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Electronically Filed April 4, 2018

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF NEVADA**

9 In re
10
11 AVERY LAND GROUP, LLC,
12 a Nevada limited liability company,
13
14 Debtor.

Case No. BK-S-16-14995-abl

Chapter 11

**FIRST AMENDED CHAPTER 11
PLAN OF REORGANIZATION
DATED APRIL 4, 2018**

Hearing Date: N/A

Hearing Time: N/A

**ANY OFFER OR SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE
ABOVE-REFERENCED PLAN WILL COMPLY WITH ALL APPLICABLE
PROVISIONS OF THE BANKRUPTCY CODE ONCE A DISCLOSURE
STATEMENT TO ACCOMPANY SUCH PLAN HAS BEEN APPROVED BY THIS
COURT. ALL REFERENCES TO THE DISCLOSURE STATEMENT CONTAINED
HEREIN ARE TO SUCH DISCLOSURE STATEMENT AND THE EXHIBITS TO BE
ATTACHED THERETO THAT WILL CONTAIN MATERIAL INFORMATION
ABOUT DEBTOR AND WILL BE SUBMITTED FOR COURT APPROVAL AT THE
EARLIEST POSSIBLE OPPORTUNITY.**

22 Avery Land Group, LLC (“Debtor”), debtor and debtor-in-possession in the above-
23 captioned case (the “Chapter 11 Case”), hereby proposes its *First Amended Chapter 11 Plan of*
24 *Reorganization Dated as of April 4, 2018* (the “Plan”), pursuant to section 1121(a) of title 11 of the
25 United States Code (the “Bankruptcy Code”).

26 **DISCLAIMER**

27 Reference is made to the Disclosure Statement accompanying this Plan, including the
28 exhibits appended thereto, for a discussion of Debtor’s history, business, results of operations and

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1 properties, and brief summary and detailed analysis of this Plan. All creditors are encouraged to
2 consult the Disclosure Statement and to read this Plan carefully and completely before voting to
3 accept or reject this Plan.

4 THIS PLAN AND THE EXHIBITS APPENDED HERETO, AND THE
5 ACCOMPANYING DISCLOSURE STATEMENT AND THE EXHIBITS APPENDED
6 THERETO, ALL REMAIN SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND
7 HAVE NOT BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN
8 SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.

9 **ARTICLE I**

10 **DEFINITIONS AND RULES OF INTERPRETATION**

11 **A. Definitions.**

12 1.1 For the purposes of this Plan and the accompanying Disclosure Statement, the
13 following terms (which appear herein as capitalized terms) shall have the respective meanings as
14 hereinafter set forth; such meanings to be equally applicable to the singular and the plural forms of
15 the terms defined, unless the context otherwise requires. Capitalized terms used in this Plan at all
16 times shall refer to terms defined in this Article I, or, if not defined in this Article I, then as defined
17 in any other section of this Plan. Capitalized terms used but not immediately defined in this Plan
18 shall have the meanings ascribed to them later in this Plan. Unless otherwise provided in this Plan,
19 all terms used herein shall have the meaning assigned to them under the Bankruptcy Code or
20 Bankruptcy Rules. The rules of construction applicable to the Bankruptcy Code and the Bankruptcy
21 Rules shall be applicable to this Plan.

22 1.2 “101 Pipe Collateral” means all Assets that secure the 101 Pipe Secured Claim by
23 means of a Lien that is not Avoidable.

24 1.3 “101 Pipe Secured Claim” means the Secured Claim Scheduled by Debtor in favor of
25 101 Pipe.

26 1.4 “Administrative Claim” means a Claim for costs and expenses of administration,
27 pursuant to Bankruptcy Code sections 503(b), 507(a)(2) or 507(b), including: (a) the actual and
28 necessary costs and expenses incurred after the Petition Date and through the Effective Date of

1 preserving the Estate and operating the business of Debtor (such as wages, salaries, or commissions
2 for services, and payments for goods and services); (b) compensation and reimbursement of
3 expenses for legal, financial advisory, accounting, and other services, including but not limited to,
4 Allowed Professional Fees, pursuant to Bankruptcy Code sections 328, 330(a), or 331 or otherwise
5 for the period commencing on the Petition Date and ending on the Effective Date; and (c) all
6 Bankruptcy Court approved requests for compensation or expense reimbursement for making a
7 substantial contribution in the Chapter 11 Case, pursuant to Bankruptcy Code sections 503(b)(3),
8 (4), and (5).

