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13 **UNITED STATES BANKRUPTCY COURT**
14 **DISTRICT OF NEVADA**

15
16 In re
17 GRAND CANYON RANCH, LLC,
18
19 Debtor.

Case No. 15-14145-btb
Chapter 11
**FANN CONTRACTING, INC.'S CREDITOR'S
FIFTH AMENDED PLAN OF LIQUIDATION**
Hearing Date: December 6, 2018
Hearing Time: 10:00 a.m.
Hearing Location:
United States Bankruptcy Court
Foley Federal Bldg., Crtrm. No. 4
300 Las Vegas Blvd South, 2nd Floor
Las Vegas, Nevada 89101

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I.

INTRODUCTION

On July 20, 2015, Grand Canyon Ranch (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of the BANKRUPTCY CODE. On January 5, 2016, Brian D. Shapiro was appointed as the Chapter 11 Trustee (the “Trustee”).

The document you are reading is Creditor Fann Contracting, Inc.’s (“Fann”) proposed Fifth Amended Plan of Liquidation (the “Plan”). Fann is proposing the Plan to treat the claims of the Debtor’s creditors. The Court has not yet confirmed the Plan, which means the terms of the Plan are not now binding on anyone.

This Chapter 11 case was preceded by disputes surrounding two pieces of property and the operation of a tourist ranch in Mohave County, Arizona. Pre-petition, Debtor was involved in litigation in the Nevada State Court, case number A-13-690801-B (the “State Court Action”) with Canyon Rock, LLC (“Canyon Rock”), Canyon Land Holdings, LLC (“Holdings”), Oriental Tours d/b/a Oriental Tours, Inc. (“OTI”), Canyon Ranch Adventures, LLC (“Adventures” and, together with Canyon Rock, Holdings, OTI, the “Canyon Rock Parties”). Among the more pertinent issues subject to litigation in the State Court Action were: (i) which entities were responsible for the millions of dollars of development costs incurred in developing the “Frontier”, certain real property located in Mohave County, Arizona (parcel no. 318-08-016); (ii) what entity or person now owns or holds rights in the Frontier, including improvements, fixtures, and personal property left on the land; and (iii) what person(s) or entity(ies) hold authority to control Holdings and Adventures.

The other dispute involved Mared, LLC (“Mared”) and its principals, Marios Savvides, Gina Savvides, Edward Frymer, and Madeline Frymer (collectively the “Mared Parties”). This dispute centered on a pre-petition transaction with Debtor in which real property adjacent to the Frontier (the “Ranch”) was sold to Mared for \$2.8 million, and in connection with which Debtor and Mared formed Grand Canyon Ranch Resort LLC (“GCRRL”), governed by a Partnership, Management, and Operating Agreement (the “Resort PMOA”). While Mared asserted a claim in the amount of \$3.2 million arising out of this transaction, to which claim the Trustee had objected

1 (ECF No. 305), Debtor contended that the Ranch was worth significantly more than the \$2.8
2 million purchase price, and commenced an adversary action styled Grand Canyon Ranch LLC vs.
3 Marios Savvides, et al., (the “Adversary Action”) adversary number 15-01126-BTB, wherein
4 Debtor asserted three causes of action against the Mared Parties, and the Mared Parties asserted
5 five counterclaims (the “Mared Adversary”). See ECF Nos. 1 and 26, in Adv. No. 15-01126-
6 BTB.

7 On August 30, 2016, the Trustee brought a Motion for Order Approving Settlement
8 Between the Trustee and Canyon Rock Parties Pursuant to 11 U.S.C. §§ 105(A) and 363 and
9 Bankruptcy Rule 9010 (ECF No. 290) (the “First Settlement Motion”). The First Settlement
10 Motion essentially provided for the Trustee to sell the Frontier Property to the Canyon Rock
11 Parties for \$780,000. Fann and the Mared Parties opposed the First Settlement Motion and the
12 Court scheduled a settlement conference for January 11, 2017 which was further continued for a
13 second full day of settlement conference on April 14, 2017.

14 On April 24, 2017, the Trustee filed a Motion for Order Approving Settlement Arising out
15 of Settlement Conference Pursuant to 11 U.S.C. §§ 105(A) and 363 and Bankruptcy Rule 9019
16 (ECF No. 383) (the “Settlement Motion”) to approve a settlement agreement between the Mared
17 Parties and the Canyon Rock Parties, as set forth in the transcript attached as Exhibit 1 to the
18 Settlement Motion (the “Settlement”) which was placed on the record at the conclusion of the
19 settlement conference. The central terms of the Settlement consist of the Estate selling the
20 Frontier to Mared for \$1.75 million payment and the Canyon Rock Parties receiving a secured
21 claim of \$900,000 with the Estate receiving \$850,000. In exchange, the Mared Parties and
22 Canyon Rock Parties agree to withdraw their proofs of claim. Fann contends that the Settlement
23 was never reduced to writing. The Trustee contends that the terms of the Settlement were
24 included in the proposed order approving the Settlement and on the record at the Settlement
25 Conference.

