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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re
GRAND CANYON RANCH, LLC,
Debtor.

Case No. 15-14145-btb

Chapter 11

**FANN CONTRACTING, INC.'S CREDITOR'S
THIRD AMENDED PLAN OF LIQUIDATION**

Hearing Date: TBD

Hearing Time: TBD

**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 Third 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 (“GCR”), 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 Settlement Order was entered on the Docket. A true and correct copy of
 7 the Settlement Order is attached to the Disclosure Statement as Exhibit 2. Fann contends that the
 8 Settlement placed on the record did not articulate the means of effectuation of the settlement, and
 9 the Trustee through counsel gave conflicting statements whether the Settlement was to occur by a
 10 Section 363 sale free and clear or some other means.

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

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

21 II.

22 DEFINITIONS AND RULES OF CONSTRUCTION

23 Definitions.

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

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

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, and: (b)(i) as to which no objection to the allowance of such Claim
 6 has been filed within any applicable time period fixed by the Bankruptcy Court, or (ii) as to
 7 which an objection is filed and the order allowing such Claim has become a Final Order. If any
 8 Claim or the Creditor holding such Claim is subject to any defense, set off, counterclaim,
 9 recoupment, or other adverse claim of any kind of the Debtor, that Claim will be deemed a
 10 Disputed Claim; and it will not become an Allowed Claim unless and until all such matters are
 11 resolved or adjudicated fully and finally, with all appellate rights and remedies having been
 12 exhausted. The term “Allowed,” when used to modify a reference in the Plan to any Claim or
 13 Class of Claims shall mean a Claim (or any Claim in such Class) that is allowed, pursuant to the
 14 requirements of this definition.

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

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

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

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

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

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

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

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

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

3 **“Effective Date”** means the first Business Day following the Confirmation Order being a
4 final order and no stay of the Confirmation Order is in effect.

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

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

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

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

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

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

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

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

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

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

26 **“Priority Non-Tax Claim”** means a Priority Claim other than a Priority Tax Claim.
27 Priority Non-Tax Claims do not include any Claims that accrue after the Petition Date.
28

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

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

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

7 **III.**

8 **CLASSIFICATION OF CLAIMS AND INTERESTS**
 9 **AND THEIR TREATMENT UNDER THE PLAN**

10 **A. General Overview.**

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

15 **B. Unclassified Claims.**

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

20 **1. Administrative Expense Claims.**

21 Administrative expenses are claims for costs or expenses of administering the Debtor’s
 22 Chapter 11 case which are allowed under Code section 507(a)(1). The Code requires that all
 23 administrative claims be paid on the Effective Date of the Plan, unless a particular claimant
 24 agrees to a different treatment.

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

27 ///

28 ///

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<u>Name of Claimant</u>	<u>Amount Claimed¹</u>	<u>Trustee and GTG's Statement of Amount Claimed</u>	<u>Treatment</u>
Garman Turner Gordon LLP L.L.P. ("GTG")	<p>\$281,487.50</p> <p>This amount is based on the employment application of GTG on file with the Court that provides for a thirty-five percent contingency fee. The amount is calculated from the \$850,000 that comes into the Estate from the Trustee's Settlement, after subtracting \$45,750 for the Trustee's fees (\$850,000-\$45,750).</p>	<p>\$590,836.93</p> <p>This amount is based on the employment application of GTG on file with the Court that provides for a thirty-five percent contingency fee. The amount is calculated from the \$1.75M recovered by the Trustee that comes into the Estate from the Trustee's Settlement, plus expenses paid by GTG for the benefit of the estate, minus a \$50,000 reduction voluntarily provided by GTG.</p>	<p>Unless otherwise agreed to by the administrative claimant, this claim will be satisfied in full by payment of \$281,487.50 or in an amount to be determined by a final order allowing GTG's fees.</p>
Brian Shapiro Chapter 11 Trustee	<p>\$45,750</p> <p>The Trustee's fee is calculated from the \$850,000 disbursed or turned over from the Estate with respect to the Settlement.</p>	<p>\$75,750 The Trustee's fee is calculated from the \$1.75M disbursed or turned over from the Estate with respect to the Settlement.</p>	<p>Unless otherwise agreed to by the administrative claimant, this claim will be satisfied by payment in full of the \$45,750 or in an amount determined by a final order.</p>
Office of the United States Trustee	<p>Unknown</p>		<p>The Debtor remains current on all post-petition obligations to the Office of the United States Trustee. Unless otherwise agreed</p>

