without including acceptance by any insider.

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1 21. The Plan complies with Section 1129(a)(11) of the Bankruptcy Code because  
2 confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial  
3 reorganization of the Debtor.

4 22. The Plan complies with Section 1129(a)(12) of the Bankruptcy Code in that the Plan  
5 provides for the payment of all fees under 28 U.S.C. § 1930 as of the Effective Date and that such fees  
6 shall continue to accrue and be payable as they come due until the case is closed, converted or  
7 dismissed.

8 23. Sections 1129(a)(13) through (a)(16) of the Bankruptcy Code are all inapplicable.

9 24. The principal purpose of the Plan is not the avoidance of taxes or avoidance of the  
10 requirements of section 5 of the Securities Act of 1933. No governmental unit has requested that the  
11 Court deny confirmation on such basis. Therefore, the Plan satisfies the requirements of Section  
12 1129(d) of the Bankruptcy Code.

13 **ACCORDINGLY**, the Court **ORDERS** as follows:

14 1. The Disclosure Statement is **APPROVED** on a final basis pursuant to Section 1125(b)  
15 of the Bankruptcy Code and Rule 3017.1 of the Federal Rules of Bankruptcy Procedure.

16 2. The Plan and each of its provisions are **CONFIRMED** pursuant to Section 1129 of the  
17 Bankruptcy Code. Any objection to the Plan and any response or request for continuance regarding  
18 confirmation of the Plan not resolved by the terms of this Confirmation Order is overruled and denied.  
19 A copy of the Plan is attached hereto as **Exhibit 1** and is incorporated herein in its entirety by this  
20 reference.

21 3. The provisions of the Plan are binding on any holder of a Claim against or Equity  
22 Interest in, the Debtor and its successors and assigns, or in the assets of the Debtor, its successors and  
23 assigns, in each case regardless of whether the Claim or Equity Interest of such Holder is impaired  
24 under the Plan and whether such Holder has accepted the Plan.

25 4. Subject to the terms of the Plan, the Debtor or Reorganized Debtor as the case may be,  
26 is duly and validly authorized to issue, execute, deliver, file or record any and all documents necessary  
27



1 to implement the Plan, and to take any action reasonably necessary or appropriate to implement the  
2 Plan, in accordance with its terms.

3 5. All documents necessary to implement the Plan upon execution on or after the Effective  
4 Date, will constitute valid, binding and enforceable agreements not in conflict with any federal or state  
5 laws.

6 6. The Debtor, its officers, and its professionals have acted in good faith with respect to  
7 the solicitation of votes to accept or reject Plan, and thus they are entitled to the protection under Section  
8 1125(e) of the Bankruptcy Code.

9 7. The Court’s retention of jurisdiction as set forth in Section 11 of the Plan is appropriate  
10 pursuant to 28 U.S.C. § 157.

11 8. Notice of all proceedings regarding or relating to confirmation of the Plan, including  
12 without limitation, the Confirmation Hearing, was adequate under the circumstances and complied with  
13 applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

14 9. To the extent the Confirmation Order and/or the Plan is inconsistent with the Disclosure  
15 Statement, or any other agreement entered into by the Debtor and any third party, (i) the Plan shall  
16 controls the Disclosure Statement and any such agreements between the Debtor and any third party,  
17 and (ii) the Confirmation Order controls the Plan.

18 10. The making or delivery of any instrument of transfer under the Plan shall not be taxed  
19 under any state or local law imposing a stamp tax or similar tax as provided in Section 1146 of the  
20 Bankruptcy Code.

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1           11.     This Confirmation Order is a final order and the period in which an appeal must be filed  
2 shall commence immediately upon the entry hereof.

3  
4 Prepared and submitted by:

5 **ANDERSEN LAW FIRM, LTD.**

6 By:    /s/ Ryan A. Andersen  
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*Counsel for the Debtor*





**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

- The court has waived the requirement set forth in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Counsel appearing: Michael B. Wixom, Esq., Waived Review on the Record  
 Trustee appearing:  
 Debtor(s) appearing:

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of June, 2017.

By: /s/ Ryan A. Andersen  
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 Las Vegas, Nevada 89109

*Counsel for the Debtor*

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**EXHIBIT 1**

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Electronically Filed: May 9, 2017

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*Counsel for the Debtor*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

PARAGON POOLS,

Debtor.

Case No.: 16-16342-ABL  
Chapter 11



**DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION**

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1 Paragon Pools, a Nevada corporation, the above-captioned debtor and debtor in possession, proposes  
 2 this plan of reorganization for the resolution of Debtor's outstanding Claims and Equity Interests.<sup>1</sup> All Creditors,  
 3 Equity Interest Holders, and other parties-in-interest should refer to the Disclosure Statement for a discussion of  
 4 Debtor's history, assets, historical financial data, and for a summary and analysis of the Plan and certain related  
 5 matters. There are also other agreements and documents, which are or will be filed with the Bankruptcy Court,  
 6 that are referenced in the Plan. All Holders of Claims against and Equity Interests in Debtor are encouraged to  
 7 read the Plan, the Disclosure Statement, the related solicitation materials, and any other referenced agreements  
 8 and documents in their entirety before voting to accept or reject the Plan.

9 Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. Subject  
 10 to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019,  
 11 and to those restrictions on modifications set forth in Article 13 to the Plan, Debtor expressly reserves the right  
 12 to alter, amend, strike, withdraw, or modify the Plan one or more times before its substantial consummation.

## 13 **1. DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

### 14 **1.1. Definitions**

15 For the purposes of the Plan, except as expressly provided or unless the context otherwise requires, all  
 16 capitalized terms not otherwise defined shall have the meanings ascribed to them in this Article 1. Any  
 17 term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy  
 18 Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, in  
 19 that order of priority. Whenever the context requires, such terms shall include the plural as well as the  
 20 singular, the masculine gender shall include the feminine, and the feminine gender shall include the  
 21 masculine. As used in the Plan, the following terms shall have the meanings specified below:

#### 22 **1.1.1. Administrative Claim**

23 A Claim for any cost or expense of administration of the Chapter 11 Case allowed pursuant to  
 24 sections 503(b), 507(a)(2) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary  
 25 costs and expenses incurred after the Petition Dates and through the Effective Date of preserving  
 26 the Estate and operating the business of Debtor, including but not limited to wages, salaries, or  
 27 commissions for services, and payments for goods and services; (b) compensation and  
 reimbursement of expenses for legal, financial advisory, accounting, and other services, including  
 but not limited to, Allowed Professional Fees, pursuant to sections 327, 328, 330(a), or 331 of the  
 Bankruptcy Code or otherwise for the period commencing on the Petition Date and ending on the  
 Effective Date; (c) all fees and charges payable pursuant to 28 U.S.C. § 1930; and (d) all Bankruptcy  
 Court approved requests for compensation or expense reimbursement for making a substantial  
 contribution in the Chapter 11 Case, pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy  
 Code or otherwise.

#### 28 **1.1.2. Administrative Bar Date**

29 The deadline for filing requests for allowance and payment of Administrative Claims, including  
 30 Professional Fees, which shall be thirty (30) days after the Effective Date.

#### 31 **1.1.3. Affiliates**

32 This term has the meaning set forth in section 101(2) of the Bankruptcy Code.

#### 33 **1.1.4. Allowed**

34 With reference to any Claim or Equity Interest with respect to Debtor: (a) any Claim against or  
 35 Equity Interest in Debtor that has been listed by Debtor in its Schedules, as such Schedules may be  
 36 amended by Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in  
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<sup>1</sup> All capitalized terms herein have the meanings ascribed to them in Article 1.1 of the Plan.





1 amount and not disputed or contingent and for which no contrary Proof of Claim or Equity Interest  
2 has been Filed; (b) any Claim or Equity Interest allowed (i) under the Plan, (ii) by Final Order, or  
3 (iii) as to which the liability of Debtor and the amount thereof are determined by a final order of a  
4 court of competent jurisdiction other than the Bankruptcy Court; or (c) as to which a Proof of Claim  
5 has been timely Filed in a liquidated amount with the Bankruptcy Court, pursuant to the Bankruptcy  
6 Code or any order of the Bankruptcy Court, or has been Filed with leave of the Bankruptcy Court  
7 after notice and a hearing, provided that no objection to the allowance of such Claim or motion to  
8 expunge such Claim has been interposed by any party in interest before any final date for the filing  
9 of such objections or motions set forth in the Plan, the Confirmation Order or other order of the  
10 Bankruptcy Court. For purposes of determining the amount of an Allowed Claim, there shall be  
11 deducted therefrom an amount equal to the amount of any valid and enforceable claim that Debtor  
12 may hold against the Holder thereof, to the extent such Claim may be validly offset, recouped, or  
13 otherwise reduced under applicable law.

14 **1.1.5. Assets**

15 All of Debtor's right, title and interest of any nature in property, wherever located, as specified in  
16 section 541 of the Bankruptcy Code, including the Litigation Claims.

17 **1.1.6. Avoidance Actions**

18 Any and all claims and causes of action which Debtor, the debtor in possession, the Estate, or other  
19 appropriate party in interest has asserted or may assert under sections 502, 510, 542, 544, 545, or  
20 547 through 553 of the Bankruptcy Code or under similar or related state or federal statutes and  
21 common law, including fraudulent transfer laws.

22 **1.1.7. Ballots**

23 The ballots accompanying the Disclosure Statement upon which certain Holders of Impaired Claims  
24 (modified, as necessary, based on voting party in accordance with the Disclosure Statement Order)  
25 entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in  
26 accordance with the Plan and the procedures governing the solicitation process, and which must be  
27 actually received on or before the Voting Deadline.

**1.1.8. Bankruptcy Code**

The Bankruptcy Reform Act of 1978, title 11 of the United States Code, as amended from time to  
time, as applicable to this Chapter 11 Case, as now in effect or hereafter amended.

**1.1.9. Bankruptcy Court**

The United States Bankruptcy Court for the District of Nevada having jurisdiction over the Chapter  
11 Case, and to the extent of the withdrawal of any reference under section 157 of title 28 of the  
United States Code and/or the General Order of the United States District Court for the District of  
Nevada pursuant to section 151 of title 28 of the United States Code, the United States District Court  
for the District of Nevada.

**1.1.10. Bankruptcy Rules**

Collectively, the Federal Rules of Bankruptcy Procedure as applicable to the Chapter 11 Case, and  
the general, local and chambers rules and orders of the Bankruptcy Court, all as now in effect or  
hereafter amended.

**1.1.11. Bar Date**

In the case of non-governmental Creditors, March 29, 2017, which is the date established by the  
Bankruptcy Court by which such Creditors are required to file proofs of claim with respect to pre-  
petition Claims including Claims asserted pursuant to section 503(b)(9) of the Bankruptcy Code,



1 except with respect to Administrative Claims, Claims arising from the rejection of any Executory  
2 Contracts and Unexpired Leases, and Claims that were scheduled by Debtor as undisputed, non-  
3 contingent, and unliquidated. In the case of governmental Creditors, May 30, 2017, which is the  
4 date established by the Bankruptcy Court by which such Creditors are required to file proofs of  
5 claim with respect to pre-petition Claims, including but not limited to Priority Tax Claims.

6 **1.1.12. BB&T**

7 Branch Banking & Trust Company.

8 **1.1.13. BB&T Claim**

9 The Unsecured Claim held by BB&T, as addressed by the Settlement Agreement.

10 **1.1.14. Business Day**

11 A day, other than a Saturday, Sunday, or “legal holiday” as defined in Bankruptcy Rule 9006(a).

12 **1.1.15. Cash**

13 The legal tender of the United States of America or the equivalent thereof, including bank deposits,  
14 checks, negotiable instruments, wire transfers of immediately available funds, or other cash  
15 equivalents.

16 **1.1.16. Chapter 11 Case**

17 The case under chapter 11 of the Bankruptcy Code involving Debtor, having case number BK-S-  
18 17-16342-ABL, including any adversary proceedings pending in connection therewith.

19 **1.1.17. Claim**

20 Any right to payment from Debtor, whether or not such right is reduced to judgment, liquidated,  
21 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured,  
22 or unsecured arising at any time before the Effective Date or relating to any event that occurred  
23 before the Effective Date, or any right to an equitable remedy for breach of performance if such  
24 breach gives rise to a right to payment from Debtor, whether or not such right to an equitable remedy  
25 is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or  
26 unsecured.

27 **1.1.18. Claim Objection Deadline**

The date that is thirty (30) days from the Effective Date for all Claims, except for Claims for which  
a specific objection deadline has been set forth elsewhere in the Plan, which deadline may be  
extended by Reorganized Debtor upon request after notice and a hearing.

**1.1.19. Claims Register**

The official register of Claims maintained by the Bankruptcy Court.

**1.1.20. Class**

A category of Holders of Claims or Equity Interests as classified in the Plan.

**1.1.21. Confirmation**

The entry by the Bankruptcy Court of the Confirmation Order on the docket in the Chapter 11 Case.

**1.1.22. Confirmation Date**

The date upon which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket  
of the Chapter 11 Case



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**1.1.23. Confirmation Hearing**

The hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to section 1128 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

**1.1.24. Confirmation Order**

The order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

**1.1.25. Creditor**

Any Holder of a Claim, whether or not such Claim is Allowed.

**1.1.26. Cure**

The distribution on the Effective Date, or as soon thereafter as practicable, of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption of an Executory Contract or Unexpired Lease pursuant to section 365(b) of the Bankruptcy Code, or with respect to any other debt instrument, in an amount equal to: (i) all unpaid monetary obligations due under such Executory Contract or Unexpired Lease or required to pay to bring current the debt instrument and thereby reinstate the debt and return to the pre-default conditions to the extent such obligations are enforceable under the Bankruptcy Code or applicable non-bankruptcy law; and (ii) with respect to any debt instrument, if a claim arises from Debtor's failure to perform any non-monetary obligation as set forth in sections 1124(2)(C) and 1124(2)(D) of the Bankruptcy Code, payment of the dollar amount that compensates the Holder of such a Claim for any actual pecuniary loss incurred by such Holder as a result of any such failure and the dollar amount of the Claim that is established by the Holder's sworn declaration and accompanying admissible evidence filed with the Bankruptcy Court on or before the deadline ordered by the Court for the filing of objections to the Disclosure Statement.

**1.1.27. Debtor**

Paragon Pools, a Nevada corporation.

**1.1.28. Disallowed Claim**

Any Claim or portion thereof that has been disallowed by a Final Order of the Bankruptcy Court.

**1.1.29. Disclosure Statement**

The disclosure statement that relates to the Plan, including all exhibits and schedules thereto, as may be amended, supplemented or modified from time to time, that is prepared and distributed in accordance with, among other matters, sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable law.

**1.1.30. Disputed**

A Claim (including any Administrative Claim, Priority Claim or Secured Claim) or Equity Interest, or any portion thereof, that is: (a) listed in the Schedules as disputed, contingent, or unliquidated; or (b) subject to an objection interposed by Debtor, Reorganized Debtor, or any party-in-interest entitled to file and prosecute such objection in the Chapter 11 Case, if at such time such objection remains unresolved.

**1.1.31. Distribution**

Any distribution made by Debtor or Reorganized Debtor to the Holders of Allowed Claims or Allowed Equity Interests pursuant to the terms of the Plan.



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**1.1.32. Distribution Agent**

Reorganized Debtor, which shall hold and distribute certain consideration to the holders of unclassified Claims and Allowed Claims, as set forth herein.

**1.1.33. Distribution Record Date**

The Confirmation Date unless the Bankruptcy Court establishes a different date in the Confirmation Order.