26 On the Petition Date, the Frontier was titled solely in Debtor’s name. Subsequently, the
27 Bankruptcy Court ruled that part of the Frontier was not property of the Estate. Although there
28 has been no specific finding by the Court of the part of the Frontier that is not property of the

1 Estate, the Trustee has represented that the southeastern portion of the Frontier remains property
2 of the estate. There has never been a finding as to the allocation of value between the southern
3 and northern portions of the Frontier and the representations from the Trustee have been that the
4 value of the southeastern part of the Frontier is negligible.

5 On August 23, 2017 the Bankruptcy Court approved the Settlement Motion. On
6 September 18, 2017, the Court entered an order, on the Docket at ECF No. 537, granting the
7 Settlement Motion (the "Settlement Order"). A true and correct copy of the Settlement Order is
8 attached to the Disclosure Statement as Exhibit 2. Fann contends that the Settlement placed on
9 the record did not articulate the means of effectuation of the settlement, and the Trustee through
10 counsel gave conflicting statements whether the Settlement was to occur by a Section 363 sale
11 free and clear or some other means.

12 The Trustee's position is that the transcript of the Settlement and Settlement Order clearly
13 articulated the terms of the Settlement and that the Court confirmed that the entire Frontier was
14 transferred as property of the Estate. The Trustee disagrees with Fann's statements regarding the
15 Settlement.

16 Fann has reserved December 6, 2018 at 10:00 a.m. in Foley Federal Building and U.S.
17 Courthouse, courtroom number four, 300 Las Vegas Blvd South, Las Vegas, Nevada, 89101 for a
18 hearing to determine whether the Court will confirm the Plan. Any party that desires further
19 information about this Plan should contact Donald L. Gaffney at Snell & Wilmer L.L.P., 400 East
20 Van Buren Street, Suite 1900, Phoenix, Arizona 85004-2202, Telephone: (310) 407-4000, E-
21 mail: dgaffney@swlaw.com.

22 **II.**

23 **DEFINITIONS AND RULES OF CONSTRUCTION**

24 **Definitions.**

25 In addition to such other terms as are defined elsewhere herein, the following terms
26 (which appear herein as capitalized terms) have the following meanings as used herein:

27 **"Administrative Claim"** means a Claim against the Estate for administrative costs or
28 expenses entitled to priority under Bankruptcy Code section 507(a)(2) or (b).

1 **“Allowed”** means any Claim against the Debtor: (a)(i) as to which a proof of such Claim
 2 has been filed within the time fixed by the Bankruptcy Court, or (ii) if such Claim arises from the
 3 rejection of an Executory Contract, on or before the first Business Day which is the earlier of
 4 thirty (30) days after the entry of the order rejecting the Executory Contract or thirty (30) days
 5 after the Confirmation Date, or (iii) as to which there exists no requirement for the holder of a
 6 Claim to file such Claim under the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final
 7 Order; and: (b)(i) as to which no objection to the allowance of such Claim has been filed within
 8 any applicable time period fixed by the Bankruptcy Court, or (ii) as to which an objection is filed
 9 and the order allowing such Claim has become a Final Order. If any Claim or the Creditor
 10 holding such Claim is subject to any defense, set off, counterclaim, recoupment, or other adverse
 11 claim of any kind of the Debtor, that Claim will be deemed a Disputed Claim; and it will not
 12 become an Allowed Claim unless and until all such matters are resolved or adjudicated fully and
 13 finally, with all appellate rights and remedies having been exhausted. The term “Allowed,” when
 14 used to modify a reference in the Plan to any Claim or Class of Claims shall mean a Claim (or
 15 any Claim in such Class) that is allowed, pursuant to the requirements of this definition.

16 **“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

17 **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure.

18 **“Business Day”** means a day that is not a Saturday, Sunday, or legal holiday.

19 **“Claim”** means a claim, as defined in Bankruptcy Code section 101(5).

20 **“Claims Objection Deadline”** means the last day by which Fann or a creditor may file
 21 objections to Claims, which day shall be, except with respect to Administrative Claims, one year
 22 after the Effective Date, unless extended by the Court. The filing of a motion to extend the
 23 Claims Objections Deadline by any party shall automatically extend the Claims Objection
 24 Deadline. If such motion to extend the Claims Objection Deadline is denied by the Court, or
 25 approved by the Court and reserved on appeal, the Claims Objection Deadline shall be the later of
 26 the then-current Claims Objection Deadline (as previously extended, if applicable) or 30 days
 27 after the entry of a Final Order denying the motion to extend the Claims Objection Deadline.

28 **“Class”** means a category of holders of Claims or Interests as classified in Article III.

1 “**Confirmation Date**” means the date of the entry of the Confirmation Order.

2 “**Confirmation Hearing**” means the hearing by the Court on confirmation of the Plan.

3 “**Confirmation Order**” means the Court order confirming the Plan.

4 “**Effective Date**” means the first Business Day, thirty days after entry of an order
5 providing for the resolution of the Disputed Lease in the Eighth Judicial District Court, Clark
6 County, Nevada, Case No. A-13-690801 (the “State Court Litigation”). For the avoidance of
7 doubt, this includes the final resolution of any post-trial briefing and motions but does not include
8 prosecution or defense of an appeal and/or defense of a remand.

9 “**Estate**” means the estate of the Debtor created in the Bankruptcy Cases under
10 Bankruptcy Code section 541.