¹ Stated amounts are estimates of total fees through the Effective Date, and are based on information available as of December 11, 2017. 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. 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>Amount Claimed</u>	<u>Trustee and GTG's Statement of Amount Claimed</u>	<u>Treatment</u>
			to by the administrative claimant, this claim will be satisfied by payment in full of Allowed Claim in cash on the later of the Effective Date or the date allowed by the Court.
Total:	~ \$325,000	\$688, 250	

GTG's claim is for professional services and cannot be paid by the Estate until approved draw down requests are submitted or such fees and costs are otherwise approved by the Court. For all such fees and costs, the professional in question must file and serve a properly noticed fee application and the Court must rule on it. Only the amount of professional fees and costs allowed by the Court will be owed and required to be paid under the Plan.²

With respect to the UST's 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. Post-confirmation fees and costs will be due quarterly and will be paid from income generated by the Settlement.

As indicated above, the Debtor will likely be liable for approximately \$325,000 in administrative claims on the Effective Date of the Plan, 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. Also, as indicated above, the Trustee and GTG's contention

² Based on communications to date and the Notice, the Trustee and GTG seek larger compensations based on inclusion of the \$900,000 payout to the Canyon Rock Parties as part of a base computation, which payment was made from the Trustee's account and pursuant to the Order of the Bankruptcy Court.

1 is that the Estate will be liable to pay to GTG a fee of \$590,836.93. As discussed below, the
2 proceeds from the Settlement will be able to satisfy the payment to the Administrative Claimants.

3 2. Priority Tax Claims.

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

<u>Name of Claimant</u>	<u>Amount Claimed</u>	<u>Treatment</u>
Arizona Department of Revenue ("AZDOR")	\$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 ("NDETR")	\$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

24 C. Classified Claims and Interests.

25 1. Classes of Secured Claims.

26 Secured claims are claims secured by liens on property of the Estate. The following chart
27 lists all classes of the Debtor's secured pre-petition claims and their treatment under the Plan:

<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 Code Sections 507(a) (4), (5), (6) and (7) are required to be placed in classes.³ Those types of claims are entitled to priority treatment as follows: The Code requires that each holder of such a claim receives cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders

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

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

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

<u>Class</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
3A	Fann Contracting Amount: \$1,111,630.81	Yes.	Fann will receive a pro rata distribution of all funds received by the estate in an amount of no less than \$500,000. Distributions to Class 3A will be made sixty days following the Effective Date of the Plan or on the Effective Date of the Plan.
3B	Allowed general unsecured claims. Amount of claims in Class: \$151,192.16	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. Class 3B's pro rata distribution shall be reduced, if necessary, to ensure that Fann receives no less than a \$500,000 distribution. Distributions to Class 3A 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.

25 Class 3A consists of the claim of Fann. Fann will receive a pro rata distribution of all
 26 funds received by the Estate in an amount of no less than \$500,000. Distributions to Class 3A
 27

1 will be made sixty days following the Effective Date of the Plan or on the Effective Date of the
2 Plan.