9 1.5 “Administrative Claim Bar Date” means the deadline for filing requests for payment
10 of Administrative Claims, which shall be thirty (30) days prior to the Effective Date, except with
11 respect to Professional Fees, which shall be subject to the provisions of Section 2.2 hereof. The
12 Administrative Claim Bar Date does not apply to the fees and changes assessed against the Estate
13 pursuant to Section 123 of the Judicial Code and 28 U.S.C. § 1930. Such fees and changes are not
14 subject to an allowance procedure under 11 U.S.C. § 503(b).

15 1.6 “Affiliate Account Debtor” means an insider of Debtor that owes Debtor a debt.

16 1.7 “Affiliate Settlement Agreement” means an agreement between Debtor and an
17 Affiliate Account Debtor that is approved by the Bankruptcy Court and provides for the Affiliate
18 Account Debtor to settle its debt by giving Debtor Land of an aggregate Value equal to such debt.

19 1.8 “Allowed” means, with reference to any Claim, Equity Interest or Interest and with
20 respect to Debtor: (a) any Claim against or Interest in Debtor that has been listed by Debtor in its
21 Schedules, as such Schedules may be amended by Debtor from time to time in accordance with
22 Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no
23 contrary Proof of Claim or Interest has been Filed; (b) any Claim or Interest allowed (i) under this
24 Plan, (ii) by Final Order, or (iii) as to which the liability of Debtor and the amount thereof are
25 determined by a final order of a court of competent jurisdiction other than the Bankruptcy Court; or
26 (c) as to which a Proof of Claim has been timely Filed in a liquidated amount with the Bankruptcy
27 Court, pursuant to the Bankruptcy Code or any order of the Bankruptcy Court, or has been Filed
28 with leave of the Bankruptcy Court after notice and a hearing, provided that no objection to the

1 allowance of such Claim or motion to expunge such Claim has been interposed by any party in
2 interest before any final date for the filing of such objections or motions set forth in this Plan, the
3 Confirmation Order or other order of the Bankruptcy Court. For purposes of determining the
4 amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of
5 any valid and enforceable Claim that Debtor may hold against the Holder thereof, to the extent such
6 Claim may be validly offset, recouped, or otherwise reduced under applicable law.

7 1.9 “Assets” means all of the assets, property (including the Property), interests, and
8 effects, Cash, receivables, real and personal, tangible and intangible, wherever situated, of Debtor,
9 as they existed on the Effective Date or thereafter, including all of the Debtor’s other non-Cash
10 property and assets, including all of the Causes of Action.

11 1.10 “Avoidable” means subject to avoidance under Chapter 5 of the Bankruptcy Code.

12 1.11 “Avoidance Actions” means all claims, rights, and causes of action of Debtor’s Estate
13 under the Bankruptcy Code, including but not limited to those set forth in sections 506(c), 506(d),
14 510, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553, or their state law analogs, regardless of
15 whether or not such actions have been commenced prior to the Effective Date.

16 1.12 “Bankruptcy Code” means Title 11 of the United States Code, as amended from time
17 to time, as applicable to this Chapter 11 Case.

18 1.13 “Bankruptcy Court” means the United States Bankruptcy Court for the District of
19 Nevada, or such other court as may from time to time have jurisdiction over this Chapter 11 Case.

20 1.14 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as heretofore
21 or hereafter amended and the general, local and chambers rules and orders of the Bankruptcy Court.

22 1.15 “Bar Date” means January 11, 2017, the date established by the Bankruptcy Court by
23 which non-governmental Creditors were required to file proofs of claim with respect to pre-petition
24 Claims, including Claims asserted pursuant to Bankruptcy Code section 503(b)(9), except with
25 respect to Administrative Claims, Claims arising from the rejection of any executory contracts and
26 unexpired leases, and Claims that were scheduled by the Debtor as undisputed, non-contingent, and
27 unliquidated; and March 8, 2017, by which governmental Creditors were required to file proofs of
28 claim with respect to pre-petition Claims, including but not limited to Priority Tax Claims.