11 “**Final Order**” means an order or judgment of the Court entered on the Court’s official
12 docket:

13 (a) that has not been reversed, rescinded, stayed, modified, or amended; and

14 (b) that is in full force and effect.

15 “**Fann Litigation**” refers to the case pending in Yavapai County Superior Court, *Grand*
16 *Canyon Ranch, LLC v. Fann Contracting, Inc. et al.*, Case No. P1300CV2013-00913 between the
17 Debtor and Fann.

18 “**Frontier**” refers to certain real property known as the “Frontier,” parcel no. 318-08-016
19 in Mohave County, Arizona.

20 “**General Unsecured Claim**” means a Claim against the Debtor that is not an
21 Administrative Claim, Secured Claim, Priority Claim or the unsecured claim of Fann.

22 “**Interest**” means any interest, whether or not asserted, of any holder of an equity security
23 of the Debtor, as defined in Bankruptcy Code section 101(16).

24 “**Lien**” means any lien, security interest, pledge, title retention agreement, encumbrance,
25 charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation,
26 other than, in the case of securities and any other equity ownership interests, any restrictions
27 imposed by applicable United States or foreign securities laws.

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1 “**Priority Claim**” means an Allowed Claim entitled to Priority under Bankruptcy Code
2 section 507.

3 “**Priority Non-Tax Claim**” means a Priority Claim other than a Priority Tax Claim.
4 Priority Non-Tax Claims do not include any Claims that accrue after the Petition Date.

5 “**Priority Tax Claim**” means an Allowed Claim entitled to priority under Bankruptcy
6 Code section 507(a)(8). Priority Tax Claims do not include any Claims that accrue after the
7 Petition Date.

8 “**Retained Assets**” means all of the Estate’s rights, claims, and causes of action against
9 Fann Contracting, Inc., Jim Barnes, and JEB Vermillion Cliffs, LLC, and all other avoidance
10 claims against parties other than the Mared Parties and the Canyon Rock Parties as set forth in
11 paragraph 5 of the Settlement Order.

12 “**U.S. Trustee**” means the Office of the United States Trustee for the District of Nevada.

13 “**U.S. Trustee Fees**” means fees or charges assessed against the Estate pursuant to 28
14 U.S.C. § 1930.

15 **III.**

16 **CLASSIFICATION OF CLAIMS AND INTERESTS**
17 **AND THEIR TREATMENT UNDER THE PLAN**

18 **A. General Overview.**

19 As required by the Bankruptcy Code, the Plan classifies claims and interests in various
20 classes according to their right and priority. The Plan states whether, in Fann’s opinion, each
21 class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class
22 will receive.

23 **B. Unclassified Claims.**

24 Certain types of claims are not placed into voting classes; instead they are unclassified.
25 They are not considered impaired and they do not vote on the Plan because they are automatically
26 entitled to specific treatment provided for them in the Bankruptcy Code. As such, Fann has **not**
27 placed the following claims in a class:
28

1. Administrative Expense Claims.

Administrative expenses are claims for costs or expenses of administering the Debtor’s Chapter 11 case which are allowed under Bankruptcy Code section 507(a)(1). All Allowed Administrative Claims will be paid on the Effective Date of the Plan or on the date Allowed by final order, unless a particular claimant agrees to a different treatment.

The following chart lists all of the Debtor’s section 507(a)(1) administrative claims and their treatment under the Plan:

<u>Name of Claimant</u>	<u>Fann’s Statement of Amount Claimed¹</u>	<u>Trustee and GTG’s Statement of Amount Claimed</u>	<u>Treatment</u>
Garman Turner Gordon LLP L.L.P. (“GTG”)	\$590,836.92 As set forth in the December 22, 2017, order approving GTG’s Fee Notice [ECF No. 639]. This amount is based on the employment application of GTG on file with the Court that provides for a thirty-five percent contingency fee, which increases upon certain events, including the appeal filed by Fann. The amount is calculated from the \$1.75M recovered by the Trustee that comes into the Estate	\$590,836.92, plus additional fees and costs awarded by the Bankruptcy Court. As set forth in the December 22, 2017, order approving GTG’s Fee Notice [ECF No. 639]. This amount is based on the employment application of GTG on file with the Court that provides for a thirty-five percent contingency fee, which increases upon certain events, including the appeal filed by Fann.	On or about December 26, 2017, GTG was paid \$590,836.92, which was reported in the Trustee’s Monthly Operating Report for the Month of December 2017 [ECF No. 713]. Unless otherwise agreed to by the administrative claimant, any additional awarded fees and costs will be satisfied immediately upon entry of an order of the Bankruptcy Court approving this claim.