**1.1.34. Effective Date**

The latest to occur of: (i) the first Business Day that is at least fourteen (14) days after the Confirmation Date and on which no stay of the Confirmation Order is in effect; and (ii) the first (1st) Business Day on which all of the conditions set forth in Section 9 have been satisfied or waived.

**1.1.35. Equity Interest**

Includes the following (i) any equity or other ownership interest in Debtor, including, but not limited to, all issued and outstanding or reserved for issuance, common stock, preferred stock, membership interests, warrants, options, or other ownership rights or rights to purchase or receive additional shares of stock or membership interests in Debtor, and/or any other instrument or document to the extent that it directly or indirectly evidences, creates or reserves any equity or ownership interest in Debtor giving rise to any Claim or Equity Interest, (ii) equity interests, including all membership interests together with any warrants, options, or contractual rights to purchase or acquire such equity interests at any time and all rights arising with respect thereto, and (iii) partnership, limited liability company or similar interest.

**1.1.36. Estate**

The estate of Debtor that was created by the commencement of the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

**1.1.37. Exculpated Parties**

Collectively, Reorganized Debtor and the Released Parties.

**1.1.38. Executory Contract**

A contract to which Debtor is a party that is subject to assumption or rejection pursuant to section 365 of the Bankruptcy Code.

**1.1.39. Federal Judgment Rate**

The rate of interest on judgments as provided for by 28 U.S.C. § 1961 as of the Confirmation Date.

**1.1.40. File**

To file with the Bankruptcy Court in the Chapter 11 Case.

**1.1.41. Filing Date**

November 28, 2016, the date on which Debtor commenced the Chapter 11 Case.

**1.1.42. Final Decree**

An order of the Bankruptcy Court closing the Chapter 11 Case pursuant to section 350 of the Bankruptcy Code.

**1.1.43. Final Order**

An order, judgment or other decree of the Bankruptcy Court and entered on the docket of such court: (a) that has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to

1 which (i) any right to appeal or seek certiorari, review, reargument, stay or rehearing has been  
 2 waived, or (ii) the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired  
 3 and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending; or (b) as  
 4 to which an appeal has been taken or petition for certiorari, review, reargument, stay or rehearing  
 5 has been filed, and (i) such appeal or petition for certiorari, review, reargument, stay or rehearing  
 6 has been resolved by the highest court to which the order or judgment was appealed or from which  
 7 certiorari, review, reargument, stay or rehearing was sought, and (ii) the time to appeal further or  
 8 seek certiorari, review, reargument, stay or rehearing has been waived or expired and no such further  
 9 appeal or petition for certiorari, review, reargument, stay or rehearing is pending; provided,  
 10 however, that no order or judgment shall fail to be a "Final Order" hereunder solely because of the  
 11 possibility that a motion pursuant to sections 502(j) or 1144 of the Bankruptcy Code, Rule 59 or 60  
 12 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be Filed with respect to such  
 13 order or judgment.

14 **1.1.44. General Unsecured Claim**

15 A Claim that is not secured by a charge against or interest in property in which the Estate has an  
 16 interest and is not an unclassified Claim, Administrative Claim, Secured Claim, Priority Tax Claim,  
 17 or Priority Non-Tax Claim. General Unsecured Claims shall also include all Claims arising under  
 18 section 502(g) of the Bankruptcy Code.

19 **1.1.45. Holder**

20 Any Person holding a Claim against or Equity Interest in Debtor.

21 **1.1.46. Impaired**

22 Means impairment within the meaning of section 1124 of the Bankruptcy Code.

23 **1.1.47. Initial Distribution Date**

24 The Business Day that is as soon as practicable after the Effective Date, when distributions under  
 25 the Plan shall commence, and when payments to Holders the Allowed Unsecured Claims will begin.

26 **1.1.48. Insider**

27 Shall include any person having such meaning as set forth in section 101(31) of the Bankruptcy  
 Code.

**1.1.49. Lien**

A charge against or interest in property to secure payment of a debt or performance of an obligation.

**1.1.50. Litigation Claims**

All rights, claims, torts, liens, liabilities, obligations, actions, causes of action, Avoidance Actions,  
 derivative actions, proceedings, debts, contracts, judgments, damages and demands whatsoever in  
 law or in equity, whether known or unknown, contingent or otherwise, that Debtor or the Estate may  
 have against any person.

**1.1.51. New Equity Interests**

The equity in Reorganized Debtor to be authorized, issued or reserved on the Effective Date  
 pursuant to the Plan, which shall constitute all of the direct or indirect equity of Reorganized Debtor.

**1.1.52. Operative Document**

Any contract, instrument, release, agreement or other document affecting the Chapter 11 Case or  
 providing the means for Plan implementation, including the Settlement Agreement.



1 **1.1.53. Periodic Distribution Date**

2 The first Business Day that is as soon as reasonably practicable occurring no later than  
3 approximately thirty (30) days after the Initial Distribution Date, and thereafter, the first Business  
4 Day that is as soon as reasonably practicable occurring no later than thirty (30) days after the  
5 immediately preceding Periodic Distribution Date.

6 **1.1.54. Permitted Encumbrances**

7 Includes the following: (i) Liens for ad valorem taxes not yet due and payable, (ii) easements,  
8 restrictions, conditions and limitations of record that affected the title to the Properties as of the  
9 Petition Date, (iii) any Liens securing Secured Claims that are reinstated or assumed by Debtor (as  
10 applicable), and (iv) liens arising in favor of any applicable authority pursuant to NRS chapter 318  
11 or other applicable law to secure water or sewer service, inspection and/or related fees.

12 **1.1.55. Person**

13 Any individual, corporation, partnership, limited liability company, joint venture, association, trust  
14 or organization, unincorporated organization or government, governmental agency, governmental  
15 unit or political subdivision, or any other entity.

16 **1.1.56. Petition Date**

17 November 28, 2016, the date on which Debtor filed its voluntary petition for relief under chapter 11  
18 of the Bankruptcy Code thereby commencing the Chapter 11 Case.

19 **1.1.57. Plan**

20 This chapter 11 plan of reorganization, including all Operative Documents referenced herein and all  
21 exhibits, supplements, appendices and schedules hereto or thereto, either in its present form or as  
22 the same may be altered, amended or modified from time to time pursuant to the Bankruptcy Code  
23 or Final Order.

24 **1.1.58. Priority Non-Tax Claim**

25 Any Claim, other than an Administrative Claim or Priority Tax Claim that is entitled to priority  
26 under section 507(a) of the Bankruptcy Code.

27 **1.1.59. Priority Tax Claims**

Any Claim that is entitled to priority under sections 502(i) or 507(a)(8) of the Bankruptcy Code.  
Priority Tax Claims do not include ad valorem property tax Claims if such Claims under applicable  
state law are Secured by a Lien on Debtor's Assets.

**1.1.60. Professional**

A Person: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 328  
and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the  
Effective Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code; or (b)  
awarded compensation and reimbursement by the Bankruptcy Court, pursuant to section 503(b) of  
the Bankruptcy Code.

**1.1.61. Professional Fees**

All reasonable fees and expenses incurred by Professionals and allowed by the Bankruptcy Court.

**1.1.62. Professional Fee Claim**

Any Claim for compensation or reimbursement of fees and expenses as may be requested by a  
Professional to the extent such Professional is required to apply to the Bankruptcy Court for payment



1 of such Claim pursuant to sections 326, 327, 328, 330 or 331 of the Bankruptcy Code and the terms  
2 of the Plan.

3 **1.1.63. Proof of Claim**

A Proof of Claim Filed against Debtor in the Chapter 11 Case.

4 **1.1.64. Pro Rata**

5 The proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed  
6 Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate  
7 amount of Allowed Claims in a particular Class and other Classes entitled to share in the same  
8 recovery as such Allowed Claim under the Plan.

9 **1.1.65. Record Date**

The Confirmation Date for the purpose of determining the Holders of Equity Interests.

10 **1.1.66. Released Parties**

11 Each of Debtor, Reorganized Debtor, the officers and directors of Debtor, and each of the foregoing  
12 entities subsidiaries, Affiliates, members, officers, directors, managers, controlling persons, agents,  
13 financial advisors, accountants, consultants, attorneys, employees, partners and representatives, in  
14 each case, only in their capacity as such and subject to the limitations set forth herein.

15 **1.1.67. Reorganized Debtor**

16 Debtor, or any successor thereto, by merger, consolidation, or otherwise, as reorganized pursuant to  
17 the Plan on or after the Effective Date.

18 **1.1.68. Representatives**

19 With respect to a given Person, its past and current directors, officers, shareholders, members,  
20 partners, employees, agents, attorneys, professionals, advisors, trustees, consultants, accountants,  
21 contractors and other representatives.

22 **1.1.69. Schedules**

23 The schedules of assets and liabilities, the list of Holders of Interests and the statements of financial  
24 affairs Filed by Debtor under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and  
25 all amendments and modifications thereto through the Confirmation Date.

26 **1.1.70. Secured**

27 When referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest,  
which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a  
Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code,  
to the extent of the value of the Creditor's interest in the Estates' interest in such property or to the  
extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the  
Bankruptcy Code; or (b) Allowed pursuant to the Plan as a secured Claim.

**1.1.71. Settlement Agreement**

The settlement agreement between Debtor, on the one hand, and Branch Banking and Trust  
Company, on the other hand, dated February 9, 2017, as approved by the Bankruptcy Court, such  
approval order and Settlement Agreement attached hereto as Exhibit 1.

**1.1.72. Unexpired Lease**

A lease of non-residential real property to which Debtor is a party that is subject to assumption or  
rejection pursuant to section 365 of the Bankruptcy Code.





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**1.1.73. Unimpaired**

With respect to a Claims or Interest, leaving unaltered the legal, equitable, and contractual rights to which such Claim or Interest entitles the Holder of such Claim or Interest.

**1.1.74. Unsecured Claim**

Any Claim that is neither Secured nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court as a Priority Tax Claim or Priority Non-Tax Claim.

**1.1.75. Vassallo**

Mr. Joseph M. Vassallo, the President and sole shareholder of Debtor.

**1.1.76. Voting Classes**

Class 2 and Class 3.

**1.1.77. Voting Deadline**

May 31, 2017, at 5:00 p.m. prevailing Pacific Time for all Holders of Claims, which is the date and time by which all Ballots must be received by Debtor in accordance with the Disclosure Statement Order, or such other date and time as may be established by the Bankruptcy Court with respect to any Voting Class.

**1.2. Rules of Interpretation**

Any term used in the Plan that is not defined in the Plan, either in this Article or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules. For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) to the extent a reference or description in the Plan to an Operative Document is inconsistent with the terms or conditions of that Operative Document, the terms and conditions of the Operative Document shall govern over the reference or description contained in the Plan; (c) any reference in the Plan to an existing document, schedule, Operative Document, or exhibit Filed or to be Filed means such document, schedule, Operative Document or exhibit as it may have been or may be amended, modified, or supplemented as of the Confirmation Date in accordance with the terms hereof; (d) unless otherwise specified in a particular reference, all references in the Plan to Sections, Articles, and exhibits are references to Sections, Articles, and exhibits of or to the Plan; (e) the words “herein”, “hereof”, “hereto”, “hereunder”, and others of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan; (f) the word “all” shall mean “any and all;” (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply, including that the terms “includes,” “shall include,” and “including” are not limiting; (h) reference to a pleading, request, or document being “Filed” means duly and properly filed with the Bankruptcy Court as reflected on the docket of the Bankruptcy Court; (i) all exhibits and schedules to the Plan are incorporated into the Plan, and shall be deemed to be included in the Plan, regardless of when they are Filed; (j) any service or notice provided for in the Plan shall be provided at the addresses specified herein; (k) except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent the exhibits or Operative Documents provide otherwise, the rights, duties and obligations under the Plan shall be governed, construed and enforced in accordance with the laws of the State of Nevada; and (l) to the extent a reference or description in the Disclosure Statement is inconsistent with the terms or conditions of the Plan or Operative Documents, the terms and conditions of the Plan or Operative Documents, as applicable, shall govern over the reference contained in the Disclosure Statement.





**1.3. Exhibits and Plan Schedules**

All exhibits and schedules attached to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

**2. TREATMENT OF UNCLASSIFIED CLAIMS****2.1. General**

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Claims against Debtor set forth in this Article 2 are not designated as Classes. The holders of such Claims are not entitled to vote on this Plan. The treatment of the Claims set forth below is consistent with the requirements of Section 1129(a)(9)(A) of the Bankruptcy Code.

**2.2. Treatment of Administrative Claims****2.2.1. Generally**

Each Allowed Administrative Claim shall be paid by Reorganized Debtor (or otherwise satisfied in accordance with its terms) upon the latest of: (i) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable; (ii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as practicable; and (iii) such date as the holder of such Claim and, prior to the Effective Date, Debtor, and after the Effective Date, Reorganized Debtor, shall agree upon. For the avoidance of doubt, notwithstanding anything to the contrary herein, Debtor or Reorganized Debtor, as the case may be, hereby reserve any and all defenses or offsets to challenge any Administrative Claims.

**2.2.2. Requests for Payment**

All requests for payment of Administrative Claims against Debtor and all final applications for allowance and disbursement of Professional Fees must be filed by the Administrative Claims Bar Date or the holders thereof shall be forever barred from asserting such Administrative Claims against Debtor and Reorganized Debtor. All applications for allowance of Professional Fees may be later amended to include any fees and costs incurred after the Confirmation Date.

**2.3. Priority Tax Claims**

Each Allowed Priority Tax Claim, if any, will be paid in full by Reorganized Debtor on the later of: (i) the fourteenth (14th) Business Day after the date on which an order allowing such Claim becomes a Final Order; or (ii) such other time as is agreed to by the holder of such Claim and Debtor prior to the Effective Date or Reorganized Debtor after the Effective Date.

**3. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS****3.1. Overview**

Pursuant to this Plan and in accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors and the holders of Equity Interests (except Administrative Claims and Priority Tax Claims) are placed in the Classes described below. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is classified in other Classes only to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Classes. A Claim or Equity Interest is also classified in a particular Class only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released or otherwise satisfied prior to the Effective Date. With respect to Classes of Claims described as unimpaired under the Plan, except as otherwise provided under this Plan, nothing shall affect the rights and legal and equitable defenses of Debtor and Reorganized Debtor regarding such Claims classified as unimpaired under this Plan, including but not

1 limited to, all rights in respect of legal and equitable defenses to setoff or recoupment against such  
2 Claims.

### 3.2. Summary of Classification

Class	Description	Treatment
Class 1	Priority Non-Tax Claims	Unimpaired. No Solicitation Required.
Class 2	BB&T Claim	Impaired. Solicitation Required.
Class 3	General Unsecured Claims	Impaired. Solicitation Required.
Class 4	Equity Interests in Debtor	Unimpaired. No Solicitation Required.

### 3.3. Classification and Treatment of Claims and Security Interests

#### 3.3.1. Class 1: Priority Non-Tax Claims

##### 3.3.1.1. Claims in Class

Class 1 consists of the Priority Claims against Debtor

##### 3.3.1.2. Treatment

The legal, equitable and contractual rights of the Holders of allowed Class 1 Claims are unaltered. Except to the extent that a Holder of an allowed Class 1 Claim (i) has been paid by Debtor prior to the effective date of this Plan, or (ii) otherwise agrees to different treatment, each Holder of an Allowed Class 1 Claim shall receive, in full and final satisfaction of such allowed Class 1 Claim, payment in full in cash on or as soon as reasonably practicable after (i) the effective date of the Plan, (ii) the date such allowed Class 1 Claim becomes Allowed or (iii) such other date as may be ordered by the Bankruptcy Court.

##### 3.3.1.3. Voting

Class 1 is an Unimpaired Class and is deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Holder of an Allowed Class 1 Claim is not entitled to vote to accept or reject the Plan.