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1 1.16 “Baum” means Jonathan Baum.

2 1.17 “Baum Collateral” means all Assets that secure the Baum Secured Claim by means of
3 a Lien that is not Avoidable.

4 1.18 “Baum Secured Claim” means the Secured Claim Scheduled by Debtor in favor of
5 Baum.

6 1.1 “Baum Secured Note” means the promissory note, signed by the Reorganized Debtor
7 and reflecting the obligations of the Reorganized Debtor to Baum under this Plan, substantially in
8 the form annexed as an exhibit to the Disclosure Statement.

9 1.2 “Business Day” means a day, other than a Saturday, Sunday, or other day on which
10 commercial banks in Las Vegas, Nevada are authorized or required by law to close.

11 1.3 “Cash” means legal tender of the United States of America, which may be conveyed
12 by check or wire transfer.

13 1.4 “Cashman” means Cashman Equipment Company

14 1.5 “Cashman Settlement Agreement” means that certain *Settlement Agreement and*
15 *Release of Claims* dated March 31, 2017, between Cashman and James M. Rhodes.

16 1.6 “Cashman Unsecured Claim” means the Claim asserted by Cashman Equipment
17 Company in Proof of Claim No. 52, that is guaranteed by a non-Debtor.

18 1.7 “Cashman Unsecured Claim Balance” has the meaning ascribed to it in Section 2.3(f)
19 of this Plan.

20 1.8 “Causes of Action” means any Claim, Avoidance Action, cause of action,
21 controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage,
22 judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character
23 whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or
24 unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable
25 directly or derivatively, whether arising before, on or after the Petition Date, in contract or in tort,
26 in law or in equity, or pursuant to any other theory of law.

27 1.9 “Chapter 11 Case” means the chapter 11 case filed by Debtor as set forth in the caption
28 to this Plan.

1 1.10 “Claim” has the meaning set forth in Bankruptcy Code section 101(5).

2 1.11 “Claims Register” means the official register of Claims and Interests maintained by
3 Debtor.

4 1.12 “Class” means a class of Holders of Claims or Interests as described in Article II of
5 the Plan.

6 1.13 “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order.

7 1.14 “Confirmation Date” means the date upon which the clerk of the Bankruptcy Court
8 enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of
9 Bankruptcy Rules 5003 and 9021.

10 1.15 “Confirmation Funds” means the Post Effective Date Fee Fund, together with (a) all
11 funds required to be disbursed, or deposited and held for later disbursement upon allowance or other
12 Bankruptcy Court authorization, on or as of the Effective Date (i) to Holders of Allowed
13 Professional Fee Claims, other Allowed Administrative Claims, Allowed Priority Claims, and
14 Allowed Priority Tax Claims to be paid in Cash on the Effective Date; (ii) to the U.S. Trustee for
15 US Trustee Fees due as of the Effective Date; and (iii) for any other Distributions and payment of
16 costs and expenses in connection with consummating the Plan; and (b) all funds required by the
17 Reorganized Debtor to develop the Property.

18 1.16 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider
19 confirmation of the Plan pursuant to Bankruptcy Code section 1129, as such hearing may be
20 adjourned or continued from time to time.

21 1.17 “Confirmation Order” means the order entered by the Bankruptcy Court confirming
22 the Plan in accordance with the Bankruptcy Code, which shall be in form and substance reasonably
23 acceptable to Debtor.

24 1.18 “Creditor” means a Holder of a Claim.

25 1.19 “Debtor” means Avery Land Group, LLC, a Nevada limited liability company.

26 1.20 “Debtor in Possession” means the Debtor, as debtor in possession in the Chapter 11
27 Case, pursuant to Bankruptcy Code sections 1107 and 1108.

28

1 1.21 “Deferred Administrative Claim” has the meaning ascribed to it in Section 2.2(a)(2)
2 of this Plan.

3 1.22 “DIP Drawdown” has the meaning ascribed to it in Section 5.1(b) of this Plan.

4 1.23 “DIP Lender” means Gypsum Resources Materials, LLC.