¹ Stated amounts are estimates of total fees through the Effective Date, and are based on information available as of February 5, 2018. There is a dispute between the Trustee and Fann regarding what the base computation for calculation of the Trustee’s fees and its attorneys’ fees should be. These amounts do not include an estimate of the costs that are recoverable by GTG or waive any rights of GTG to seek additional fees under the Engagement Agreement. Any requests must comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

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<u>Name of Claimant</u>	<u>Fann’s Statement of Amount Claimed¹</u>	<u>Trustee and GTG’s Statement of Amount Claimed</u>	<u>Treatment</u>
	from the Settlement, plus expenses paid by GTG for the benefit of the estate, minus a \$50,000 reduction voluntarily provided by GTG.	The amount is calculated from the \$1.75M recovered by the Trustee that comes into the Estate from the Settlement, plus expenses paid by GTG for the benefit of the estate, minus a \$50,000 reduction voluntarily provided by GTG.	
Brian Shapiro Chapter 11 Trustee	\$45,750	\$75,750	The Allowed claim ² shall be paid on the earlier of entry of a final order approving the Trustee’s fees, the Effective Date, or the acceptance of the Trustee’s final report.
Office of the United States Trustee	Unknown		The Office of the U.S. Trustee has been paid \$6,500, which payment Fann does not dispute and the Debtor remains current on all post-petition obligations to the Office of the U.S. Trustee. U.S. Trustee Fees shall be paid as they are assessed pursuant to 28 U.S.C. 1930(a)(6).
Johnson & Gubler , P.C.	\$37,349.51 As set forth in the January 22, 2018 order authorizing and directing payment of Debtor’s attorneys’	\$37,349.51 As set forth in the January 22, 2018 order authorizing and directing	This claim has been satisfied in full by prior payment in the amount of \$37,349.51.

² Fann will not dispute the calculation of the Trustee’s claim. However, the amount of the Trustee’s claim and the distribution amounts used for purposes of that calculation shall have no bearing on the basis for the attorneys’ fees received by GTG and shall not affect the appeal filed by Fann with regard to the order granting GTG’s Fee Notice, pending appeal no. 17-64, USDC Case No. 2:17-cv-03126-GMN.

<u>Name of Claimant</u>	<u>Fann's Statement of Amount Claimed¹</u>	<u>Trustee and GTG's Statement of Amount Claimed</u>	<u>Treatment</u>
	fees as an administrative expense. [ECF No. 711].	payment of Debtor's attorneys' fees as an administrative expense. [ECF No. 711].	
Total:	~ \$673,936.43	\$703,936.43	

GTG's claim is for professional services. The Court approved GTG's Fee Notice on December 22, 2017 [ECF No. 639].³ The Trustee paid \$590,836.92 of GTG's claim on December 26, 2017 [ECF No. 713].

With respect to the U.S. Trustee Fees, pursuant to 28 U.S.C. Section 1930(a)(6), Chapter 11 debtors who have confirmed a plan are required to continue making quarterly payments based upon disbursements until the case is converted, dismissed or closed. Pre-confirmation fees and costs incurred by the Debtor shall be pro-rated and paid on the Effective Date of the Plan. After confirmation, Fann shall timely file quarterly operating reports, and pay quarterly fees due to the U.S. Trustee pursuant to 28 U.S.C. 1930(a)(6), until this case is administratively closed, dismissed, converted to another chapter in bankruptcy, or a final decree closing the case is entered.

As indicated above, the Debtor will likely be liable for between \$45,750.01 and \$100,000 in Administrative Claims on the Effective Date of the Plan (GTG's Administrative Claim has been satisfied in part), depending on the amount of Administrative Claims ultimately allowed by the Court and the extent to which claimant(s) agree to receive their payments over time. As discussed below, the proceeds from the Settlement will be able to satisfy the payment to the Administrative Claimants.

³ On December 27, 2017, Fann filed a *Notice of Appeal and Statement of Election* [ECF No. 644], appealing this order.

1 **2. Priority Tax Claims.**

2 Priority tax claims include certain unsecured income, employment and other taxes
3 described by Bankruptcy Code Section 507(a)(8). Bankruptcy Code Section 1129(a)(9)(C)
4 requires that each holder of such a Section 507(a)(8) priority tax claim receive the present value
5 of such claim in deferred cash payments, over a period not exceeding sixty months from the
6 petition date of July 20, 2015. The following chart lists all of the Debtor's Section 507(a)(8)
7 priority tax claims and their treatment under the Plan:

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<u>Name of Claimant</u>	<u>Amount Claimed</u>	<u>Treatment</u>
Arizona Department of Revenue (" <u>AZDOR</u> ")	\$45,359.21	This claim will be paid in full, in cash, on the Effective Date • Est. Pmt. Amt. = \$45,359.21
Nevada Dept. Employment, Training, and Rehabilitation (" <u>NDETR</u> ")	\$4,187.60	Fann intends to object to this claim as it believes this amount is overstated. In addition, Fann believes that this claim is the co-responsibility of non-debtor entities. Fann will reserve funds in the amount of \$4,187.60 on account of this claim. This claim, to the extent Allowed, will be paid in full, in cash, upon the later of: (1) the conclusion of the NDETR's exhaustive attempt to seek repayment of this claim from non-debtor entities; or (2) fourteen days following a final order allowing or disallowing in part the claim following a claim objection. • Est. Pmt. Amt. = \$4,187.60

9 **C. Classified Claims and Interests.**

10 **1. Classes of Secured Claims.**

11 Secured claims are claims secured by liens on property of the Estate. The following chart
12 lists all classes of the Debtor's secured pre-petition claims and their treatment under the Plan:
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<u>Class</u>	<u>Description</u>	<u>Insider?</u>	<u>Impaired?</u>	<u>Treatment</u>
1A	Secured claim of Arizona Department of Revenue Total Claim Amount: \$35,534.84	No.	No.	This claim will be paid in full, in cash, on the Effective Date.
1B	Secured claim of Internal Revenue Service Total Claim Amount: \$1,586.13	No	No	This claim will be paid in full, in cash, on the Effective Date.