#### 3.3.2. Class 2: BB&T Claim

##### 3.3.2.1. Claims in Class

Class 2 consists of the BB&T Claim.

##### 3.3.2.2. Treatment

Claims in Class 2 shall be afforded the treatment set forth in the Settlement Agreement.

##### 3.3.2.3. Voting

Class 2 is an Impaired Class. The Holder of an Allowed Class 2 Claim is entitled to vote to accept or reject the Plan.

#### 3.3.3. Class 3: General Unsecured Claims

##### 3.3.3.1. Claims in Class

Class 3 consists of the General Unsecured Claims against Debtor that are determined to be Allowed Claims as set forth herein.



**3.3.3.2. Treatment**

Except to the extent that a holder of an Allowed Class 3 Claim has (i) has been paid by Debtor prior to the Effective Date of this Plan, or (ii) otherwise agrees to different treatment, each Holder of an Allowed Class 3 Claim shall receive, in full and final satisfaction of such allowed Class 3 Claim, payments totaling 100% of its Allowed Class 3 Claim, such payments to be made in twelve equal monthly installments commencing on the Initial Distribution Date and continuing thereafter on the Periodic Distribution Date.

**3.3.3.3. Voting**

Class 3 is an Impaired Class. The Holder of an Allowed Class 3 Claim is entitled to vote to accept or reject the Plan.

**3.3.4. Class 4: Equity Interests in Debtor****3.3.4.1. Claims in Class**

Class 4 consists of all Equity Interests.

**3.3.4.2. Treatment**

On the Effective Date, Debtor's Equity Interest Holders will retain their Equity Interests. Accordingly, on the Effective Date of the Plan, Debtor's Equity Interest Holders will receive their Pro Rata share of Equity Interests in Reorganized Debtor.

**3.3.4.3. Voting**

Class 4 is an Unimpaired Class and is deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Holder of an Allowed Class 4 Claim is not entitled to vote to accept or reject the Plan.

**3.4. Acceptance by Impaired Classes of Claims**

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

**3.5. Elimination of Vacant Classes**

Any Class of Claims that is not occupied as of the date of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**4. PLAN IMPLEMENTATION****4.1. Plan Implementation Occurring on Effective Date**

On the Effective Date, without any further action by Debtor or Reorganized Debtor, all of Debtor's assets shall vest in Reorganized Debtor, subject to the terms and conditions of this Plan, and the following events shall occur in the following sequence:

**4.1.1. Reorganized Debtor**

On and after the Effective Date, Reorganized Debtor shall continue to exist as a separate entity in accordance with applicable law, and shall retain all licenses necessary to its operations that existed as of the Petition Date. Debtor's existing articles of incorporation, bylaws, corporate resolutions (as

1 amended, supplemented or modified) will continue in effect for Reorganized Debtor following the  
 2 Effective Date, except to the extent such documents are amended in conformance with this Plan or  
 by proper corporate action after the Effective Date.

3 **4.1.2. Modifications to Loan Documents**

4 On the Effective Date, the modifications set forth herein, if any, with respect to the Secured Claims  
 5 and their associated loan documents shall be deemed effective and fully enforceable. All potential  
 6 discrepancies or inconsistencies between any loan documents and this Plan shall be construed and  
 resolved in favor of the effectuation and implementation of the provisions and intentions of this  
 Plan.

7 **4.1.3. Prohibition of Non-Voting Equity Interests**

8 Reorganized Debtor's articles of incorporation and/or bylaws shall be amended as necessary to  
 9 satisfy the provisions of this Plan and the Bankruptcy Code, which shall include, among other  
 matters, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance  
 of non-voting equity interests, but only to the extent required by the Bankruptcy Code.

10 **4.2. Notice of Effectiveness**

11 When all of the steps contemplated by Article 4.1 have been completed, Reorganized Debtor shall file  
 12 with the Bankruptcy Court and serve upon all Creditors and all potential holders of Administrative  
 Claims known to Reorganized Debtor (whether or not disputed), a Notice of Effective Date of Plan. The  
 Notice of Effective Date of Plan shall include notice of the Administrative Claim Bar Date.

13 **4.3. Operations of Reorganized Debtor**

14 From the Effective Date until the dissolution of Reorganized Debtor, Debtor's present management,  
 15 including specifically Vassallo as president and qualified person, shall be the sole officer of Reorganized  
 Debtor with full authority to make all decisions and take all actions on behalf of Reorganized Debtor to  
 effectuate this Plan.

16 **4.4. No Governance Action Required**

17 As of the Effective Date: (i) the adoption, execution, delivery and implementation or assignment of all  
 18 contracts, leases, instruments, releases and other agreements related to or contemplated by this Plan; and  
 (ii) the other matters provided for under or in furtherance of this Plan involving corporate action to be  
 taken by or required of Debtor shall be deemed to have occurred and be effective as provided herein,  
 19 and shall be authorized and approved in all respects without further order of the Bankruptcy Court or  
 any requirement of further action by the members or managers of Debtor.

20 **4.5. Filing with Nevada Secretary of State**

21 To the extent applicable, in accordance with NRS 78.622, on the Effective Date a certified copy of this  
 22 Plan and the Confirmation Order shall be filed with the Nevada Secretary. To the extent applicable, from  
 the Confirmation Date until the Effective Date, Debtor or Reorganized Debtor as the case may be is  
 authorized and directed to take any action or carry out any proceeding necessary to effectuate this Plan  
 pursuant to NRS Chapter 78.

24 **5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

25 **5.1. Assumption and Rejection of Executory Contracts and Unexpired Leases**

26 **5.1.1. Assumption of Executory Contracts and Unexpired Leases**

27 Except as otherwise set forth herein, each Executory Contract or Unexpired Lease shall be deemed  
 automatically assumed in accordance with the provisions and requirements of sections 365 and 1123



1 of the Bankruptcy Code as of the Effective Date, unless any such Executory Contract or Unexpired  
2 Lease:

- 3 (a) has been previously rejected by Debtor by Final Order of the Bankruptcy Court;
- 4 (b) has been rejected by Debtor by order of the Bankruptcy Court as of the  
5 Effective Date, which order becomes a Final Order after the Effective Date;
- 6 (c) is the subject of a motion to reject pending as of the Effective Date;
- 7 (d) is listed on the schedule of "Rejected Executory Contracts and Unexpired  
8 Leases" in the Plan Supplement; or
- 9 (e) is otherwise rejected pursuant to the terms herein.

10 The Confirmation Order shall constitute an order of the Bankruptcy Court approving such  
11 assumptions pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.  
12 Debtor reserves the right to amend the schedule of Rejected Executory Contracts and Unexpired  
13 Leases at any time before the Effective Date.

14 **5.1.2. Approval of Assumptions**

15 The Confirmation Order shall constitute an order of the Bankruptcy Court approving the  
16 assumptions described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code  
17 as of the Effective Date. Any counterparty to an Executory Contract or Unexpired Lease that fails  
18 to object timely to the proposed assumption of such Executory Contract or Unexpired Lease will be  
19 deemed to have consented to such assumption. Each Executory Contract and Unexpired Lease  
20 assumed pursuant to this section or by any order of the Bankruptcy Court, which has not been  
21 assigned to a third party prior to the Effective Date, shall revert in and be fully enforceable by  
22 Reorganized Debtor in accordance with its terms, except as such terms are modified by the  
23 provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its  
24 assumption under applicable federal law.

25 **5.1.3. Assignment of Executory Contracts and Unexpired Leases**

26 In the event of an assignment of an Executory Contract or Unexpired Lease, at least ten (10) days  
27 prior to the Confirmation Hearing, Debtor shall serve upon counterparties to such Executory  
Contracts and Unexpired Leases, a notice of the proposed assumption and assignment, which will:  
(a) list the applicable cure amount, if any; (b) identify the party to which the Executory Contract or  
Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d)  
explain the process by which related disputes will be resolved by the Bankruptcy Court.  
Additionally, Debtor shall file with the Bankruptcy Court a list of such Executory Contracts and  
Unexpired Leases to be assigned and the proposed cure amounts. Any applicable cure amounts shall  
be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount  
in Cash on the Effective Date or on such other terms as the parties to such Executory Contracts or  
Unexpired Leases may otherwise agree.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed  
assignment or any related cure amount must be filed, served and actually received by Debtor, and  
their counsel, Andersen Law Firm, Ltd., at least five (5) days prior to the Confirmation Hearing.  
Any counterparty to an Executory Contract and Unexpired Lease that fails to object timely to the  
proposed assignment or cure amount will be deemed to have consented to such assignment of its  
Executory Contract or Unexpired Lease. The Confirmation Order shall constitute an order of the



1 Bankruptcy Court approving any proposed assignments of Executory Contracts or Unexpired  
2 Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

3 In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of any assignee  
4 to provide “adequate assurance of future performance” (within the meaning of section 365 of the  
5 Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assigned or (c) any other  
6 matter pertaining to assignment, the applicable cure payments required by section 365(b)(1) of the  
7 Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute  
8 and approving the assignment. If an objection to assignment or cure amount is sustained by the  
9 Bankruptcy Court, Reorganized Debtor in their sole option, may elect to reject such Executory  
10 Contract or Unexpired Lease in lieu of assuming and assigning it.

11 **5.1.4. Rejection of Executory Contracts or Unexpired Leases**

12 All Executory Contracts and Unexpired Leases listed on the schedule of “Rejected Executory  
13 Contracts and Unexpired Leases” in the Plan Supplement shall be deemed rejected as of the  
14 Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving  
15 the rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code  
16 as of the Effective Date.

17 **5.2. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases**

18 All proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or  
19 Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the  
20 Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court  
21 (including the Confirmation Order) approving such rejection.

22 Any Entity that is required to file a Proof of Claim arising from the rejection of an Executory Contract  
23 or an Unexpired Lease that fails to timely do so shall be forever barred, estopped, and enjoined from  
24 asserting such Claim, and such Claim shall not be enforceable, against Debtor, Reorganized Debtor, or  
25 its Estate and property, and Debtor, Reorganized Debtor, and its Estate and property shall be forever  
26 discharged from any and all indebtedness and liability with respect to such Claim unless otherwise  
27 ordered by the Bankruptcy Court or as otherwise provided herein.

18 **5.3. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases**

19 Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to  
20 the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the  
21 default amount in Cash on the Effective Date or on such other terms as the parties to such Executory  
22 Contracts or Unexpired Leases may otherwise agree. At least ten (10) days prior to the Confirmation  
23 Hearing, Debtor shall serve upon counterparties to such Executory Contracts and Unexpired Leases, a  
24 notice of the proposed assumption, which will: (i) list the applicable cure amount, if any; (ii) describe  
25 the procedures for filing objections thereto; and (iii) explain the process by which related disputes will  
26 be resolved by the Bankruptcy Court; additionally, Debtor shall file with the Bankruptcy Court a list of  
27 such Executory Contracts and Unexpired Leases to be assumed and the proposed cure amounts.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption  
or related cure amount must be filed, served and actually received by Debtor, and their counsel,  
Andersen Law Firm, Ltd., at least five (5) days prior to the Confirmation Hearing. Any counterparty to  
an Executory Contract and Unexpired Lease that fails to object timely to the proposed assumption or  
cure amount will be deemed to have assented to such matters. In the event of a dispute regarding (i) the  
amount of any payments to cure such a default, (ii) the ability of Reorganized Debtor or any assignee  
to provide “adequate assurance of future performance” (within the meaning of section 365 of the  
Bankruptcy Code) under the contract or lease to be assumed or (3) any other matter pertaining to  
assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made





1 following the entry of a Final Order or orders resolving the dispute and approving the assumption. If an  
 2 objection to Cure is sustained by the Bankruptcy Court, Reorganized Debtor in its sole option, may elect  
 3 to reject such executory contract or unexpired lease in lieu of assuming it.

4 **5.4. Contracts and Leases Entered Into After the Filing Date**

5 Contracts and leases entered into after the Filing Date by Debtor, including any Executory Contracts  
 6 and Unexpired Leases assumed by such Debtor, will be performed by Debtor or Reorganized Debtor  
 7 liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including  
 8 any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry  
 9 of the Confirmation Order.

10 **6. PROVISIONS GOVERNING DISTRIBUTIONS**

11 **6.1. Distributions for Claims Allowed as of the Effective Date**

12 Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties,  
 13 Reorganized Debtor shall make initial distributions under the Plan on account of Claims Allowed before  
 14 the Effective Date on or as soon as practicable after the Initial Distribution Date.

15 **6.2. Distributions on Account of Claims Allowed After the Effective Date**

16 **6.2.1. Payments and Distributions on Disputed Claims**

17 Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties,  
 18 distributions under the Plan on account of a Disputed Claim that becomes an Allowed Claim after  
 19 the Effective Date shall be made on the first Periodic Distribution Date after the Disputed Claim  
 20 becomes an Allowed Claim.

21 **6.2.2. Special Rules for Distributions to Holders of Disputed Claims**

22 Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the  
 23 relevant parties, no partial payments and no partial distributions shall be made with respect to a  
 24 Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved  
 25 by settlement or Final Order. In the event that there are Disputed Claims requiring adjudication and  
 26 resolution, Reorganized Debtor shall establish appropriate reserves for potential payment of such  
 27 Claims.

**6.3. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

**6.3.1. Record Date for Distributions**

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for  
 making distributions shall instead be authorized and entitled to recognize only those Holders of  
 Claims listed on the Claims Register as of the close of business on the Distribution Record Date. If  
 a Claim is transferred twenty (20) or fewer days before the Distribution Record Date, the  
 Distribution Agent shall make distributions to the transferee only to the extent practical and, in any  
 event, only if the relevant transfer form contains an unconditional and explicit certification and  
 waiver of any objection to the transfer by the transferor.

**6.3.2. Delivery of Distributions in General**

Except as otherwise provided herein, Debtor or Reorganized Debtor, as applicable, shall make  
 distributions to Holders of Allowed Claims at the address for each such Holder as indicated on  
 Debtor's records as of the date of any such distribution; provided, however, that the manner of such  
 distributions shall be determined at the discretion of Debtor or Reorganized Debtor, as applicable;



1 and provided further, that the address for each Holder of an Allowed Claim shall be deemed to be  
2 the address set forth in any Proof of Claim Filed by that Holder.

3 **6.3.3. Distribution Agent**

4 Reorganized Debtor shall be responsible for making all Distributions described in this Plan as  
5 Distribution Agent.

6 **6.3.4. Minimum Distributions**

7 Notwithstanding anything herein to the contrary, Reorganized Debtor shall not be required to make  
8 distributions or payments of less than \$10 (whether Cash or otherwise) and shall not be required to  
9 make partial distributions or payments of fractions of dollars. Whenever any payment or distribution  
10 of a fraction of a dollar or share of New Equity Interests under the Plan would otherwise be called  
11 for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole  
12 dollar or share of New Membership Interests (up or down), with half dollars and half shares of New  
13 Equity Interests or less being rounded down.

14 No Distribution Agent shall have any obligation to make a distribution on account of an Allowed  
15 Claim if: (a) the aggregate amount of all distributions authorized to be made on the Periodic  
16 Distribution Date in question is or has an economic value less than \$5,000, unless such distribution  
17 is a final distribution; or (b) the amount to be distributed to the specific Holder of an Allowed Claim  
18 on such Periodic Distribution Date does not constitute a final distribution to such Holder and is or  
19 has an economic value less than \$10, which shall be treated as an undeliverable distribution under  
20 Article 6.3.5 below.