5 1.24 “DIP Lender Collateral” means all Assets that secure the DIP Lender Secured Claim
6 by means of a Lien that is not Avoidable.

7 1.25 “DIP Lender Secured Claim” means, collectively, all Claims of the DIP Lender under
8 the DIP Loan.

9 1.26 “DIP Lender Secured Claim Balance” has the meaning ascribed to it in
10 Section 2.3(b)(i) of this Plan.

11 1.27 “DIP Lender Secured Note” means the promissory note signed by the Reorganized
12 Debtor and reflecting the obligations of the Reorganized Debtor to the DIP Lender under this Plan,
13 a copy of which is annexed as an exhibit to the Disclosure Statement.

14 1.28 “DIP Loan” means the advance of funds by the DIP Lender under the Debtor-In-
15 Possession Revolving Credit Agreement, approved by the Court in its *Order Pursuant to 11 U.S.C.*
16 *105, 364, Fed. R. Bankr. P. Rule 4001(C) and L.R. 4001(B) and (C): (I) Authorizing Debtor to*
17 *Obtain Post-Petition Financing; (II) Granting Related Relief* [Docket No. 139]

18 1.29 “Disallowed Claim” means any Claim or portion thereof that has been disallowed by
19 a Final Order of the Bankruptcy Court.

20 1.30 “Disclosure Statement” means the solicitation and disclosure statement for this Plan,
21 including all exhibits and schedules thereto.

22 1.31 “Disputed Claim” means: (a) any Claim or portion of a Claim (including any
23 Administrative Claim, Priority Claim or Secured Claim) listed in the Schedules as disputed,
24 contingent or unliquidated; or (b) any Claim, as to which an objection to the allowance thereof has
25 been filed with the Bankruptcy Court within any time limitation fixed by the Bankruptcy Code, the
26 Bankruptcy Rules, this Plan or an order of the Bankruptcy Court, which objection has not been
27 settled, withdrawn, or determined, in whole or in part, by a Final Order.

28

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1 1.32 “Distribution” means any distribution made by the Distribution Agent pursuant to the
2 terms of this Plan.

3 1.33 “Distribution Agent” means Debtor, Reorganized Debtor, or the Person or Entity
4 chosen by Debtor to make or facilitate Distributions pursuant to this Plan.

5 1.34 “Distribution Record Date” means the Confirmation Date unless the Bankruptcy
6 Court establishes a different date for the Distribution Record Date in the Confirmation Order.

7 1.35 “Disputed Claims Reserve” means the Distribution Agent’s segregated reserve
8 account for disputed claims, as defined in Section 8.6 of this Plan.

9 1.36 “Effective Date” means the first Business Day on which the conditions specified in
10 Article X of this Plan have been satisfied in full or waived.

11 1.37 “Entity” has the meaning as set forth in Bankruptcy Code section 101(15).

12 1.38 “Estate” means the estate of Debtor that was created by the commencement of the
13 Chapter 11 Case pursuant to Bankruptcy Code section 541, and shall be deemed to include any and
14 all privileges and incorporeal hereditaments of Debtor and any and all interests in property, whether
15 real, personal or mixed, rights, Causes of Action, avoidance powers or extensions of time that
16 Debtor or the estate shall have had effective as of the Petition Date or thereafter, whether by virtue
17 of Bankruptcy Code sections 544, 545, 546, 547, 548, 549 or 550 or otherwise.

18 1.39 “Equity Interest” has the same meaning as “Interest.”

19 1.40 “File” means to file with the Bankruptcy Court in the Chapter 11 Case.

20 1.41 “Final Decree” means an order of the Bankruptcy Court closing the Chapter 11 Case
21 pursuant to Bankruptcy Code section 350.

22 1.42 “Final Order” means an order or judgment entered by the Bankruptcy Court: (a) that
23 has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which (i)
24 any right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived, or (ii)
25 the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal
26 or petition for certiorari, review, reargument, stay or rehearing is pending; or (b) as to which an
27 appeal has been taken or petition for certiorari, review, reargument, stay or rehearing has been filed,
28 and (i) such appeal or petition for certiorari, review, reargument, stay or rehearing has been resolved

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

8 1.43 “General Unsecured Claim Balances” has the meaning ascribed to it in Section 2.3(d)
9 of this Plan.