The Debtor's Secured Claims and their treatment under the Plan are described as follows:

Class 1-A consists of the Arizona Department of Revenue. Fann filed an objection to this Claim that was resolved by the Stipulation to Vacate Hearing Date on Fann Contracting, Inc.'s Objection to Arizona Department of Revenue's Amended Claim No. 3 on December 5, 2017. Pursuant to the Stipulation, the AZDOR shall have a secured claim of \$35,534.84. Fann believes that this claim is the co-responsibility of non-Debtor entities, specifically of the Mared Parties and/or the Canyon Rock Parties and Fann will be entitled on behalf of the Estate to seek repayment from non-Debtor third parties on behalf of the AZDOR. This claim will be paid in full, in cash, on the Effective Date. This Class is not impaired and its holders are not entitled to vote on the Plan. Class 1-B consists of the secured claim of the IRS in the amount of \$1,586.13. This claim will be paid in full, in cash, on the Effective Date. This Class is not impaired and its holders are not entitled to vote on the Plan.

2. Classes of Priority Unsecured Claims (Non-Tax).

Certain priority claims that are referred to in Bankruptcy Code Sections 507(a) (4), (5), (6) and (7) are required to be placed in classes.⁴ Those types of claims are entitled to priority treatment as follows: The Bankruptcy Code requires that each holder of such a claim receives

⁴ Section 507(a)(4) – Wages, salary or commissions earned by an individual within 180 days from the petition date of no more than \$10,950;

Section 507(a)(5) – Claims for contribution to employee benefit plans within 180 days of the petition date; Section 507(a)(6) – Claims of up to \$5,400 by persons raising grain against a debtor operating a grain storage facility or engaged as a United States fisherman against a person operating a fish storage or processing facility; and

Section 507(a)(7) – Claims of up to \$2,425 by individuals for a pre-petition deposit in connection with the purchase, lease or rental of undelivered property or services intended for the personal use of the individual.

1 cash on the Effective Date equal to the allowed amount of such claim. However, a class of
 2 unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the
 3 Effective Date, equal to the allowed amount of such claim. The Debtor does not have any classes
 4 of priority unsecured claims that are required to be classified.

5 **3. Classes of General Unsecured Claims.**

6 General unsecured claims are unsecured claims not entitled to priority under Bankruptcy
 7 Code Section 507(a). The following chart identifies the Plan’s treatment of the classes containing
 8 all of the Debtor’s general unsecured claims.

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<u>Class</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
3	Allowed general unsecured claims. Amount of claims in Class: appx. \$1,262,823.00. This includes a stipulated \$20,000 reduction in Fann’s asserted claim.	Yes.	Holders of allowed general unsecured claims shall receive pro rata distributions on account of their claims from the Estate’s cash on hand following the consummation of the Settlement. Distributions to Class 3 will be made sixty days following the Effective Date of the Plan or as soon as a base number for distribution can be calculated, but all payments will be made no later than three (3) years after the Effective Date.

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Class 3 consists of the allowed general unsecured claims. Holders of allowed general unsecured claims shall receive pro rata distributions on account of their claims from all funds received by the Estate.

Distributions on Class 3 Allowed Claims will be made sixty days following the Effective Date of the Plan or as soon as a base number for distribution can be calculated, but all payments will be made no later than three (3) years after the Effective Date.

Class 3 is impaired and is entitled to vote.

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1 which the Estate received \$850,000 as \$900,000 was transferred to the Canyon Rock Parties
2 outside of this Plan.

3 The Effective Date of the Plan is to be the first Business Day, thirty days after entry of an
4 order resolving the case pending in the Eighth Judicial District Court, Clark County, Nevada,
5 Case No. A-13-690801 (the “State Court Litigation”). For the avoidance of doubt, this includes
6 the final resolution of any post-trial briefing and motions but does not include prosecution or
7 defense of an appeal and/or defense of a remand.

8 Prior to the Effective Date, the Trustee and his counsel will continue the obligation under
9 the Settlement Agreement as more fully set forth in paragraph 3 of the Settlement Order entered
10 at ECF No. 537 which provides that the “Trustee, through his counsel, agrees to use reasonable
11 efforts to seek an order from the Eighth Judicial District Court, Clark County, Nevada
12 determining that the Disputed Lease is invalid.” Trial is scheduled over the Disputed Lease in the
13 State Court Litigation for March 5, 2019.

14 In order to give the Trustee and his counsel time to complete the State Court Litigation,
15 the Effective Date is delayed as set forth above.

16 As the Settlement Order does not provide for prosecution or defense of an appeal or
17 defense of a remand of an appeal by the Trustee or his counsel, the Estate’s obligations related to
18 the State Court Litigation will be complete and discharged after the conclusion of the trial and
19 any post-trial briefing. For the avoidance of doubt, upon the Effective Date, the Trustee and his
20 counsel (which is currently Garman Turner Gordon) shall no longer be the legal representative of
21 the Estate and shall not be permitted to prosecute and/or defend any appeal of the State Court
22 Litigation. The Trustee may file an applicable document with the State Court advising of the
23 same. To the extent applicable, any interested third party, may seek to substitute in as the real
24 party in interest to prosecute and/or defend any appeal of the State Court Litigation.