21 **6.3.5. Undeliverable Distributions**

22 **6.3.5.1. Holding of Certain Undeliverable Distributions**

23 If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to  
24 the Distribution Agent as undeliverable, no further distributions shall be made to such Holder  
25 unless and until the Distribution Agent is notified in writing of such Holder's then current  
26 address, at which time all currently due and missed distributions shall be made to such Holder  
27 on the next Periodic Distribution Date. Undeliverable distributions shall remain in the  
possession of Reorganized Debtor, subject to the provisions of Article 6.3.5.2 hereof, until such  
time as any such distributions become deliverable. Undeliverable distributions shall not be  
entitled to any additional interest, dividends, or other accruals of any kind on account of their  
distribution being undeliverable.

**6.3.5.2. Failure to Claim Undeliverable Distributions**

No later than 210 days after the Effective Date, Reorganized Debtor shall file with the  
Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be  
maintained and updated periodically in the sole discretion of Reorganized Debtor for as long as  
the Chapter 11 Case remains open. Any Holder of an Allowed Claim, irrespective of when a  
Claim becomes an Allowed Claim, that does not notify Reorganized Debtor of such Holder's  
then current address in accordance herewith within the latest of (i) one year after the Effective  
Date, (ii) 60 days after the attempted delivery of the undeliverable distribution and (iii) 180 days  
after the date such Claim becomes an Allowed Claim, shall have its Claim for such  
undeliverable distribution discharged and shall be forever barred, estopped, and enjoined from  
asserting any such Claim against Reorganized Debtor or its property. In such cases, (i) any Cash  
held for distribution on account of Allowed Claims shall be redistributed to Holders of Allowed  
Claims in the applicable Class on the next Periodic Distribution Date and (ii) any Cash held for  
distribution to other creditors shall be deemed unclaimed property under section 347(b) of the  
Bankruptcy Code and become property of Reorganized Debtor, free of any Claims of such



1 Holder with respect thereto. Nothing contained herein shall require Reorganized Debtor to  
2 attempt to locate any Holder of an Allowed Claim.

3 **6.3.5.3. Failure to Present Checks**

4 Checks issued by the Distribution Agent on account of Allowed Claims shall be null and void  
5 if not negotiated within 180 days after the issuance of such check. In an effort to ensure that all  
6 Holders of Allowed Claims receive their allocated distributions, no later than 180 days after the  
7 issuance of such checks, Reorganized Debtor shall File with the Bankruptcy Court a list of the  
8 Holders of any un-negotiated checks. This list shall be maintained and updated periodically in  
9 the sole discretion of Reorganized Debtor for as long as the Chapter 11 Case remains open.  
10 Requests for reissuance of any check shall be made directly to the Distribution Agent by the  
11 Holder of the relevant Allowed Claim with respect to which such check originally was issued.  
12 Any Holder of an Allowed Claim holding an un-negotiated check that does not request  
13 reissuance of such un-negotiated check within 240 days after the date of mailing or other  
14 delivery of such check shall have its Claim for such un-negotiated check discharged and be  
15 discharged and forever barred, estopped, and enjoined from asserting any such Claim against  
16 Reorganized Debtor or its property. In such cases, any Cash held for payment on account of  
17 such Claims shall be property of Reorganized Debtor, free of any Claims of such Holder with  
18 respect thereto. Nothing contained herein shall require Reorganized Debtor to attempt to locate  
19 any Holder of an Allowed Claim.

20 **6.4. Compliance with Tax Requirements/Allocations**

21 In connection with the Plan, to the extent applicable, Reorganized Debtor shall comply with all tax  
22 withholding and reporting requirements imposed on them by any governmental unit, and all distributions  
23 pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any  
24 provision in the Plan to the contrary, Reorganized Debtor shall be authorized to take all actions necessary  
25 or appropriate to comply with such withholding and reporting requirements, including liquidating a  
26 portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable  
27 withholding taxes, withholding distributions pending receipt of information necessary to facilitate such  
distributions or establishing any other mechanisms they believe are reasonable and appropriate.  
Reorganized Debtor reserve the right to allocate all distributions made under the Plan in compliance  
with all applicable liens and encumbrances.

For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to  
the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on  
such Claims.

**6.5. Timing and Calculation of Amounts to be Distributed**

On the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective Date, on the  
date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each  
Holder of an Allowed Claim against Debtor shall receive the full amount of the distributions that the  
Plan provides for Allowed Claims in the applicable Class. Except as otherwise provided herein, Holders  
of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for herein,  
regardless of whether such distributions are delivered on or at any time after the Effective Date.

**6.6. Setoffs**

Debtor and Reorganized Debtor may withhold (but not setoff except as set forth below) from the  
distributions called for hereunder on account of any Allowed Claim an amount equal to any claims,  
equity interests, rights, and Causes of Action of any nature that Debtor or Reorganized Debtor may hold  
against the Holder of any such Allowed Claim. In the event that any such claims, equity interests, rights,  
and Causes of Action of any nature that Debtor or Reorganized Debtor may hold against the Holder of  
any such Allowed Claim are adjudicated by Final Order or otherwise resolved, Debtor may, pursuant to



1 section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed  
 2 Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any  
 3 distribution is made on account of such Allowed Claim), the amount of any adjudicated or resolved  
 4 claims, equity interests, rights, and Causes of Action of any nature that Debtor or Reorganized Debtor  
 5 may hold against the Holder of any such Allowed Claim, but only to the extent of such adjudicated or  
 6 resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder  
 7 shall constitute a waiver or release by Debtor or Reorganized Debtor of any such claims, equity interests,  
 8 rights, and Causes of Action that Debtor or Reorganized Debtor may possess against any such Holder,  
 9 except as specifically provided herein.

## 7. PROCEDURES FOR RESOLVING DISPUTED CLAIMS

### 7.1. Resolution of Disputed Claims

#### 7.1.1. Allowance of Claims

8 After the Effective Date, Reorganized Debtor shall have and shall retain any and all rights and  
 9 defenses of Debtor with respect to any Claim, except with respect to any Claim deemed Allowed  
 10 under the Plan. Except as expressly provided in the Plan or in any order entered in the Chapter 11  
 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim  
 12 shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or  
 13 the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including, without  
 14 limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim. All settled claims  
 15 approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court pursuant to  
 16 Bankruptcy Rule 9019 or otherwise shall be binding on all parties.

#### 7.1.2. Prosecution of Objections to Claims

14 After the Confirmation Date, Debtor or Reorganized Debtor, as applicable, shall have the exclusive  
 15 authority to File objections to Claims, settle, compromise, withdraw, or litigate to judgment  
 16 objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise;  
 17 provided, however, this provision shall not apply to Professional Fee Claims. From and after the  
 18 Effective Date, Reorganized Debtor may settle or compromise any Disputed Claim without any  
 19 further notice to or action, order or approval of the Bankruptcy Court. Reorganized Debtor shall  
 20 have the sole authority to administer and adjust the Claims Register to reflect any such settlements  
 21 or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

#### 7.1.3. Claims Estimation

19 After the Confirmation Date, Debtor or Reorganized Debtor, as applicable, may, at any time, request  
 20 that the Bankruptcy Court estimate (i) any Disputed Claim pursuant to applicable law and (ii) any  
 21 contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section  
 22 502(c) of the Bankruptcy Code, regardless of whether Debtor or Reorganized Debtor has previously  
 23 objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the  
 24 Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed  
 25 Claim, contingent Claim or unliquidated Claim, including during the litigation concerning any  
 26 objection to any Claim or during the pendency of any appeal relating to any such objection.  
 27 Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the  
 Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be  
 deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. All of  
 the aforementioned Claims and objection, estimation and resolution procedures are cumulative and  
 not exclusive of one another. Claims may be estimated and subsequently compromised, settled,  
 withdrawn or resolved by any mechanism approved by the Bankruptcy Court.



**7.1.4. Expungement or Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied or superseded may be expunged on the Claims Register by Reorganized Debtor, and any Claim that has been amended may be adjusted thereon by Reorganized Debtor, in both cases without a claims objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

**7.1.5. Deadline to File Objections to Claims**

Any objections to Claims shall be Filed no later than the Claim Objection Deadline.

**7.2. Disallowance of Claims**

All Claims of any Entity from which property is sought by Debtor or Reorganized Debtor under section 542, 543, 550 or 553 of the Bankruptcy Code or that Debtor or Reorganized Debtor alleges is a transferee of a transfer that is avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code shall be disallowed if (i) the Entity, on the one hand, and Debtor or Reorganized Debtor, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code and (ii) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

**EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM AND PROOFS OF INTEREST FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS AND EQUITY INTERESTS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS AND EQUITY INTERESTS, UNLESS SUCH LATE PROOF OF CLAIM OR EQUITY INTEREST IS DEEMED TIMELY FILED BY A BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (1) THE CONFIRMATION HEARING AND (2) 45 DAYS AFTER THE APPLICABLE CLAIMS BAR DATE.**

**7.3. Amendments to Claims**

On or after the Effective Date, except as otherwise provided herein, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or Reorganized Debtor, and, to the extent such prior authorization is not received, any such new or amended Claim Filed shall be deemed disallowed and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

**8. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

**8.1. Conditions Precedent to Confirmation**

It shall be a condition to Confirmation hereof that all provisions, terms and conditions hereof are approved in the Confirmation Order.

**8.2. Conditions Precedent to Consummation**

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article 8.3 hereof:

- (a) The Plan and all Plan Supplement documents, including any amendments, modifications or supplements thereto, shall be reasonably acceptable to Debtor.
- (b) The Confirmation Order shall have been entered and become a Final Order in a form and in substance reasonably satisfactory to Debtor. The Confirmation Order shall



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1 provide that, among other things, Debtor or Reorganized Debtor, as appropriate, is  
 2 authorized and directed to take all actions necessary or appropriate to consummate the  
 3 Plan, including, without limitation, entering into, implementing and consummating the  
 contracts, instruments, releases, leases, indentures and other agreements or documents  
 created in connection with or described in the Plan.

- 4 (c) All actions, documents, certificates and agreements necessary to implement this Plan  
 5 shall have been effected or executed and delivered to the required parties and, to the  
 6 extent required, Filed with the applicable governmental units in accordance with  
 applicable laws.

7 **8.3. Waiver of Conditions**

The conditions to Confirmation of the Plan and to Consummation of the Plan set forth in this Article 8  
 8 may be waived by Debtor without notice, leave, or order of the Bankruptcy Court or any formal action  
 other than proceeding to confirm or consummate the Plan.

9 **8.4. Effect of Non-Occurrence of Conditions to Consummation**

10 If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and  
 nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any  
 11 claims by or Claims against or Equity Interests in Debtor; (ii) prejudice in any manner the rights of  
 Debtor, any Holders, or any other Entity; or (iii) constitute an admission, acknowledgment, offer or  
 12 undertaking by Debtor, any Holders or any other Entity in any respect.

13 **9. TITLE TO PROPERTY; DISCHARGE; INJUNCTION**

14 **9.1. Vesting of Assets**

15 Subject to the provisions of this Plan, the Assets shall be transferred to and revested in Reorganized  
 Debtor on the Effective Date. As of the Effective Date, all such property shall be free and clear of all  
 16 Liens, Claims and Equity Interests except as otherwise provided herein.

17 **9.2. Discharge of Claims**

18 Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except  
 as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or  
 document created pursuant to the Plan, the Distributions, rights and treatment that are provided in the  
 19 Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of  
 Claims, Equity Interests and causes of action of any nature whatsoever, including any interest accrued  
 20 on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against,  
 liabilities of, Liens on, obligations of, rights against, and Equity Interests in, Debtor, Reorganized  
 Debtor, or any of its assets or properties, regardless of whether any property shall have been distributed  
 or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands,  
 21 liabilities and causes of action that arose before the Effective Date, any liability to the extent such Claims  
 or Equity Interests relate to services performed by employees of Debtor prior to the Effective Date and  
 that arise from a termination of employment, any contingent or noncontingent liability on account of  
 22 representations or warranties issued on or before the Effective Date and all debts of the kind specified  
 in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of  
 Claim or Equity Interest based upon such debt, right or Equity Interest is filed or deemed filed pursuant  
 23 to section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such debt, right or  
 Equity Interest is Allowed pursuant to Section 502 of the Bankruptcy Code; or (iii) the Holder of such  
 24 a Claim or Equity Interest has accepted the Plan. Any default by Debtor or its Affiliates and Insiders  
 with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing  
 25 of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a  
 26  
 27



1 judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date  
2 occurring.

### 3 **9.3. Release of Liens**

4 Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or  
5 document created pursuant to the Plan, on the Effective Date and concurrently with the applicable  
6 Distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the  
7 portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust,  
8 Liens, pledges or other security interests against any property of the Estate shall be fully released and  
9 discharged, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens,  
10 pledges or other security interests shall revert to Reorganized Debtor and its successors and assigns.

### 11 **9.4. Releases by Debtor**

12 Pursuant to Section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided  
13 in the Plan, for good and valuable consideration, including the service of the Released Parties to  
14 facilitate the expeditious reorganization of Debtor and the implementation of the restructuring  
15 contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed  
16 released and discharged by Debtor, Reorganized Debtor and the Estate from any and all Claims,  
17 obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including  
18 any derivative Claims asserted or assertable on behalf of Debtor, whether known or unknown,  
19 foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that Debtor,  
20 Reorganized Debtor, the Estate, or its Affiliates would have been legally entitled to assert in their  
21 own right (whether individually or collectively) or on behalf of the Holder of any Claim or Equity  
22 Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in  
23 part, Debtor, the Chapter 11 Case, Debtor's restructuring, the subject matter of, or the  
24 transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the  
25 business or contractual arrangements between Debtor and any Released Party, the restructuring  
26 of Claims and Equity Interests prior to or in the Chapter 11 Case, the negotiation, formulation or  
27 preparation of the Plan, the Disclosure Statement or related agreements, instruments or other  
documents, upon any other act or omission, transaction, agreement, event or other occurrence  
taking place on or before the Confirmation Date, other than Claims or liabilities arising out of or  
relating to any act or omission of a Released Party that constitutes willful misconduct or gross  
negligence to the extent such act or omission is determined by a Final Order to have constituted  
willful misconduct or gross negligence. The foregoing release shall not apply to any express  
contractual or financial obligations or any right or obligations arising under or that is part of the  
Plan or any agreements entered into pursuant to, in connection with or contemplated by the Plan.

### 28 **9.5. Releases by Holders of Claims and Equity Interests**

29 As of the Effective Date, each Holder of a Claim or an Equity Interest shall be deemed to have  
30 conclusively, absolutely, unconditionally, irrevocably and forever released and discharged  
31 Debtor, Reorganized Debtor, and the Released Parties from any and all Claims, Equity Interests,  
32 obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including  
33 any derivative Claims asserted on behalf of Debtor, whether known or unknown, foreseen or  
34 unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have  
35 been legally entitled to assert (whether individually or collectively), based on or relating to, or in  
36 any manner arising from, in whole or in part, Debtor, Debtor's restructuring, the Chapter 11  
37 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Equity  
38 Interest that is treated in the Plan, the business or contractual arrangements between Debtor and  
39 any Released Party, the restructuring of Claims and Equity Interests prior to or during the  
40 Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure  
41 Statement, or related agreements, instruments or other documents, upon any other act or  
42 omission, transaction, agreement, event or other occurrence taking place on or before the





1 Confirmation Date, other than Claims or liabilities arising out of or relating to any act or omission  
 2 of a Released Party that constitutes willful misconduct or gross negligence to the extent such act  
 3 or omission is determined by a Final Order to have constituted willful misconduct or gross  
 4 negligence. Notwithstanding anything to the contrary in the foregoing, the release set forth above  
 5 does not release any post-Effective Date obligations of any party under the Plan or any document,  
 6 instrument or agreement executed to implement the Plan.