3 Class 3A is impaired and is entitled to vote.

4 **Class 3B consists of the allowed general unsecured claims, excepting Fann. Holders**
5 **of allowed general unsecured claims shall receive pro rata distributions on account of their**
6 **claims from all funds received by the Estate. Class 3B's pro rata distribution shall be**
7 **reduced, if necessary, to ensure that Fann receives no less than a \$500,000 distribution and**
8 **Fann may receive better treatment than Class 3B due to its contribution to the Plan by**
9 **Gallagher Bassett and Liberty Mutual.**

10 If Fann's contention that the Trustee's counsel's fees should be in the amount of \$325,000
11 is upheld, then Fann will not receive a larger pro rata distribution than other unsecured creditors.
12 However, if the amount claimed by GTG of \$590,836.93 is allowed, then there will only be
13 approximately \$80,000 remaining from the Settlement for distribution to unsecured creditors.
14 Fann will not be able to receive a pro rata distribution of \$500,000 as there will not be funds
15 available to satisfy this amount. Even including the \$200,000 contribution from Liberty Mutual
16 and Gallagher Bassett, the amount available for unsecured creditors in total will be only
17 \$280,000. Fann is the largest unsecured creditor and makes up approximately ninety percent of
18 all unsecured creditors.

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

22 Class 3B is impaired and is entitled to vote.

23 **4. Classes of Interest Holders.**

24 Interest holders are the parties who hold an ownership interest (i.e., equity interest) in the
25 Debtor. If the debtor is a corporation, entities holding preferred or common stock in the debtor
26 are interest holders. If the debtor is a partnership, the interest holders include both general and
27 limited partners. If the debtor is an individual, the debtor is the interest holder. In the present
28 case, according to the Debtor's Statement of Financial Affairs, Nigel Turner owns an 85%

1 membership interest in the Debtor, Lesley Turner owns a 5% membership interest in the Debtor,
 2 and Tony Marriott owns a 10% membership interest in the Debtor. The following chart identifies
 3 the Plan's treatment of the class of interest holders:

<u>Class</u>	<u>Description</u>	<u>Impaired?</u>	<u>Treatment</u>
4	Equity interest holders holding 100% of the Debtor's shares.	Yes	Class 4 Equity Interests will be canceled.

8 This Class is impaired and is deemed to reject the Plan. Its holders are not entitled to vote on the
 9 Plan.

10 **D. Procedures for Resolving Claims Objections.**

11 Fann intends to file objections to certain claims prior to the Effective Date. Fann
 12 anticipates resolving many such objections prior to the date required for payment on account of
 13 any claim which has been the subject of an objection. To the extent a claim objection has not
 14 been resolved prior to the date that such claim would otherwise be required to be paid pursuant to
 15 this Plan, then no payment shall be made on account of such claim until the objection to such
 16 claim is resolved.

17 **IV.**

18 **IMPLEMENTATION OF THE PLAN**

19 **A. Funding for the Plan.**

20 The funding for the Plan consists of the proceeds received by the Estate pursuant to the
 21 Settlement and purchase of the Frontier Property by Mared for \$1,750,000 of which the Estate
 22 will net \$850,000 as \$900,000 is earmarked for, and will be immediately transferred to, the
 23 Canyon Rock Parties outside of this Plan.

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

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

5 **B. Objections to Claims.**

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

8 Fann and creditors shall have the authority to file any objections to Claims following Plan
9 Confirmation until the Claims Objection Deadline, and the Court shall retain jurisdiction of the
10 Debtor and this Bankruptcy Case to resolve such objections to Claims following Plan
11 Confirmation.