25 On the Effective Date or as soon as practicable thereafter, the following events will occur
26 in the following order:

27 ///

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1 1. Fann will establish a separate bank account for purposes of effectuating the terms
2 of this Plan (the “Disbursing Agent Account”);

3 2. The Trustee will transfer by wire transfer all of the Estate’s cash to the Disbursing
4 Agent Account;

5 3. Upon the Effective Date, Fann shall constitute the authorized representative for all
6 purposes of Debtor entity, the Grand Canyon Ranch, LLC, whether relating to rights, privileges,
7 control, or ownership arising before or after the Effective Date.

8 4. The Retained Assets defined herein shall be assigned to Fann. Such assignment
9 shall be effective immediately on the Effective Date without further written instrument or order.

10 5. The Trustee shall be fully discharged from all obligations and duties, except that
11 the Trustee shall be responsible for filing his final report if such report has not been filed prior to
12 the Effective Date.

13 6. Fann shall have the authority to implement the terms of this Plan.

14 In addition, within thirty days after the Effective Date, Liberty Mutual and Gallagher
15 Basset will each pay \$100,000 into the Estate, for a total contribution of \$200,000, in order to
16 fully and finally settle the Fann Litigation and in exchange for full releases of Liberty Mutual,
17 Gallagher Basset, and Fann by the Estate.

18 Further, Fann may pursue reimbursement and/or equitably marshal the claims of the
19 AZDOR, and the NDTER among other claims, as those claims are the co-responsibility of the
20 Mared Parties and the Canyon Rock Parties. The Plan provides that NDTER must first pursue
21 their claims against the non-debtor entities before seeking a distribution from the Estate.

22 **B. Objections to Claims.**

23 As provided by Bankruptcy Code section 502(c), the Court may estimate any contingent
24 or unliquidated disputed claim for purposes of confirmation of the Plan.

25 Fann and creditors shall have the authority to file any objections to Claims following Plan
26 Confirmation until the Claims Objection Deadline, and the Court shall retain jurisdiction of the
27 Debtor and this Bankruptcy Case to resolve such objections to Claims following Plan
28 Confirmation.

1 **1. Treatment of Disputed Claims.**

2 Notwithstanding any other provisions of the Plan, no payments or distributions will be
3 made on account of any Claim until such Claim becomes an Allowed Claim. The Court will
4 retain jurisdiction to estimate any contingent or unliquidated Claim at any time during litigation
5 concerning any objection to the Claim, including during the pendency of any appeal relating to
6 any such objection. If the Court estimates any contingent or unliquidated Claim, that estimated
7 amount will constitute either the Allowed Amount of such Claim or a maximum limitation on
8 such Claim, as determined by the Court.

9 **2. Allowance of Claims Subject to Bankruptcy Code Section 502(d).**

10 Allowance of Claims shall be in all respects subject to the provisions of Section 502(d) of
11 the Bankruptcy Code.

12 **C. Disbursing Agent.**

13 Fann will act as the disbursing agent for the purpose of making all disbursements provided
14 for under the Plan.

15 **D. Distribution of Property Under the Plan.**

16 The following procedures set forth in the Plan apply to all distributions made pursuant to
17 the Plan.

18 **1. Manner of Cash Payments Under the Plan**

19 Cash payments to domestic entities holding Allowed Claims will be tendered in United
20 States dollars and will be made by checks drawn on a United States domestic bank.

21 **2. No Distributions with Respect to Disputed Claims**

22 No payments of cash or distributions of other property or other consideration of any kind
23 shall be made on account of any Disputed Claim unless and until such Claim becomes an
24 Allowed Claim or is deemed to be such for purposes of distribution, and then only to the extent
25 that the Claim becomes, or is deemed to be for distribution purposes, an Allowed Claim. The
26 presence of a Disputed Claim in any Class will not be a cause to delay distribution to Allowed
27 Claims in that Class or in other Classes, so long as a reserve is created for the Disputed Claim in
28 accordance herewith. Any holder of a Claim that becomes an Allowed Claim after the Effective

1 Date will receive any distribution that it would have received had its Allowed Claim been
2 Allowed as of the Effective Date within thirty (30) days from the date that such Claim becomes
3 an Allowed Claim.

4 **3. Delivery of Distributions and Undeliverable/Unclaimed Distributions**

5 Fann shall make distributions to each holder of an Allowed Claim by mail as follows: (1)
6 at the address set forth on the proof of Claim filed by such holder of an Allowed Claim; and (2) at
7 the address set forth in any written notice of address change delivered to Fann after the date of
8 any related proof of Claim.

9 **4. Undeliverable and Unclaimed Distributions**

10 If the distribution to the holder of any Allowed Claim is returned as undeliverable, no
11 further distribution shall be made to such holder unless and until Fann is notified in writing of
12 such holder's then current address. Subject to the other provisions of the Plan, undeliverable
13 distributions shall remain in the possession of Fann pursuant to this Section until such time as a
14 distribution becomes deliverable. All undeliverable cash distributions will be held in
15 unsegregated, interest-bearing bank accounts for the benefit of the entities entitled to the
16 distributions. These entities will be entitled to interest actually earned on account of
17 undeliverable distributions. The bank account will be maintained in the name of Fann.