#### 9.6. Injunction

5 Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan,  
 6 all Entities who have held, hold or may hold Claims or Equity Interests that have been released,  
 7 discharged, or exculpated pursuant to the Plan, are permanently enjoined, from and after the  
 8 Effective Date, from taking any of the following actions against, as applicable, Debtor,  
 9 Reorganized Debtor, or the Released Parties: (i) commencing or continuing in any manner any  
 10 action or other proceeding of any kind on account of, in connection with or with respect to any  
 11 such Claims or Equity Interests; (ii) enforcing, attaching, collecting or recovering by any manner  
 12 or means any judgment, award, decree or order against Debtor, Reorganized Debtor, or the  
 13 Released Parties on account of or in connection with or with respect to any such Claims or Equity  
 14 Interests; (iii) creating, perfecting or enforcing any encumbrance of any kind against Debtor,  
 15 Reorganized Debtor, or the Released Parties or the property or estate of Debtor, Reorganized  
 16 Debtor, or the Released Parties on account of or in connection with or with respect to any such  
 17 Claims or Equity Interests; (iv) asserting any right of setoff, subrogation or recoupment of any  
 18 kind against any obligation due from Debtor, Reorganized Debtor, or the Released Parties or  
 19 against the property or Estate of Debtor, Reorganized Debtor, or the Released Parties on account  
 20 of or in connection with or with respect to any such Claims or Equity Interests unless such Holder  
 21 has filed a motion requesting the right to perform such setoff on or before the Confirmation Date,  
 22 and notwithstanding an indication in a Proof of Claim or Equity Interest or otherwise that such  
 23 Holder asserts, has or intends to preserve any right of setoff pursuant to section 553 of the  
 24 Bankruptcy Code or otherwise; and (v) commencing or continuing in any manner any action or  
 25 other proceeding of any kind on account of, in connection with or with respect to any such Claims  
 26 or Equity Interests released or settled pursuant to the Plan.

#### 9.7. Exculpation

17 Upon and effective as of the Effective Date, Debtor and its directors, officers, employees, attorneys,  
 18 and other professional advisors and agents will be deemed to have solicited acceptances of the  
 19 Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code,  
 20 including section 1125(e) of the Bankruptcy Code. Except with respect to any acts or omissions  
 21 expressly set forth in and preserved by the Plan, the Disclosure Statement or related documents,  
 22 the Exculpated Parties shall neither have nor incur any liability to any Entity for any prepetition  
 23 or postpetition act taken or omitted to be taken in connection with, or arising from or relating in  
 24 any way to, the Chapter 11 Case, including the operation of Debtor's businesses during the  
 25 pendency of the Chapter 11 Case; formulating, negotiating, preparing, disseminating,  
 26 implementing and/or effecting the Disclosure Statement and the Plan (including any related  
 27 contract, instrument, release or other agreement or document created or entered into in  
 connection therewith); the solicitation of votes for the Plan and the pursuit of confirmation and  
 consummation of the Plan; the administration of the Plan and/or the property to be distributed  
 under the Plan; and any other prepetition or postpetition act taken or omitted to be taken in  
 connection with or in contemplation of the restructuring of Debtor. In all respects, each  
 Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its  
 respective duties under, pursuant to or in connection with the Plan. Notwithstanding anything  
 herein to the contrary, nothing in the foregoing "Exculpation" shall (i) exculpate any person or  
 entity from any liability resulting from any act or omission constituting fraud, willful misconduct,  
 gross negligence, criminal conduct, malpractice, or (ii) limit the liability of the professionals of the



1 **Exculpated Parties to their respective clients pursuant to Nevada Rule of Professional Conduct**  
2 **1.8(h)(1).**

3 **10. SETTLEMENT AND PRESERVATION OF RIGHTS OF ACTION**

4 **10.1. Compromise and Settlement**

5 Notwithstanding anything contained herein to the contrary, the allowance, classification, and treatment  
6 of all Allowed Claims and their respective distributions and treatments hereunder, takes into account the  
7 relative priority and rights of the Claims and the Equity Interests in each Class in connection with any  
8 contractual, legal and equitable subordination rights relating thereto whether arising under general  
9 principles of equitable subordination, section 510(b) and (c) of the Bankruptcy Code or otherwise. As  
10 of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising  
11 under general principles of equitable subordination, section 510(b) and (c) of the Bankruptcy Code or  
12 otherwise, relating to the allowance, classification and treatment of all Allowed Claims and their  
13 respective distributions and treatments hereunder are settled, compromised, terminated and released  
14 pursuant hereto.

15 The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the  
16 settlements reflected in the Plan are (i) in the best interests of Debtor, their estate and all Holders of  
17 Claims and Equity Interests, (ii) fair, equitable and reasonable, (iii) made in good faith and (iv) approved  
18 by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019.  
19 The Confirmation Order shall approve the releases by all Entities of all such contractual, legal and  
20 equitable subordination rights or Causes of Action that are satisfied, compromised and settled pursuant  
21 hereto.

22 In accordance with the provisions of this Plan and pursuant to section 363 of the Bankruptcy Code and  
23 Bankruptcy Rule 9019, without any further notice to or action, order or approval of the Bankruptcy  
24 Court, after the Effective Date (1) Reorganized Debtor may, in its sole and absolute discretion,  
25 compromise and settle Claims against them and (2) Reorganized Debtor may, in its sole and absolute  
26 discretion, compromise and settle Causes of Action against other Entities.

27 **10.2. Preservation of Rights of Action**

**10.2.1. Maintenance of Causes of Action**

Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date,  
Reorganized Debtor shall retain all rights to commence, pursue, litigate or settle, as appropriate, any  
and all Causes of Action, whether existing as of the Commencement Date or thereafter arising, in  
any court or other tribunal including, without limitation, in an adversary proceeding Filed in the  
Chapter 11 Case.

**10.2.2. Preservation of Causes of Action Not Expressly Settled or Released**

Unless a claim or Cause of Action against a Holder of a Claim or an Equity Interest or other Entity  
is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order  
(including, without limitation, the Confirmation Order), Debtor expressly reserves such claim or  
Cause of Action for later adjudication by Debtor or Reorganized Debtor (including, without  
limitation, claims and Causes of Action not specifically identified or of which Debtor may presently  
be unaware or which may arise or exist by reason of additional facts or circumstances unknown to  
Debtor at this time or facts or circumstances that may change or be different from those Debtor now  
believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines  
of res judicata, collateral estoppel, issue preclusion, claim 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

1 Confirmation Order, or any other Final Order (including, without limitation, the Confirmation  
2 Order). In addition, Debtor and Reorganized Debtor expressly reserve the right to pursue or adopt  
3 any claims alleged in any lawsuit in which Debtor is a plaintiff, defendant or an interested party,  
4 against any Entity, including, without limitation, any parties in such lawsuits.

5 **11. RETENTION OF JURISDICTION**

6 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the  
7 Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case and Reorganized Debtor after  
8 the Effective Date as is legally permissible, including jurisdiction to:

9 **11.1.** Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or  
10 unsecured status of any Claim or Equity Interests or Disputed Claim or Disputed Equity Interests,  
11 including the resolution of any request for payment of any Administrative Claim and the resolution of  
12 any and all objections to the allowance or priority of Claims or Disputed Claims and Equity Interests or  
13 Disputed Equity Interests;

14 **11.2.** Grant or deny any applications for allowance of compensation or reimbursement of expenses  
15 authorized pursuant to the Bankruptcy Code or this Plan for periods ending on or before the Effective  
16 Date;

17 **11.3.** Resolve any matters related to the rejection of any executory contract or unexpired lease to  
18 which Debtor or Reorganized Debtor are party and to hear, determine and, if necessary, liquidate any  
19 Claims arising there from amounts related thereto;

20 **11.4.** Insure that distributions to holders of Allowed Claims and Equity Interests are accomplished  
21 pursuant to the provisions of this Plan;

22 **11.5.** Decide or resolve any motions, adversary proceedings, contested or litigated matters and any  
23 other matters and grant or deny any applications or motions involving Debtor or Reorganized Debtor  
24 that may be pending on the Effective Date or commenced thereafter as provided for by this Plan;

25 **11.6.** Enter such orders as may be necessary or appropriate to implement or consummate the  
26 provisions of this Plan and all contracts, instruments, releases and other agreements or documents  
27 created in connection with this Plan or the Disclosure Statement or the Confirmation Order, except as  
otherwise provided herein;

**11.7.** Decide or resolve any cases, controversies, suits or disputes that may arise in connection with  
the consummation, interpretation or enforcement of any Final Order, this Plan, the Confirmation Order  
or any Person's obligations incurred in connection with this Plan or the Confirmation Order;

**11.8.** Modify this Plan before or after the Effective Date pursuant to Section 1127 of the Bankruptcy  
Code and the terms of this Plan or modify any contract, instrument, release or other agreement or  
document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order or  
Reorganized Debtor; or remedy any defect or omission or reconcile any inconsistency in any Final  
Order, this Plan, the Confirmation Order or any contract, instrument, release or other agreement or  
document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, in  
such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by  
the Bankruptcy Code;





1 11.9. Issue injunctions, enter and implement other orders or take such other actions as may be  
2 necessary or appropriate to restrain interference by any person with consummation, implementation or  
3 enforcement of any Final Order, this Plan or the Confirmation Order, except as otherwise provided  
4 herein;

5 11.10. Enter and implement such orders as are necessary or appropriate if a Final Order or the  
6 Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

7 11.11. Determine any other matters that may arise in connection with or relate to this Plan, any Final  
8 Order, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other  
9 agreement or document created in connection with this Plan, the Disclosure Statement, any Final Order  
10 or Confirmation Order, except as otherwise provided herein;

11 11.12. Enter an order closing the Chapter 11 Case;

12 11.13. Hear and decide Litigation Claims and continue to hear and decide pending Litigation Claims  
13 and any other claim or cause of action of Debtor and Reorganized Debtor; and

14 11.14. Decide or resolve any matter over which the Bankruptcy Court has jurisdiction pursuant to  
15 section 505 of the Bankruptcy Code.

16 **12. MISCELLANEOUS PROVISIONS**

17 **12.1. Payment of Statutory Fees**

18 All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date  
19 shall be paid prior to the closing of the Chapter 11 Case when due or as soon thereafter as practicable.

20 **12.2. Modification of the Plan**

21 Effective as of the date hereof and subject to the limitations and rights contained in the Plan: (a) Debtor  
22 reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or  
23 modify the Plan prior to the entry of the Confirmation Order; and (b) after the entry of the Confirmation  
24 Order, Debtor or Reorganized Debtor, as applicable, may, upon order of the Bankruptcy Court, amend  
25 or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect  
26 or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out  
27 the purpose and intent of the Plan.

**12.3. Revocation of Plan**

Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to File  
subsequent chapter 11 plans. If Debtor revokes or withdraws the Plan, or if Confirmation or  
Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement  
or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired  
Leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed  
null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3)  
nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims by or against, or any  
Equity Interests in, such Debtor or any other Entity; (b) prejudice in any manner the rights of Debtor or  
any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by  
Debtor or any other Entity.

**12.4. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and  
shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.



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**12.5. Governing Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable or as provided in any contract, instrument, release or other agreement entered into in connection with this Plan or in any document which remains unaltered by this Plan, the rights, duties and obligations of Debtor and any other Person arising under this Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Nevada without giving effect to Nevada’s choice of law provisions.

**12.6. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by Debtor or any other Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) any Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

**12.7. Section 1146 Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement the provisions of and the distributions to be made under the Plan.

**12.8. Further Assurances**

Debtor or Reorganized Debtor, as applicable, all Holders of Claims receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**12.9. Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision then will be applicable as altered or interpreted, provided that Debtor, Reorganized Debtor or any affected Entity (as applicable) may seek an expedited hearing before the Bankruptcy Court to address any objection to any such alteration or interpretation of the foregoing. Notwithstanding any such order by the Bankruptcy Court, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect. The Confirmation Order shall constitute a judicial determination and shall provide 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 pursuant to its terms.



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**12.10. Service of Documents**

Any pleading, notice or other document required by the Plan to be served on or delivered to Debtor shall be sent by overnight mail to:

Paragon Pools  
Attn: Joseph M. Vassallo  
7473 W. Lake Mead Blvd.  
Suite 100  
Las Vegas, Nevada 89128

with a copy to:  
Andersen Law Firm, Ltd.  
Attn: Ryan A. Andersen, Esq.  
101 Convention Center Drive  
Suite 600  
Las Vegas, Nevada 89109

**12.11. Return of Security Deposits**

Unless Debtor has agreed otherwise in a written agreement or stipulation approved by the Bankruptcy Court, all security deposits provided by Debtor to any Person or Entity at any time after the Filing Date shall be returned to Reorganized Debtor within twenty (20) days after the Effective Date, without deduction or offset of any kind.

**12.12. Filing of Additional Documents**

On or before the Effective Date, Debtor may File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**12.13. Cramdown**

In the event that any impaired Class is determined to have rejected this Plan in accordance with Section 1126 of the Bankruptcy Code, Debtor may invoke the provisions of Section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of this Plan. Debtor reserves the right to modify this Plan to the extent, if any, that Confirmation pursuant to Section 1129(b) of the Bankruptcy Code requires modification.

**12.14. Default**

Upon the Effective Date of the Plan, in the event Debtor fails to timely perform any of the obligations set forth in the Plan, the applicable creditor or party-in-interest shall notify Debtor and Debtor's counsel of the default in writing in accordance with the notice provisions herein, after which Debtor shall have: (i) thirty (30) calendar days from the date of the written notification to cure the default; or (ii) if the cure requires more than thirty (30) days, so long as Debtor initiates steps to cure the default within thirty (30) days and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical. If Debtor fails to timely cure the default as provided above, the applicable creditor shall be free to pursue any and all rights it may have under the contract(s) between the parties and/or applicable state law, without further court order or proceeding being necessary.



**12.15. Entire Agreement**

The Plan, as described herein, the Disclosure Statement and exhibits thereto, set forth the entire agreement and understanding of the parties hereto relating to the subject matter hereof and supersede all prior discussions and documents. No party hereto shall be bound by any terms, conditions, definitions, warrants, understandings or representations with respect to the subject matter hereof, other than as in expressly provided for herein or as may hereafter be agreed by the parties in writing.

Dated this 9th day of May, 2017.

PARAGON POOLS,  
a Nevada corporation:

By: /s/ Joseph M. Vassallo  
Joseph M. Vassallo,  
its President

Prepared and submitted by:

**ANDERSEN LAW FIRM, LTD.**

By: /s/ Ryan A. Andersen  
Ryan A. Andersen, Esq.  
Nevada Bar No. 12321  
101 Convention Center Drive  
Suite 600  
Las Vegas, Nevada 89109

*Counsel for the Debtor*



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Honorable August B. Landis  
United States Bankruptcy Judge



Entered on Docket  
March 30, 2017

**ANDERSEN LAW FIRM, LTD.**  
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Phone: 702-522-1992  
Fax: 702-825-2824

*Counsel for the Debtor*



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
  
PARAGON POOLS,  
  
Debtor.