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

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

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

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

23 **C. Disbursing Agent.**

24 Fann will act as the disbursing agent for the purpose of making all disbursements provided
25 for under the Plan. On the Effective Date, unless the Trustee seeks an earlier discharge, the
26 Trustee will be discharged along with his counsel and Fann will be vested with all rights,
27 obligations and duties necessary to carry out the terms of the Plan.
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1 **D. Distribution of Property Under the Plan.**

2 The following procedures set forth in the Plan apply to all distributions made pursuant to
3 the Plan.

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

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

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

8 No payments of cash or distributions of other property or other consideration of any kind
9 shall be made on account of any Disputed Claim unless and until such Claim becomes an
10 Allowed Claim or is deemed to be such for purposes of distribution, and then only to the extent
11 that the Claim becomes, or is deemed to be for distribution purposes, an Allowed Claim. The
12 presence of a Disputed Claim in any Class will not be a cause to delay distribution to Allowed
13 Claims in that Class or in other Classes, so long as a reserve is created for the Disputed Claim in
14 accordance herewith. Any holder of a Claim that becomes an Allowed Claim after the Effective
15 Date will receive any distribution that it would have received had its Allowed Claim been
16 Allowed as of the Effective Date within thirty (30) days from the date that such Claim becomes
17 an Allowed Claim.

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

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

23 **4. Undeliverable and Unclaimed Distributions**

24 If the distribution to the holder of any Allowed Claim is returned as undeliverable, no
25 further distribution shall be made to such holder unless and until Fann is notified in writing of
26 such holder's then current address. Subject to the other provisions of the Plan, undeliverable
27 distributions shall remain in the possession of Fann pursuant to this Section until such time as a
28 distribution becomes deliverable. All undeliverable cash distributions will be held in

1 unsegregated, interest-bearing bank accounts for the benefit of the entities entitled to the
2 distributions. These entities will be entitled to interest actually earned on account of
3 undeliverable distributions. The bank account will be maintained in the name of Fann.

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

7 Any undeliverable distributions that are not claimed under this Section will be transferred
8 to Fann to be distributed to holders of Allowed Class 3A and 3B Claims in accordance with
9 Article III hereof.

10 **5. No Recourse**

11 Notwithstanding that the Allowed amount of a particular Disputed Claim is recovered
12 under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in
13 an amount for which there is insufficient cash to provide a recovery equal to that received by
14 other holders of Allowed Claims in the relevant Class, no Claim holder shall have recourse to the
15 Debtor, Fann, or any of their respective Professionals, or their successors or assigns, or the holder
16 of any other Claim, or any of their respective property. However, nothing in the Plan shall
17 modify any right of a holder of a Claim under Bankruptcy Code section 502(j).

18 **E. The Effective Date**

19 The Plan shall not become binding unless and until the Effective Date occurs. The
20 Effective Date is the first Business Day, fourteen days after entry of the Confirmation Order, on
21 which no stay of the Confirmation Order is in effect.

22 **F. Treatment of Nonconsenting Members of Consenting Classes (Chapter 7 Liquidation
23 Analysis)**

24 A plan must provide that a nonconsenting impaired claimant or interest holder of a
25 consenting class receive at least as much as would be available had the debtor filed a Chapter 7
26 petition instead. In a chapter 7 case, the general rule is that the debtor's assets are sold by a
27 trustee. Unsecured creditors generally share in the proceeds only after secured creditors and
28 administrative claimants are paid. Certain unsecured creditors get paid before other unsecured

1 creditors do. Unsecured creditors with the same priority share in proportion to the amount of
2 their allowed claim in relationship to the total amount of allowed claims.

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

6 **G. Other Plan Provisions.**

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

8 The Debtor has no executory contracts or unexpired leases that will be assumed under this
9 Plan or that require cure amounts as a condition to assumption. In the event a Claimant asserts a
10 Claim arising from the rejection of an unexpired lease or executory contract which is rejected, the
11 deadline to file such Claim will be thirty (30) days after the Confirmation Order. Any Claim
12 based on the rejection of an unexpired lease or executory contract will be barred if the proof of
13 Claim was not timely filed, unless the Court orders otherwise.