18 Any holder of an Allowed Claim who does not assert a claim in writing for an
19 undeliverable distribution within ninety (90) days after the date of the first attempted distribution
20 shall no longer have any claim or interest in such undeliverable distribution.

21 Any undeliverable distributions that are not claimed under this Section will be transferred
22 to Fann to be distributed to holders of Allowed Class 3 Claims in accordance with Article III
23 hereof.

24 **5. No Recourse**

25 Notwithstanding that the Allowed amount of a particular Disputed Claim is recovered
26 under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in
27 an amount for which there is insufficient cash to provide a recovery equal to that received by
28 other holders of Allowed Claims in the relevant Class, no Claim holder shall have recourse to the

1 Debtor, Fann, or any of their respective Professionals, or their successors or assigns, or the holder
 2 of any other Claim, or any of their respective property. However, nothing in the Plan shall
 3 modify any right of a holder of a Claim under Bankruptcy Code section 502(j).

4 **E. The Effective Date**

5 The Plan shall not become binding unless and until the Effective Date occurs. The
 6 Effective Date of the Plan is to be the first Business Day, thirty days after entry of an order
 7 resolving the State Court Litigation. For the avoidance of doubt, this includes the final resolution
 8 of any post-trial briefing and motions but does not include prosecution or defense of an appeal
 9 and/or defense of a remand.

10 **F. Treatment of Nonconsenting Members of Consenting Classes (Chapter 7 Liquidation
 11 Analysis)**

12 A plan must provide that a nonconsenting impaired claimant or interest holder of a
 13 consenting class receive at least as much as would be available had the debtor filed a Chapter 7
 14 petition instead. In a chapter 7 case, the general rule is that the debtor's assets are sold by a
 15 trustee. Unsecured creditors generally share in the proceeds only after secured creditors and
 16 administrative claimants are paid. Certain unsecured creditors get paid before other unsecured
 17 creditors do. Unsecured creditors with the same priority share in proportion to the amount of
 18 their allowed claim in relationship to the total amount of allowed claims.

19 This Plan provides for the distribution of assets pursuant to the distribution scheme that
 20 would be applicable in a Chapter 7 case. Accordingly, Fann believe that no creditor will receive
 21 less under this Plan than such creditor would have received in a Chapter 7 case.

22 **G. Other Plan Provisions.**

23 **1. Executory Contracts and Unexpired Leases (11 U.S.C. Section 365).**

24 The Debtor has no executory contracts or unexpired leases that will be assumed under this
 25 Plan or that require cure amounts as a condition to assumption. In the event a Claimant asserts a
 26 Claim arising from the rejection of an unexpired lease or executory contract which is rejected, the
 27 deadline to file such Claim will be thirty (30) days after the Confirmation Order. Any Claim
 28

1 based on the rejection of an unexpired lease or executory contract will be barred if the proof of
2 Claim was not timely filed, unless the Court orders otherwise.

3 **2. Retention of Jurisdiction.**

4 Notwithstanding the entry of the Confirmation Order and occurrence of the Effective
5 Date, the Court will retain such jurisdiction over the Case after the Effective Date to the full
6 extent permitted by law, including, without limitation, jurisdiction to:

7 (a) Allow, disallow, determine, liquidate, classify, subordinate, estimate or establish
8 the priority or secured or unsecured status of any Claim or interest, including the resolution of any
9 request for payment of any Administrative Claim, the resolution of any objections to the
10 allowance or priority of Claims or Interests and the resolution of any dispute related thereto;

11 (b) Grant or deny applications for the allowance of compensation or reimbursement of
12 expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending before the
13 Effective Date;

14 (c) Resolve any matters related to the assumption or rejection of any executory
15 contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor
16 may be liable, and to hear, determine, and if necessary, liquidate any Claims arising therefrom;

17 (d) Ensure that distributions to holders of Allowed Claims are accomplished pursuant
18 to the provisions of the Plan;

19 (e) Decide or resolve any motions, adversary proceedings, contested or litigated
20 matters and any other matters and grant or deny any applications involving the Debtor, the
21 Reorganized Debtor or the Chapter 11 Case that may be pending on the Effective Date;

22 (f) Enter such Orders as may be necessary or appropriate to implement or
23 consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and
24 other agreements or documents created in connection with the Plan, the Disclosure Statement or
25 the Confirmation Order, except as otherwise provided herein;

26 (g) Resolve any cases, controversies, suits or disputes that may arise in connection
27 with the consummation, interpretation, or enforcement of the Plan or the Confirmation Order,
28 including the release and injunction provisions set forth in and contemplated by the Plan and the

1 Confirmation Order, or any entity's rights arising under or obligations incurred in connection
2 with the Plan or the Confirmation Order;

3 (h) Subject to any restrictions on modifications provided in any contract, instrument,
4 release, indenture or other agreement or document created in connection with the Plan, modify
5 the Plan before or after the Effective Date pursuant to Section 1127 of the Bankruptcy Code or
6 modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release,
7 indenture or other agreement or document created in connection with the Plan, the Disclosure
8 Statement or the Confirmation Order; or remedy any defect or omission or reconcile any
9 inconsistency in any Court Order, the Plan, the Disclosure Statement, the Confirmation Order or
10 any contract, instrument, release, indenture, or other agreement or document created in
11 connection with the Plan, the Disclosure Statement or the Confirmation Order, as such manner as
12 may be necessary or appropriate to consummate the Plan, to the extent authorized by the
13 Bankruptcy Code;