Case No.: 16-16342-ABL  
Chapter 11

**ORDER APPROVING SETTLEMENT**

Hearing Date: March 28, 2017  
Hearing Time: 1:30 p.m. Pacific time

The Court, having considered the *Motion for Approval of Settlement Agreement* (“Motion”) filed at ECF No. 52 by Paragon Pools, a Nevada corporation (“Debtor”), the above-captioned debtor and debtor in possession in the above-captioned bankruptcy case; having considered all papers and pleadings filed regarding the Motion; having conducted a hearing with respect to the Motion on March 28, 2017, at 1:30 p.m. Pacific time, with Ryan A. Andersen of Andersen Law Firm, Ltd. appearing on behalf of the Debtor and with other appearances as noted on the record of such hearing; having found

1 that adequate and proper notice and service of the Motion and of such hearing was provided to parties  
2 in interest; having found the evidence supporting approval of the Motion sufficient; having reviewed  
3 the settlement agreement (“Settlement Agreement”) between the Debtor, on the one hand, and Branch  
4 Banking and Trust Company (“BB&T”), on the other hand (each a “Party” and, collectively, the  
5 “Parties”); having found the settlement between the Parties (“Settlement”) as detailed in the Settlement  
6 Agreement to be in the best interest of the bankruptcy estate in the above-captioned bankruptcy case;  
7 having noted that the motion was unopposed; having found that the Court has jurisdiction over this  
8 core matter; and having stated its findings of facts and conclusions of law on the record at the  
9 conclusion of such hearing, pursuant to Fed. R. Bankr. P. 7052, made applicable hereto by Fed. R.  
10 Bank. P. 9014, such findings of facts and conclusions of law incorporated herein by this reference;

11 **NOW THEREFORE**, good cause appearing, the Court **ORDERS** as follows:

12 **IT IS ORDERED** that the Motion is **GRANTED** in its entirety;

13 **IT IS FURTHER ORDERED** that the Settlement entered into by and between the Parties is  
14 **APPROVED**;

15 **IT IS FURTHER ORDERED** that the Settlement Agreement, attached hereto as “**Exhibit 1**”,  
16 and incorporated herein by this reference, is **APPROVED**, and is binding on the Parties according to  
17 its terms;

18 **IT IS FURTHER ORDERED** that the Debtor is authorized to take any act required to  
19 effectuate the terms of the Settlement; and

20 //  
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1           **IT IS FURTHER ORDERED** that this Order shall become immediately effective and  
2 enforceable upon its entry, and any stay that that would otherwise apply to this Order under the  
3 Bankruptcy Rules or otherwise is hereby waived.

4  
5 Respectfully submitted by:

6 **ANDERSEN LAW FIRM, LTD.**

7 By: /s/ Ryan A. Andersen  
8 Ryan A. Andersen, Esq.  
9 Nevada Bar No. 12321  
10 101 Convention Center Drive  
Suite 600  
Las Vegas, Nevada 89109

11 *Counsel for the Debtor*



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**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

- The court has waived the requirement set forth in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Counsel appearing: Michael B. Wixom, Esq., Approved  
 Trustee appearing:  
 Debtor(s) appearing:

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of March, 2017.

By: /s/ Ryan A. Andersen  
 Ryan A. Andersen, Esq.  
 Nevada Bar No. 12321  
**ANDERSEN LAW FIRM, LTD.**  
 101 Convention Center Drive  
 Suite 600  
 Las Vegas, Nevada 89109

*Counsel for the Debtor*

# # #



# EXHIBIT 1

# EXHIBIT 1

# EXHIBIT 1

**SETTLEMENT AGREEMENT  
AND  
CONDITIONAL MUTUAL RELEASE**

This Settlement Agreement and Conditional Mutual Release (herein, this "Settlement Agreement") is entered into by Paragon Pools, a Nevada corporation (together, the "Defendant"), and Branch Banking and Trust Company, as successor-in-interest to Colonial Bank, N.A. (herein, "Lender"). The Defendant and Lender are collectively referred to herein as the "Settling Parties." This Settlement Agreement shall have an effective date of that date on which the last of the Settling Parties execute this Settlement Agreement, as set forth on the signature page hereof.

**RECITALS**

- A. The Settling Parties are parties to the actions, claims, and proceedings pending before the Eighth Judicial District Court in and for Clark County, Nevada styled as Banking and Trust Company, as successor-in-interest to Colonial Bank, N.A. vs. Paragon Pools, a Nevada corporation, et al., Case No. A-12-673959-C (herein, the "Lawsuit").
- B. Pursuant to the Lawsuit, Lender has obtained a judgment against Defendant (the "Judgment"). A copy of the Judgment is attached hereto as Exhibit "A."
- C. Lender sought to enforce the Judgment against Defendant by, on or about November 8, 2016, garnishing funds (the "Garnished Funds") held in Defendant's bank account with U.S. Bank National Association. The Garnished Funds total \$53,568.43.
- D. Following the said garnishment, on or about November 28, 2016, Defendant filed a voluntary "Chapter 11" petition for bankruptcy (the "Defendant's Bankruptcy Petition"), in the United States Bankruptcy Court for the District of Nevada, Case No. 16-16342-abl. (the "Bankruptcy Court").

2. The Settling Parties wish to compromise and settle all claims and issues alleged, or that could have been alleged, that arise, or that may arise from or relate to the Lawsuit, the Judgment and the Bankruptcy Petition.

NOW, THEREFORE, in consideration of the terms herein, it is agreed as follows:

**SECTION 1  
CONSIDERATION**

1.1 In full settlement of any and all claims by and among the Settling Parties hereto relating to the Lawsuit, the Judgment and the Bankruptcy Petition agree as follows:

- a. Lender shall retain the Garnished Funds, and apply the Garnished Funds to amounts owed under the Judgment.

- b. Defendant shall pay to Lender the additional sum (the "Settlement Amount") of Three Hundred Sixty One Thousand and No/100 Dollars (\$361,000.00). The Settlement Amount shall be paid to Lender in sixty (60) monthly installments of \$6,106.67 each, on the first business day of each calendar month, commencing the first day of the first calendar month following the earlier of i) the dismissal of the Debtor's Bankruptcy Petition by the Bankruptcy Court, or ii) effective date of a confirmed plan of reorganization,.
- c. Lender will stay enforcement of the Judgment, pending timely payment of the Settlement Amount.
- d. If Defendant fails to timely pay the Settlement Amount, Lender shall provide Defendant with five (5) days' written notice, and an opportunity to cure.
- e. If the Settlement Amount is paid in full in a timely fashion, Lender will file a satisfaction of the Judgment in the Lawsuit, with respect to its claims against Defendant as set forth in the Judgment.
- f. If the Settlement Amount is not paid in full and in a timely fashion, Lender may enforce its rights under the Judgment and the rights and remedies granted to Lender hereunder.
- g. As security for Defendant's obligations hereunder, Defendant shall grant to Lender a lien against all of Defendant's assets, as set forth in the "Security Agreement," attached hereto as Exhibit "B." If Defendant pays the Settlement Amount in full, Lender will release and/or terminate any security interest set forth in the Security Agreement.
- h. The Settling Parties shall each be responsible for his or its own attorneys' fees and costs in the Lawsuit and this Settlement Agreement.
- i. The terms of this Settlement Agreement are subject to the Bankruptcy Court's approval of Defendant's motion for compromise and/or settlement with respect to the Settlement Agreement, to be filed pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, which motion shall be in a form and substance acceptable to Lender and which shall be filed by Defendant on or before February 10, 2017.

**SECTION 2**  
**MUTUAL RELEASE**

2.1 The Defendant, for itself/herself/himself and on behalf, respectively, of its representatives, successors, and assigns, fully release, acquit, and forever discharge Lender, Lender's principals, officers, directors, shareholders, agents, affiliated organizations, insurers, predecessors, successors, assigns, employees, attorneys, representatives, and all other persons known or unknown, from all actions, claims, injuries, losses, damages, and consequences

pertaining to, or as a result of, the actions, inactions, events, or occurrences relating to the Lawsuit and/or the Judgment.

2.2 Subject to Defendant's performance under the terms of this Settlement Agreement, Lender, for itself and on behalf of its predecessors, representatives, successors, and assigns, fully releases, acquits, and forever discharges the Defendant and its respective principals, officers, directors, shareholders, agents, affiliated organizations, insurers, successors, assigns, employees, attorneys, representatives, and all other persons known or unknown, from all actions, claims, injuries, damages, and consequences pertaining to, or as a result of, any and all actions, inactions, events, or occurrences relating to the Lawsuit and/or the Judgment.

2.3 The Settling Parties acknowledge that they may later discover material facts in addition to, or different from, those which they now know or believe to be true with respect to the matters addressed herein. It is the Settling Parties' intention to fully, finally, and forever settle and release all claims, disputes, disagreements, and differences relating to the Lawsuit and/or the Judgment.

2.4 The Settling Parties represent, warrant, and covenant that they will not initiate or cause to be initiated any lawsuit or other legal action to enforce any aspect of the Judgment or the Lawsuit.

2.5 The Settling Parties acknowledge that this Settlement Agreement resolves the disputes among the Settling Parties relating to the Judgment and the Lawsuit.

### **SECTION 3** **REPRESENTATIONS**

3.1 The Settling Parties have each entered into this Settlement Agreement for the purpose of settlement and compromise, and nothing contained in this Settlement Agreement or its performance shall be deemed to be an admission or acknowledgment of liability or damages.

3.2 The Settling Parties acknowledge and warrant that no promise or inducement has been offered by any of the other Settling Parties, except as set forth herein, and that there is no reliance upon any representation by any of the Settling Parties concerning the nature and extent of the claimed damages, the legal liability therefor, or the tax consequences, if any, pertaining thereto; that this Settlement Agreement is entered into in good faith; that this Settlement Agreement is deemed to be drafted jointly by the Settling Parties, and that its terms have been reviewed with the benefit and advice of legal counsel; that the undersigned are empowered and authorized to execute this Settlement Agreement; and that this Settlement Agreement is a full and final compromise, settlement, release, and discharge of all claims and actions herein.

3.3 The Settling Parties represent and warrant that they have not sold, bargained away, or otherwise transferred any of their rights relating to their claims in the Lawsuit, the Judgment or any claims, rights, or choses in action relating to or otherwise based upon the Judgment or the Lawsuit.

**SECTION 4**  
**INTEGRATION**

4.1 This Settlement Agreement constitutes the entire agreement between the Settling Parties regarding the subject matter contained herein, and is the complete expression thereof. This Settlement Agreement supersedes all prior agreements, representations, and understandings of the Settling Parties regarding the Lawsuit and/or the Judgment, and all prior agreements of the Settling Parties are void and of no force or effect whatsoever to the extent they may pertain to the settlement herein.

4.2 This Settlement Agreement may not be amended or modified unless in writing and signed by the Settling Parties expressly stating that a modification is intended.

**SECTION 5**  
**ENFORCEMENT OF AGREEMENT**

5.1 This Settlement Agreement is made under and is governed by and construed in accordance with the laws of the State of Nevada.

5.2 In the event of the breach of this Settlement Agreement by any party, the non-breaching parties may enforce this Settlement Agreement in Nevada and obtain compensatory damages as proved for any breach. Any prevailing party shall further be entitled to recover reasonable attorney's fees and costs.

**SECTION 6**  
**COUNTERPART SIGNATURES**

6.1 This Settlement Agreement may be executed in any number of counterparts, each of which when duly executed shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Settlement Agreement may be detached from any counterpart without impairing the legal effect of any signature, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages.

**SECTION 7**  
**SEVERABILITY**

7.1 If any provision of this Settlement Agreement is deemed by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining portions of this Settlement Agreement shall not be affected.

**SECTION 8**  
**NOTICE**

Except as otherwise provided by law, any notice, request, demand, consent, approval or other communication ("Notice") provided or permitted under this Settlement Agreement, or any other instrument contemplated hereby, shall be in writing, signed by the part giving such Notice and shall be given by personal delivery to the other party or by United States certified or registered mail, postage prepaid, return receipt requested, addressed to the party for whom it is intended at its address as set forth below. Unless otherwise specified, Notice shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after same is deposited in any official United States Postal Depository. Any party from time to time, by Notice to the other parties given as above set forth, may change its address for purpose of receipt of any such communication.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



DEFENDANT:

Paragon Pools, a Nevada corporation

By: [Signature]  
Name: JOSEPH M VASSALLO  
Its: PRESIDENT

Date: 2/8/17

Address: 7473 W. LAKE MEAD BLVD  
SU 100  
LV NV 89128

LENDER:

Branch Banking and Trust Company, as successor-in-interest to Colonial Bank, N.A.

By: [Signature]  
Name: ALEXANDRA W DICE  
Its: Banking Officer

Date: 2/9/17

Address: 2713 Forest Hill Rd  
Wilson NC 27899  
BBBT Bankruptcy

EXHIBIT "A"

(Judgment)

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*Steven D. Larson*  
CLERK OF THE COURT

1 **FFCLO**  
2 Michael B. Wixom, Esq.  
3 Nevada Bar No. 2812  
4 Christopher L. Benner, Esq.  
5 Nevada Bar No. 8963  
6 **SMITH LARSEN & WIXOM**  
7 1935 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 Tel: (702) 252-5002  
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11 Email: [mbw@slwlaw.com](mailto:mbw@slwlaw.com)  
12 [clb@slwlaw.com](mailto:clb@slwlaw.com)  
13 Attorneys for Plaintiff  
14 Branch Banking and Trust Co., as successor in  
15 Interest to Colonial Bank, N.A.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

16 **BRANCH BANKING AND TRUST**  
17 **COMPANY, as successor in interest to**  
18 **Colonial Bank, N.A.**

Plaintiff,

v.

19 **PARAGON POOLS, a Nevada corporation,**  
20 **JOSEPH M. VASSALLO, individually;**  
21 **ALANA M. VASSALLO, individually;**  
22 **JOSEPH V. VASSALLO and ALANA M.**  
23 **VASSALLO, AS TRUSTEES OF THE**  
24 **VASSALLO FAMILY TRUST, DATED**  
25 **JUNE 7, 2006 DOES I through XX and ROE**  
26 **CORPORATIONS I through XX, inclusive,**  
27 **Defendants.**

CASE NO: A-12-673959-C  
DEPT NO: XXVI

**FINDINGS OF FACT AND  
CONCLUSION OF LAW GRANTING  
BRANCH BANKING AND TRUST  
COMPANY'S MOTION FOR  
SUMMARY JUDGMENT ON CLAIMS  
OF BRANCH BANKING AND TRUST  
COMPANY**

**SMITH LARSEN & WIXOM**  
ATTORNEYS  
HILLS CENTER BUSINESS PARK  
1935 VILLAGE CENTER CIRCLE  
LAS VEGAS, NEVADA 89134  
(702) 252-5002 • (702) 252-5006

28 This matter came before the Court on January 19, 2016, upon Plaintiff, Branch Banking and Trust Company, as successor in interest to Colonial Bank, N.A. ("BBT"), Motion for Summary Judgment against Defendants PARAGON POOLS, a Nevada corporation; JOSEPH V. VASSALLO and ALANA M. VASSALLO, AS TRUSTEES OF THE VASSALLO FAMILY TRUST, DATED JUNE 7, 2006, (hereinafter, collectively, the "Defendants"). This Court having reviewed the briefs, evidence and the record submitted by the

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Revoked Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

1 parties, having heard oral argument and for good cause appearing, hereby grants BBT's Motion  
2 for Summary Judgment and makes the following Findings of Fact and Conclusion of Law:

3 FINDINGS OF FACT

- 4 1. The following findings of fact are supported by competent evidence presented to the  
5 Court as part of the record, including the initial and supplemental briefing on Wells  
6 Fargo's Motion for Summary Judgment, the declaration and exhibits attached thereto,  
7 and the oral argument before the Court.
- 8 2. On or about June 13, 2006, Plaintiff's predecessor in interest, Colonial Bank, N.A.  
9 ("Colonial Bank") made a loan in the amount of \$200,000.00 to Paragon Pools, a  
10 Nevada corporation which was evidenced by that certain Promissory Note, dated June  
11 13, 2006, as restated on July 12, 2007, July 21, 2008, December 11, 2008, and July 6,  
12 2009 (collectively, the "Paragon Note") in the aggregate principal amount of  
13 \$200,000.00, executed by the Paragon Borrower in favor of Colonial Bank. The  
14 Paragon Loan is governed by the terms of a Business Loan Agreement, dated June 13,  
15 2006, and restated on July 12, 2007, December 11, 2008, and July 6, 2009.
- 16 3. The Paragon Note is secured by that certain Commercial Security Agreement, dated  
17 June 13, 2006, and restated on July, 12, 2007, December 11, 2008, and July 6, 2009  
18 (collectively, "Paragon Security Agreement"). The Paragon Note is also secured by  
19 that certain Deed of Trust dated October 1, 2003, recorded on October 8, 2003, as  
20 Document No. 001768, in Book 20031008, with the Clark County, Nevada,  
21 Recorder's Office (the "Paragon Deed of Trust"). The Paragon Deed of Trust  
22 encumbers certain real and personal property ("Paragon Property") described therein.  
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- 1 4. On or about June 13, 2006, and restated on July 12, 2007, and July 6, 2009, JMV and  
2 AMV, (individually, a "Paragon Guarantor", and collectively, the "Paragon  
3 Guarantors"), each executed a separate Commercial Guaranty (individually, a  
4 "Paragon Guaranty", and collectively, the "Paragon Guaranties") pursuant to which the  
5 Paragon Guarantors unconditionally guaranteed to pay the indebtedness owing by the  
6 Paragon to Plaintiff, as successor in interest to Colonial Bank, including all principal,  
7 interest, late charges, loan fees, and other charges, collection costs and expenses,  
8 including attorneys' fees.
- 9
- 10
- 11 5. The Paragon Note matured on January 6, 2010. Paragon and the Paragon Guarantors  
12 have failed to pay the amounts owing under the Paragon Note. As of December 10,  
13 2012, the amount due under the Paragon Note includes an outstanding principal  
14 obligation in the amount of \$197,658.89, accrued default interest of \$71,379.58, late  
15 charges in the amount of \$10,016.74, for a total of \$279,055.21. Interest continues to  
16 accrue on the Paragon Note at a rate 6.75% per annum with a per diem rate of \$46.05  
17 per day.
- 18
- 19 6. The terms of the Paragon Note allows Plaintiff to accelerate the amounts owed under  
20 the Paragon Note upon default thereunder, and Plaintiff has done so.
- 21
- 22 7. On or about December 15, 2006, Colonial Bank made a loan in the amount of  
23 \$2,175,000.00 to Joseph M. Vassallo and Alana M. Vassallo, as Trustees of the  
24 Vassallo Family Trust, dated June 7, 2006, Joseph M. Vassallo, individually ("JMV"),  
25 and Alana M. Vassallo, individually ("AMV"), (collectively, "Vassallo Borrowers"),  
26 which Vassallo Loan was evidenced by that certain Adjustable Rate Note and  
27 Addendum to Note, (the "Vassallo Note") dated December 15, 2006, in the aggregate  
28

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- 1 principal amount of \$2,175,000.00, executed by the Vassallo Borrowers in favor of
- 2 Colonial Bank.
- 3
- 4 8. The Vassallo Loan is governed by the terms of a Construction Loan Agreement
- 5 ("Vassallo Loan Agreement"), dated December 15, 2006. The Vassallo Note is
- 6 secured by a certain Deed of Trust, ("Vassallo Deed of Trust"), dated December 15,
- 7 2006, recorded on December 27, 2006, as Document No. 0003496, in Book 20061227,
- 8 with the Clark County, Nevada, Recorder's Office. The Vassallo Deed of Trust
- 9 encumbers certain real and personal property ("Vassallo Property") described therein.
- 10
- 11 9. On or about December 15, 2006, Paragon Pools, ("Vassallo Guarantor," collectively
- 12 with the Paragon Guarantors, the "Guarantors"), executed a Commercial Guaranty
- 13 ("Vassallo Guaranty" and collectively with the Paragon Guaranties, the "Guaranties")
- 14 pursuant to which the Vassallo Guarantor unconditionally guaranteed to pay the
- 15 indebtedness owing by the Vassallo Borrowers to Plaintiff, as successor in interest to
- 16 Colonial Bank, including all principal, interest, late charges, loan fees, and other
- 17 charges, collection costs and expenses, including attorneys' fees.
- 18
- 19 10. The terms of the Vassallo Note allows Plaintiff to accelerate the amounts owed under
- 20 the Vassallo Note upon default thereunder, and Plaintiff has done so.
- 21
- 22 11. A Notice of Default and Election to Sell Under Deed of Trust was recorded on or
- 23 about October 26, 2011, and a trustee's sale ("Trustee's Sale") was held under the
- 24 Vassallo Deed of Trust on October 30, 2012.
- 25
- 26 12. The Plaintiff purchased the Vassallo Property at the Trustee's Sale on October 30,
- 27 2012, upon a bid of \$1,317,500.00. The Trustee's Deed Upon Sale was recorded and
- 28

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1 on or about December 10, 2012, as Document No. 0002966, in Book 20121210, with  
2 the Clark County, Nevada, Recorder's Office.

3  
4 13. An appraisal with an effective date of October 30, 2012, placed the actual value of the  
5 Vassallo Property at \$1,575,000.00.

6 14. The Vassallo Borrowers and Vassallo Guarantor have failed to pay the amounts owing  
7 under the Vassallo Loan. Pursuant to NRS 40.455 and 40.459, as of October 30, 2012,  
8 the amount due under the Vassallo Note included an outstanding principal obligation  
9 in the amount of \$2,174,820.00, accrued default interest of \$438,021.73, late charges  
10 in the amount of \$70,970.65, for a total of \$2,683,812.38. Reduction by the actual  
11 value of \$1,575,000.00 results in an amount due of \$1,108,812.38. Interest under the  
12 Vassallo Note is charged at a rate of 6.125% per annum with a per diem rate of  
13 \$186.07 per day, based on that deficiency amount.

14  
15 **CONCLUSIONS OF LAW**

16  
17 15. Summary judgment is appropriate and "shall be rendered forthwith" when the  
18 pleadings and other evidence on file demonstrate "that no genuine issue as to any  
19 material fact [remains] and that the moving party is entitled to judgment as a matter of  
20 law." NRCP 56(c); see also *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1249,  
21 1353, 951 P.2d 1027, 1029 (1997).

22  
23 16. The Court finds the documents associated with the Loan, including but not limited to,  
24 the Notes, Deeds of Trust, and Guaranties, entered into between the parties to be clear  
25 and unambiguous. See *Ringle v. Bruton*, 120 Nev. 82, 86 P.3d 1032 (2004).

26  
27 17. To establish a prima facie case for breach of contract, a plaintiff must establish that the  
28 parties had a valid and existing contract, plaintiff performed or was excused from



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1 performing, the defendant breached, and the plaintiff sustained damages as a result.  
2 See e.g., *Reichert v. Gen. Ins. Co. of Amer.*, 442 P.2d 377 (Cal.1968); see also  
3 *Calloway v. City of Reno*, 116 Nev. 250, 993 P. 2d 1259 (2000).  
4

5 18. The parties do not dispute the existence of a valid contract created by the Loan  
6 Documents. The parties further do not dispute that there was a breach of the Loan  
7 Documents, particularly the Guaranties. Thus, the Court finds there to be a valid,  
8 binding contract between the parties and that there has been a breach of the Guaranty.  
9 Further, Plaintiff performed its obligations, if any, under the Loan Documents and  
10 suffered damages as a result of the breach of the Guaranties.  
11

12 19. Plaintiff was the beneficiary of the rights under the Deed of Trust at the time the  
13 Complaint was filed.

14 20. The Defendants have failed to satisfy the obligations owing to Plaintiff in connection  
15 with the Notes and Guaranties. The language of the Notes and various Guaranties is plain  
16 and unambiguous. The Defendants have failed to make the required payments to  
17 Plaintiff. Interest continues to accrue under the Note on the amount due and owing  
18 thereunder. The Defendants' failure to make the required payments to Plaintiff constitute  
19 a breach of contract under the Notes and Guaranties.  
20

21 21. Defendants failed to pay the Loans as required under the Notes and Deeds of Trust.  
22 Under the terms of the Deeds of Trust, the default by Defendants resulted in the  
23 foreclosure on the Property. The foreclosure did not result in full payment of the  
24 outstanding principal and associated costs. Due to Defendants guarantee of the Loans,  
25 Defendants are now liable for the deficiency. Plaintiff is entitled to damages from  
26 Defendants as to the Notes based on the deficiency claim.  
27  
28

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22. Plaintiff is entitled to a deficiency judgment under NRS 40.455 and NRS 40.459 against the Defendants. Prior to 2009, NRS 40.455 read as follows:

1. Upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

23. To determine the amount of the deficiency to award the Plaintiff, the Court must evaluate the deficiency pursuant to NRS 40.459, which states:

The court shall not render judgment for more than:

(a) The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale;

(b) The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale; or

(c) If the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs, whichever is the lesser amount.

24. NRS 40.459(c) is inapplicable due to the involvement of the Federal Deposit Insurance Company (FDIC<sup>®</sup>), and thus the limitation imposed by NRS 40.459(c) is preempted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). FIRREA functions to prevent interference with the FDIC where the interference compromises the ability of the FDIC to recoup losses.

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(702) 252-5002 - (702) 252-5006

- 1 25. The Nevada Supreme Court has continued to find that, pursuant to the Supremacy
- 2 Clause, state laws such as NRS 40.459(1)(c) are preempted by FIRREA. See Munoz v.
- 3 Branch Banking, 131 Nev. Adv. Op. 23, 348 P. 3d 689 (2015).
- 4
- 5 26. Plaintiff has obtained an appraisal report indicating that the market value of the
- 6 Property on October 30, 2012, is \$1,575,000.00. Defendants have waived any
- 7 challenge to this market value, and the Court hereby accepts same as the fair market
- 8 value for the Property in this matter at the time of the foreclosure.
- 9
- 10 27. Additionally, Plaintiff is entitled to an award of attorneys' fees and costs. Under NRS §
- 11 18.010(1), "[t]he compensation of an attorney and counselor for his or her services is
- 12 governed by agreement, express or implied, which is not restrained by law."
- 13
- 14 28. The Guaranties, executed by the Defendants, provides that Guarantors shall pay all
- 15 attorneys' fees and other expenses incurred by the Plaintiff in enforcing Guarantors'
- 16 obligations thereunder. Specifically, Guarantors agreed that:
- 17 **ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone
- 18 else to help collect this Note if Borrower does not pay. Borrower will pay
- 19 Lender that amount. This includes, subject to any limits under applicable
- 20 law, Lender's attorneys' fees and Lender's legal expenses, whether or not
- 21 there is a lawsuit, including attorneys' fees, expenses for bankruptcy
- 22 proceedings (including efforts to modify or vacate any automatic stay or
- 23 injunction), and appeals. If not prohibited by applicable law, Borrower
- 24 also will pay any court costs, in addition to all other sums provided by law.
- 25
- 26 29. As a result of Defendants' failure to pay outstanding amounts due to the Plaintiff under
- 27 the Notes, Plaintiff has been required to expend costs, including attorneys' fees, in an
- 28 effort to collect the amounts due and owing from Defendants. Thus, under NRS
- §18.010(1), the Notes, and the Guaranties, the Plaintiff is awarded its reasonable
- attorneys' fees in an amount to be determined, for pursuing this action.

**SMITH LARSEN & WIXOM**  
ATTORNEYS  
HILLS CENTER BUSINESS PARK  
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30. NRS §18.010(1) provides that, "[t]he compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law." The Notes and Guaranties provides that Defendants shall pay all cost incurred by the Plaintiff in enforcing Defendants' obligations thereunder.

31. In determining the reasonableness of the attorneys' fees, this Court has considered the factors listed in Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345 (1969), as follows: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the attorney; and (4) the result of the attorney's efforts. First, this Court finds that the counsel in this case has demonstrated qualities as an advocate, including education, experience, and professional standing. The Plaintiff's attorneys have over 33 combined years of litigation experience, have earned Juris Doctorate degrees from fully accredited law schools, practice with a firm that is listed in the Bar Register of Preeminent Lawyers, and are currently in good standing with the State Bar of Nevada. Second, although the issues presented have not been unusually complex or difficult, based on the history of the case the attorneys have been required to perform work over a long period of time. Although the issues in the matter have been fairly straightforward, Plaintiff's counsel has been required to expend much time and money to pursue its claims against the Defendants. Third, counsel for the Plaintiff has been required to devote significant time and money to protect the interests of the Plaintiff. As a result of the Defendants' failure to pay the outstanding amounts due under the Notes and Guaranties to the Plaintiff, Plaintiff has been required to expend significant time and money in an effort to collect the amounts due and owing from the Defendants. Therefore, the work actually and necessarily performed has been significant. Finally, counsel

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obtained a favorable result for the client. This Court granted liability for a deficiency judgment in favor of the Plaintiff on its deficiency claims against the Defendants.

Accordingly, each of the factors listed in Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345 (1969), weighs in favor of a grant of attorneys' fees.

**ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

1. Plaintiff's Motion for Summary Judgment is GRANTED as to the Breach of Contract and Deficiency claims;
2. Plaintiff's claims to a Breach of the Implied Covenant of Good Faith and Fair Dealing, and Unjust Enrichment, are hereby dismissed;
3. Judgment is hereby entered jointly and severally against PARAGON POOLS, a Nevada corporation; JOSEPH V. VASSALLO and ALANA M. VASSALLO, SOLELY AS TRUSTEES OF THE VASSALLO FAMILY TRUST, DATED JUNE 7, 2006 and not in their individual capacity, for liability under the Notes and Guaranties in this matter, with a deficiency amount as follows:
  - a. \$1,108,812.38 under the Vassallo Note with interest at a default rate of \$186.07 per day and;
  - b. \$279,055.21 under the Paragon Pools Note with interest at a default rate of \$46.05 per day,
  - c. for a total of \$1,387,867.59, with interest at a default rate of \$232.12 per day
4. Plaintiff is entitled to an award of its reasonable attorneys' fees the amount of \$33,449.00, as Plaintiff met the Brunzell factors and the amount is not disputed

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*It is undisputed that Plaintiff's costs are reasonable, necessary, and actually incurred*  
5. Plaintiff is entitled to an award of costs in the amount of \$2,058.84;  
6. This judgment is in full satisfaction against all causes of action against all defendants (excluding any Proof of Claim filed in the chapter 7 bankruptcy of the Vassallos, case 15-14144-1ed).

IT IS SO ORDERED this 21<sup>st</sup> day of February, 2016

*[Signature]*  
DISTRICT COURT JUDGE

Respectfully submitted by:

Approved as to form:

*[Signature]*

*[Signature]*

Michael E. Wixom, Esq.  
Nevada Bar No. 2812  
Christopher L. Benner Esq.  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Plaintiff  
Branch Banking and Trust Co., as successor  
in interest to Colonial Bank, N.A.

Robert E. Atkinson, Esq.  
Nevada Bar No. 9958  
8965 S. Eastern Ave, Suite 260  
Attorney for Defendants Paragon Pools,  
Joseph M. Vassallo and Alaná M. Vassallo,  
Individually and as Trustees of the  
Vassallo Family Trust, Dated June 7, 2006

SMITH LARSEN & WIXOM  
ATTORNEYS  
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**EXHIBIT "B"**

(Security Agreement)



## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "**Agreement**") is made effective as of February 8, 2017, by and between Paragon Pools, a Nevada corporation (the "**Debtor**"), and Branch Banking and Trust Company, as successor-in-interest to Colonial Bank, N.A. ("**Secured Party**").

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**I. Definitions.** All initially capitalized terms used herein which are defined in that certain Settlement Agreement and Conditional Mutual Release (the "**Settlement Agreement**") of even date herewith by and between Debtor and Secured Party shall have the same meaning herein unless the context requires otherwise.