10 1.44 “General Unsecured Claims” means all Claims against Debtor, including Claims
11 resulting from rejection of executory contracts and unexpired leases, that are not Secured,
12 Administrative, Priority or Insider Unsecured Claims, and that are not subject to subordination by
13 agreement or otherwise.

14 1.45 “Holder” means any Person or Entity that is the owner of a Claim or Interest in the
15 Chapter 11 Case.

16 1.46 “Impaired” means with respect to any Class of Claims or Interests, a Class of Claims
17 or Interests that is impaired within the meaning of Bankruptcy Code section 1124.

18 1.47 “Insider Unsecured Claim Balances” has the meaning ascribed to it in Section 2.3(h)
19 of this Plan.

20 1.48 “Insider Unsecured Claims” means all Claims held by insiders against Debtor,
21 including Claims resulting from rejection of executory contracts and unexpired leases, that are not
22 Secured, Administrative, Priority or General Unsecured Claims.

23 1.49 “Interest” means any: (i) any equity or other ownership interest in any Person or
24 Entity, including, but not limited to, all issued and outstanding or reserved for issuance, common
25 stock, preferred stock, membership interests, warrants, options, or other ownership rights or rights
26 to purchase or receive additional shares of stock or membership interests in any Person or Entity,
27 and/or any other instrument or document to the extent that it directly or indirectly evidences, creates
28 or reserves any equity or ownership interest in any Person or Entity giving rise to any Claim or

1 Interest, (ii) equity security, including all membership interests together with any warrants, options,
2 or contractual rights to purchase or acquire such equity securities at any time and all rights arising
3 with respect thereto, and (iii) partnership, limited liability company or similar interest.

4 1.50 “Interest Holder” means the Holder of an Interest.

5 1.51 “Key Transaction Documents” means, the Plan, the Disclosure Statement, the Ballots,
6 and any and all Plan implementation documents filed with the Plan Supplement.

7 1.52 “K&L Baxter” means the K & L Baxter Family Ltd. Partnership.

8 1.53 “K&L Baxter Collateral” means all Assets that secure the K&L Baxter Secured Claim
9 by means of a Lien that is not Avoidable.

10 1.54 “K&L Baxter Guarantees” means, collectively, those certain Guaranty Agreements
11 dated September 6, 2013, and September 12, 2014, executed by James M. Rhodes, Harmony Homes,
12 Inc., and the JMR Irrevocable Investment Trust in favor of K&L Baxter.

13 1.55 “K&L Baxter Secured Claim” means the Secured Claim asserted by K&L Baxter in
14 Proof of Claim No. 34.

15 1.56 “K&L Baxter Secured Claim Balance” has the meaning ascribed to it in
16 Section 2.3(b)(ii) of this Plan.

17 1.57 “K&L Baxter Secured Note” means the promissory note, signed by the Reorganized
18 Debtor and reflecting the obligations of the Reorganized Debtor to K&L Baxter under this Plan,
19 substantially in the form annexed as an exhibit to the Disclosure Statement.

20 1.58 “Land” means all real estate received from Affiliate Account Debtors pursuant to
21 Affiliate Settlement Agreements.

22 1.59 “Lien” has the meaning set forth in Bankruptcy Code section 101(37).

23 1.60 “Loftin” means Loftin Equipment Co., Inc.

24 1.61 “Loftin Mechanic’s Lien” means that certain mechanic’s lien filed against property
25 owned by Kingman Farms Ventures, LLC.

26 1.62 “Loftin Unsecured Claim” means the Claim asserted by Loftin in Proof of Claim No.
27 42, that may be secured by a lien against non-Debtor property and is a Disputed Claim.

28

1 1.63 “Loftin Unsecured Claim Balance” has the meaning ascribed to it in Section 2.3(e) of
2 this Plan.

3 1.64 “Lysgaard” means Robert A. Lysgaard and Meria Lysgaard.

4 1.65 “Lysgaard Collateral” means all Assets that secure the Lysgaard Secured Claim by
5 means of a Lien that is not Avoidable.