14 (i) Issue injunctions, enter and implement other Orders or take such other actions as
15 may be necessary or appropriate to restrain interference by any entity with consummation,
16 implementation or enforcement of the Plan or the Confirmation Order;

17 (j) Enter and implement such Orders as are necessary or appropriate if the
18 Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

19 (k) Determine any other matters that may arise in connection with or relating to the
20 Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release,
21 indenture, or other agreement or document created in connection with the Plan, the Disclosure
22 Statement or the Confirmation Order, except as otherwise provided in the Plan; and

23 (l) Enter a final decree or an Order closing or concluding the Case.

24 The foregoing list is illustrative only and not intended to limit in any way the Court's
25 exercise of jurisdiction. If the Court abstains from exercising jurisdiction or is otherwise without
26 jurisdiction over any matter arising out of the Case, including, without limitation the matters set
27 forth in this Article, this Article shall have no effect upon and shall not control, prohibit or limit
28

1 the exercise of jurisdiction by any other court having competent jurisdiction with respect to such
2 matter.

3 **V.**

4 **EFFECT OF CONFIRMATION OF THE PLAN**

5 **A. Binding Effect.**

6 Confirmation of the Plan will bind the Debtor, its creditors, interest holders, their
7 successors-in-interest, and any other person or entity acquiring property under the Plan, to the
8 provisions of the Plan.

9 **B. Injunction.**

10 Upon confirmation of the Plan, all Persons that have held, currently hold or may hold a
11 Claim or other debt or liability against the Debtor, are permanently enjoined from taking any of
12 the following actions on account of any such Claims, debts or liabilities to the extent discharged
13 as set forth in Section V.A above: (a) commencing or continuing in any manner any action or
14 other proceeding against the Debtor; (b) enforcing, attaching, collecting or recovering in any
15 manner any judgment, award, decree or order against the Debtor; (c) creating, perfecting or
16 enforcing any lien or encumbrance against the Debtor; (d) asserting a setoff, right of subrogation
17 or recoupment of any kind against any obligation due to the Debtor, and (e) commencing or
18 continuing any action, in any manner, in any place that does not comply with or is inconsistent
19 with the provisions of the Plan.

20 Any Person injured by any willful violation of such injunction shall recover actual
21 damages, including costs and attorneys' fees, and in appropriate circumstances, may recover
22 punitive damages, from the willful violator.

23 **C. Cramdown.**

24 To the extent that any class does not accept the Plan, Fann hereby seeks confirmation
25 pursuant to the "cramdown" provisions of Bankruptcy Code Section 1129(b).

26 **D. Other Documents and Actions.**

27 Fann is authorized to receive, and execute all documents and take such other actions as are
28 necessary to effectuate the transactions provided for in the Plan. In the event any party in interest

1 fails to prepare, deliver or execute a document required under this Plan, or take any act required
2 under this Plan, Fann is authorized to prepare, deliver, or execute such document or take such act
3 on that party's behalf.

4 **E. Trustee's Discharge.**

5 From and after the later of the Effective Date or the acceptance of the Trustee's final
6 report, the Trustee shall receive a discharge of his statutory duties and release of liability
7 consistent with the Bankruptcy Code. Fann is not aware of any issues that would impede the
8 discharge of the Trustee by the Court or acceptance of a Trustee's final report.

9 **F. Modification of the Plan.**

10 Fann may modify the Plan at any time before confirmation. However, the Court may
11 require a new disclosure statement and/or revoting of the Plan. Fann may also seek to modify the
12 Plan at any time after confirmation only if (1) the Plan has not been substantially consummated
13 and (2) the Court authorizes the proposed modifications after notice and a hearing.

14 **G. Post-Confirmation Status Reports.**

15 Within 120 days of the entry of the order confirming the Plan, Fann will file a status
16 report with the Court explaining what progress has been made toward consummation of the
17 confirmed Plan. The status report shall be served on the UST and those parties who have
18 requested special notice. Further status reports shall be filed every 180 days and served on the
19 same entities until the entry of a final decree closing the case.

20 **H. Post-Confirmation Conversion / Dismissal.**

21 A creditor or party in interest may bring a motion to convert or dismiss the case under
22 Bankruptcy Code Section 1112(b), after the Plan is confirmed, if there is a default in performing
23 the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all
24 property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant
25 to the Plan, will revert in the Chapter 7 estate. The automatic stay will be reimposed upon any
26 revested property.

27 The order confirming the Plan may also be revoked under very limited circumstances.
28 The Court may revoke the order if the order of confirmation was procured by fraud and if a party

1 in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry
2 of the order of confirmation.

3 **I. Final Decree.**

4 Once the estate has been fully administered as defined in Bankruptcy Rule 3022, or at
5 such other time as may be appropriate under applicable law, Fann, or such other party as the
6 Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain
7 a final decree to close the case.

8
9 DATED this 6th day of December 2018.

10 SNELL & WILMER L.L.P.

11
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