### **II.**

#### **1. Creation of Security Interest.**

Debtor hereby grants to Secured Party a security interest in and to all personal property, furniture, fixtures, inventory and equipment in which Debtor now or hereafter owns or acquires any interest or right, including, without limitation leased personal property and the personal property described in **Exhibit A** hereto and by this reference incorporated herein (which list will include all serial numbers and model descriptions for such personal property), wherever located, all insurance proceeds from any policy of insurance covering any of the aforesaid property now or hereafter acquired by Debtor (the "**Property**"), and each and every right of Debtor to the payment of money, whether such right exists now or arises hereafter, whether such right arises out of the sale or lease of goods or services, or out of the rendering of services (the "**Accounts**") (the Property, insurance proceeds and Accounts are hereinafter collectively called "**Collateral**"), for the purposes of securing: (a) payment of all amounts due under the Settlement Agreement and Judgment, and all modifications, extensions, renewals and replacements thereof; (b) payment of all sums advanced by Secured Party to protect the Collateral, with interest thereon at the rate applicable to the Judgment; (c) payment of all indebtedness of any of Debtor, or their respective successors or assigns, to Secured Party or Bank evidenced by a promissory note or notes or other instruments or agreements reciting that they are secured hereby; and (d) performance of every obligation, covenant and agreement of Debtor contained herein and in the Judgment and Settlement Agreement and in any other loan agreement, promissory note or other agreement now or hereafter executed by Debtor which recites that performance of the obligations thereunder is secured hereby.

Debtor agrees to take all steps required to perfect and consummate the assignment made hereby. Until the occurrence of an Event of Default hereunder, Secured Party hereby extends a license to Debtor to operate and use such licenses, which license shall be terminated, without notice, upon the occurrence of an Event of Default.

Upon the occurrence of an Event of Default, in Bank's sole option, Bank may establish a "lock-box" depository account for any or all of the Accounts and require Borrower to deposit any or all of the Accounts into such account and allow Secured Party to take control of such Accounts and the disbursement thereof. In such event, Bank will first apply such Accounts to the balance of the Judgment, then to accounts payable due from Borrower to third-party creditors, as Borrower provides such information to Bank, and then Bank will disburse the balance of such Accounts to Debtor. In Bank's sole option, such lock-box arrangement will be governed by a separate lock-box agreement satisfactory to Bank.

**2. Warranties, Representations and Covenants of Debtor.** To induce Secured Party to accept this Security Agreement, Debtor hereby represents, warrants, and covenants as follows:

(a) Except for the security interest granted hereby and the liens of other security agreements expressly subordinated and subject to the lien of this Agreement, Debtor are, and as to portions of the Collateral to be acquired after the date hereof will be, the sole owner of the Collateral, free from any adverse lien, security interest, or adverse claim of any kind whatsoever. Debtor will notify Secured Party of and will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(b) The Collateral is not used or bought for personal, family or household purposes.

(c) Unless prior written notice is given to the Secured Party, the tangible Collateral will be kept on or at the Property and Debtor will not, without prior written notice to the Secured Party or any successor in interest thereto, remove the Collateral therefrom except such portions or items of Collateral which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Debtor with property of similar nature and of equal or greater value.

(d) Secured Party may file and/or record one or more financing statements and fixture filings pursuant to the Nevada Uniform Commercial Code, in form satisfactory to Secured Party, and Debtor will pay the cost of filing and/or recording the same in all public offices wherever filing is deemed by Secured Party to be necessary or desirable.

(e) For purposes of this Security Agreement, the Debtor' principal place of business is at the address set forth in the Settlement Agreement. Debtor does not do business under any trade name or fictitious business name. Debtor will immediately notify Secured Party in writing of any change in their respective places of business or the adoption or change of any trade name or fictitious business name, and will, upon request of Secured Party, execute any additional financing statements or other certificates necessary to reflect the adoption or change in trade names or fictitious business name.

(f) Except in the ordinary course of business, Debtor will not, without the prior written consent of Secured Party, or any successor in interest thereto, sell, offer to sell or otherwise transfer, exchange or dispose of the Collateral or any interest therein, unless in the normal course of business the Collateral is being replaced by collateral of similar nature and of equal or greater value (provided, however, that specific items of inventory may vary in value). Except for sales in the ordinary course of business, if the Collateral or any part thereof is sold, transferred, exchanged, or otherwise disposed of (either with or without the written consent of Secured Party), the security interest of Secured Party shall extend to the proceeds of such sale, transfer, exchange or other disposition and Debtor will hold said proceeds in a separate account for Secured Party's benefit and will, at Secured Party's request, transfer such proceeds to Secured Party in kind.

(g) Debtor will keep the Collateral in good condition and repair, and will not misuse, abuse, allow to deteriorate, waste or destroy the Collateral or any part thereof, except for ordinary wear and tear resulting from its normal and expected use in Debtor's business, and will keep service records for the Collateral (as applicable). Secured Party may examine and inspect the Collateral, and any service records or other records relating to the Collateral, at any reasonable time, wherever located. Debtor will keep the Collateral insured, in amounts and with insurance companies acceptable to Secured Party, in Secured Party's sole and absolute discretion; and Secured Party may, in its sole and absolute discretion, require such endorsements or insurance policies as it deems appropriate to protect its interest in the Collateral and may, in its sole and absolute discretion, be named as an additional insured under any such policies or endorsements, and require such endorsements or policies to give the Secured Party thirty (30) days prior written notice of cancellation. If Debtor fails to keep the Collateral so insured, Bank may purchase such insurance and the cost thereof will be added to the principal amount of the Judgment and be secured hereby and by the Settlement Agreement.

(h) Debtor, in a timely manner, will execute any document, alone or with Secured Party, procure any document, give any notices, do all other acts, and pay all costs associated with the foregoing that Secured Party determines is reasonably necessary to protect the Collateral against rights, claims or interests of third parties, or will otherwise preserve the Collateral as security hereunder.

(i) Debtor shall immediately notify Secured Party or any successor in interest thereto of any claim against the Collateral adverse to the interest of Secured Party therein.

**3. Preservation of Collateral by Secured Party.** Should Debtor fail or refuse to make any payment, perform or observe any other covenant, condition, or obligation, or take any other action which Debtor is obligated hereunder to make, perform, observe, take or do at the time or in the manner herein provided, then Secured Party may, at Secured Party's sole discretion, with prior notice and demand upon Debtor and (in any case) without releasing Debtor from any obligation, covenant, or condition hereof, make, perform, observe, take or do the same in such manner and to such extent as Secured Party may deem necessary to protect the security

interest in or the value of the Collateral. Furthermore, Secured Party, in its sole discretion, may commence, appear or otherwise participate in any action or proceeding purporting to affect Secured Party's security interest in or the value or ownership of the Collateral. Debtor agree to pay Secured Party, on thirty (30) days' demand, the amount of any payment made or expense incurred by Secured Party pursuant to the foregoing authorizations (including attorneys' fees), together with interest thereon at the Default Rate from the date of each such payment by Secured Party.

**4. Use of Collateral by Debtor.** Until the occurrence of an Event of Default (defined herein), Debtor may have possession of the Collateral and use it in any lawful manner not inconsistent with this Agreement and not inconsistent with any policy of insurance thereon.

**5. Default.** The occurrence of any of the following shall be deemed an event of default hereunder ("**Event of Default**");

(a) Debtor fail, breach or default in the payment or performance of any of the obligations, representations, covenants or conditions in this Agreement which are not cured within any applicable notice and cure period set forth in the applicable provision of the Judgment or the Settlement Agreement;

(b) An event of default (as defined therein) shall occur under any of the Settlement Agreement or the Judgment.

**6. Remedies Upon Default.**

(a) Upon the occurrence of an Event of Default hereunder, Secured Party may, at its option, do any one or more of the following:

(i) Declare all indebtedness secured hereby to be immediately due and payable, whereupon all unpaid principal of and interest on said indebtedness and other amounts declared due and payable shall be and become immediately due and payable without presentment, demand, protest or notice of any kind;

(ii) Either personally, or by means of a court appointed receiver, take possession of all or any part of the Collateral and exclude therefrom Debtor and all others claiming under Debtor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Debtor with respect to the Collateral or any part thereof. In the event Secured Party demands, or attempts to take possession of the Collateral in the exercise of any rights under this Agreement, Debtor promises and agrees to promptly turn over and deliver complete possession thereof to Secured Party;

(iii) Require Debtor to assemble the Collateral, or any portion thereof, at a place designated by Secured Party and which is reasonably convenient to both parties, and promptly to deliver such Collateral to Secured Party, or an agent or representative designated by it. Secured Party, and its agents and representatives, shall have the right to enter upon any or all of Debtor's premises and property to exercise Secured Party's rights hereunder;

(iv) Foreclose this Agreement as herein provided or in any manner permitted by law, and exercise any and all of the rights and remedies conferred upon Secured Party by any deed of trust or in any other document executed by Debtor in connection with indebtedness secured hereby, either concurrently or in such order as Secured Party may determine, and sell or cause to be sold in such order as Secured Party may determine, as a whole or in such parcels as Secured Party may determine, the Collateral or the property described in any such deed of trust, or both, without affecting in any way the rights or remedies to which Secured Party may be entitled under the other such instruments;

(v) Sell, lease or otherwise dispose of the Collateral at public sale, without having the Collateral at the place of sale, and upon terms and in such manner as Secured Party may determine (subject to the applicable provisions of Nevada Revised Statutes Sections 104.9610 through 104.9616, inclusive. Secured Party may be a purchaser at any sale;

(vi) Upon the occurrence of an Event of Default, establish a "lock-box" depository account for any or all of the Accounts and require Borrower to deposit any or all of the Accounts into such account and allow Secured Party to take control of such Accounts and the disbursement thereof, and to apply such Accounts as Secured Party deems appropriate, in the sole and absolute exercise of its discretion; and

(vii) Exercise any remedies of a secured party under the Nevada Uniform Commercial Code, or any other applicable law.

(b) Unless the Collateral is perishable or threatens to decline rapidly in value or is of a type customarily sold on a recognized market, Secured Party shall give Debtor at least ten (10) days' prior written notice of the time and place of any public sale of the Collateral or other intended disposition thereof to be made. Such notice may be mailed to Debtor at the address set forth in the Settlement Agreement.

(c) The proceeds of any sale under Paragraph 6(a) shall be applied by Secured Party, in its sole discretion, to any of the following:

(i) To the repayment of the reasonable costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including attorneys' fees and costs) and the discharge of all assessments, encumbrances, charges or liens, if



any, on the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or liens subject to which such sale shall have been made);

(ii) To the payment of the amount then due and unpaid of the indebtedness of Debtor to Secured Party (including principal and interest) referred to in Paragraph 1 above;

(iii) To the payment of all other amounts (including principal and interest) then secured hereunder; and

(iv) The surplus, if any, shall be paid to the Debtor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Secured Party shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Secured Party from pursuing any further remedy which it may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release Debtor until full payment of any deficiency has been made in cash.

### III.

**1. Notices.** All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be given as provided in the Settlement Agreement.

**2. Other Remedies.** Any and all remedies herein expressly conferred upon Secured Party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on Secured Party, and the exercise of any one remedy shall not preclude the exercise of any other.

**3. Waiver.** By exercising or failing to exercise any of its rights, options or elections hereunder, Secured Party shall not be deemed to have waived any Event of Default on the part of Debtor or to have released Debtor from any of their obligations secured hereby, unless such waiver or release is in writing and is signed by Secured Party. In addition, the waiver by Secured Party of any Event of Default for default in payment of any indebtedness secured hereby shall not be deemed to constitute a waiver of any succeeding Event of Default.

**4. Affixed Collateral.** The inclusion in this Agreement of any Collateral which may now be, or hereafter become, affixed or in any manner attached to the Property shall be without prejudice to any claim at any time made by Secured Party with respect to the nature of any such Collateral.

**5. Further Security Agreements.** Debtor further promise and agree to execute from time to time, as Secured Party may require, security agreements and financing statements specifically including, in addition to the Collateral listed in Exhibit A, such additional goods,

documents, contract rights, accounts receivable or general intangibles of type or kind similar to those listed in Exhibit A in which Debtor hereafter owns or acquires any interest or right, including, without limitation, leased personal property, and which are now or hereafter located on or used or useful in the construction, operation, use or occupancy of the Project.

**6. Attorneys' Fees.** Debtor agrees to pay all charges, expenses and costs, including reasonable attorneys' fees, which may be incurred in the enforcement of this Agreement whether or not such enforcement includes the filing of a lawsuit. As used herein, "attorneys' fees" shall have the meaning given such term in the Settlement Agreement.

**7. Binding Upon Successors.** All agreements, covenants, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**8. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

**9. Amendment.** This Agreement can be modified or rescinded only by a writing expressly referring to this Agreement and signed by all of the parties.

**10. Invalidity of Provisions.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of the other provisions shall nonetheless remain in full force and effect.

**11. Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original and all of which shall constitute one and the same Agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

[Signature page follows.]



IN WITNESS WHEREOF, Debtor have duly executed this Agreement the day and year first above written.

**DEBTOR:**

Paragon Pools, a Nevada corporation

By: *Joseph M. Vassallo*  
Name: JOSEPH M VASSALLO  
Its: PRESIDENT

Date: 2/8/17

Address: 7473 W. LAKE MEAD BLVD  
LV NV 89128  
SU. 100

**SECURED PARTY:**

Branch Banking and Trust Company, as successor-in-interest to Colonial Bank, N.A.

By: *Alexandra W. Page*  
Name: ALEXANDRA W PAGE  
Its: Banking Officer

Date: 2/9/17

Address: 2713 Forest Hill Rd  
Hillsom NC 27894  
BBBT Bankruptcy

**EXHIBIT A**

**DESCRIPTION OF THE COLLATERAL**

(a) All personal property, including, without limitation, all of that personal property listed in the attached schedules and all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, and inventory and which Debtor now or hereafter owns or in which Debtor now or hereafter acquires an interest or right (wherever located), including books, records, leases and other documents, of whatever kind or character, relating to the Property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues which, after the date hereof and while any portion of the indebtedness secured hereby remains unpaid, may accrue from said goods, fixtures, furnishings, equipment and building materials or any part thereof or from any asset of Debtor, or any entity controlled by Debtor, which may be received or receivable by Debtor from any hiring, using, letting, leasing, sub-hiring, subletting, or subleasing therefor;

(c) All of Debtor's present and future rights to all accounts and other rights to receive payments of money, services or property including, without limitation, rights to capital contributions from the constituent partners of Debtor (if Debtor is a partnership), amounts payable on account of the sale of partnership interests or stock of Debtor, accounts receivable, deposit accounts, chattel paper, notes, drafts, contract rights (including, without limitation, all rights under any interest rate hedging or similar agreement), instruments, general intangibles and principal, interest and payments due on account of goods sold, services rendered, loans made or credit extended, together with title or interest in all documents evidencing or securing the same;

(d) All other intangible property and contract rights and other rights relating to the Property or the operation thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Property, all names under or by which the Property may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Property, good will in any way relating to the Property, and all licenses and permits relating in any way to, or to the operation of, the Property;

(e) All proceeds from sale or disposition of the aforesaid collateral;

(f) Debtor's rights under all insurance policies covering the Property or any of the aforesaid collateral, and all proceeds, loss payments and premium refunds payable regarding the same;

(g) All causes of action, claims compensation and recoveries for any damage to or condemnation or taking of the Property or the aforesaid collateral, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Property or the

aforesaid collateral, or for any loss or diminution in value of the Property or the aforesaid collateral;

All terms used herein which are defined in the Nevada Uniform Commercial Code shall have the same meanings when used herein, unless the context requires otherwise.