14 **2. Retention of Jurisdiction.**

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

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

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

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

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

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

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

10 (g) Resolve any cases, controversies, suits or disputes that may arise in connection
11 with the consummation, interpretation, or enforcement of the Plan or the Confirmation Order,
12 including the release and injunction provisions set forth in and contemplated by the Plan and the
13 Confirmation Order, or any entity's rights arising under or obligations incurred in connection
14 with the Plan or the Confirmation Order;

15 (h) Subject to any restrictions on modifications provided in any contract, instrument,
16 release, indenture or other agreement or document created in connection with the Plan, modify
17 the Plan before or after the Effective Date pursuant to Section 1127 of the Bankruptcy Code or
18 modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release,
19 indenture or other agreement or document created in connection with the Plan, the Disclosure
20 Statement or the Confirmation Order; or remedy any defect or omission or reconcile any
21 inconsistency in any Court Order, the Plan, the Disclosure Statement, the Confirmation Order or
22 any contract, instrument, release, indenture, or other agreement or document created in
23 connection with the Plan, the Disclosure Statement or the Confirmation Order, as such manner as
24 may be necessary or appropriate to consummate the Plan, to the extent authorized by the
25 Bankruptcy Code;

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

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

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

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

8 The foregoing list is illustrative only and not intended to limit in any way the Court's
9 exercise of jurisdiction. If the Court abstains from exercising jurisdiction or is otherwise without
10 jurisdiction over any matter arising out of the Case, including, without limitation the matters set
11 forth in this Article, this Article shall have no effect upon and shall not control, prohibit or limit
12 the exercise of jurisdiction by any other court having competent jurisdiction with respect to such
13 matter.

14 V.

15 **EFFECT OF CONFIRMATION OF THE PLAN**

16 **A. Binding Effect.**

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

20 **B. Injunction.**

21 Upon confirmation of the Plan, all Persons that have held, currently hold or may hold a
22 Claim or other debt or liability against the Debtor, are permanently enjoined from taking any of
23 the following actions on account of any such Claims, debts or liabilities to the extent discharged
24 as set forth in Section V.A above: (a) commencing or continuing in any manner any action or
25 other proceeding against the Debtor; (b) enforcing, attaching, collecting or recovering in any
26 manner any judgment, award, decree or order against the Debtor; (c) creating, perfecting or
27 enforcing any lien or encumbrance against the Debtor; (d) asserting a setoff, right of subrogation
28 or recoupment of any kind against any obligation due to the Debtor, and (e) commencing or

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1 continuing any action, in any manner, in any place that does not comply with or is inconsistent
2 with the provisions of the Plan.

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

6 **C. Cramdown.**

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

9 **D. Other Documents and Actions.**

10 Fann is authorized to execute such documents and take such other actions as are necessary
11 to effectuate the transactions provided for in the Plan. In the event any party in interest fails to
12 prepare, deliver or execute a document required under this Plan, or take any act required under
13 this Plan, Fann is authorized to prepare, deliver, or execute such document or take such act on
14 that party's behalf.

15 **E. Limitation on Liability.**

16 Neither Fann nor any of its employees, representatives, agents, attorneys or other
17 professionals will have or incur any liability to any person for any act taken or omission made in
18 connection with or related to formulating, implementing, confirming or consummating this Plan,
19 the Disclosure Statement, or any contract, instrument, release or other agreement or document
20 created in connection with this Plan.

21 **F. Modification of the Plan.**

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

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

27 Within 120 days of the entry of the order confirming the Plan, Fann will file a status
28 report with the Court explaining what progress has been made toward consummation of the

1 confirmed Plan. The status report shall be served on the UST and those parties who have
2 requested special notice. Further status reports shall be filed every 180 days and served on the
3 same entities until the entry of a final decree closing the case.

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

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

11 The order confirming the Plan may also be revoked under very limited circumstances.
12 The Court may revoke the order if the order of confirmation was procured by fraud and if a party
13 in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry
14 of the order of confirmation.

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1 **I. Final Decree.**

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

6 DATED this 11th day of December 2017.

7
8 SNELL & WILMER L.L.P.

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