6 1.66 “Lysgaard Secured Claim” means the Secured Claim Scheduled by Debtor in favor of
7 Lysgaard.

8 1.67 “McKenna” means Stephen R. McKenna.

9 1.68 “McKenna Collateral” means all Assets that secure the McKenna Secured Claim by
10 means of a Lien that is not Avoidable.

11 1.69 “McKenna Secured Claim” means the Secured Claim Scheduled by Debtor in favor
12 of McKenna.

13 1.70 “McKenna Secured Note” means the promissory note, signed by the Reorganized
14 Debtor and reflecting the obligations of the Reorganized Debtor to McKenna under this Plan,
15 substantially in the form annexed as an exhibit to the Disclosure Statement.

16 1.71 “Mohave County Treasurer” means the treasurer for Mohave County, Arizona.

17 1.72 “Moreno” means Barbara Moreno, James Robert Ellis and Marilyn Torbet.

18 1.73 “Moreno Collateral” means all Assets that secure the Moreno Secured Claim by
19 means of a Lien that is not Avoidable.

20 1.74 “Moreno Secured Claim” means the Secured Claim Scheduled by Debtor in favor of
21 Moreno.

22 1.75 “New Capital Contribution” means the amount of funds, if any, in addition to the DIP
23 Loan, that are advanced by the DIP Lender to make up the necessary Confirmation Funds.

24 1.76 “New Equity Interests” means Interests in the Reorganized Debtor to be authorized
25 and issued to the DIP Lender on the Effective Date pursuant to this Plan.

26 1.77 “Notice of Confirmation” means that certain notice, pursuant to Bankruptcy
27 Rule 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has confirmed
28 this Plan.

1 1.78 “Old Equity Interests” means Interests in the Debtor.

2 1.79 “Objection Deadline” means the deadline for Filing objections to this Plan set by the
3 Bankruptcy Court.

4 1.80 “Operative Document” means any contract, instrument, release, settlement agreement
5 or other agreement or document, if any, that is reasonably necessary to effectuate and implement
6 the transactions provided for in this Plan, including the Key Transaction Documents.

7 1.81 “Order” means an order or judgment entered by the Bankruptcy Court.

8 1.82 “Person” means any individual, corporation, partnership, limited liability company,
9 joint venture, association, trust or organization, or other “person” as defined in Bankruptcy Code
10 section 101(41), as well as any governmental agency, governmental unit or political subdivision.

11 1.83 “Petition Date” means September 9, 2016.

12 1.84 “Plan” means this chapter 11 plan, including all documents referenced herein and all
13 exhibits, supplements, appendices and schedules hereto or thereto, either in its present form or as
14 the same may be altered, amended or modified from time to time pursuant to the Bankruptcy Code
15 or Final Order.

16 1.85 “Plan Supplement” means a compilation of documents supplementing and giving
17 effect to the terms to this Plan, which shall be filed no later than the Plan Supplement Filing Date.
18 The Plan Supplement shall include: (i) any of the Operative Documents not attached to the
19 Disclosure Statement, and (ii) any information required for confirmation of this Plan pursuant to the
20 terms of the Bankruptcy Code, including lists of individuals referenced in Bankruptcy Code section
21 1129(a)(5)(A)(i) & 1129(a)(5)(B).

22 1.86 “Plan Supplement Filing Date” means 14 days prior to the Confirmation Hearing.
23 Debtor reserves the right to submit amended or revised versions of the Plan Supplement up to the
24 Confirmation Date.

25 1.87 “Post Effective Date Fees” means the reasonable fees and expenses of Debtor’s and/or
26 the Reorganized Debtor’s Professionals incurred by Debtor and/or the Reorganized Debtor after the
27 Effective Date, including those fees and expenses incurred for legal, financial advisory, accounting
28 and other services rendered in connection with the implementation, consummation and performance

1 of the Plan and which are necessary to complete the administration of, conclude and close the
2 Chapter 11 Case.

3 1.88 “Post Effective Date Fee Fund” means a sum of Thirty Thousand Dollars (\$30,000)
4 to be paid to the Distribution Agent on the Effective Date from the DIP Drawdown, which shall be
5 part of the Confirmation Funds and used by the Distribution Agent to pay any Post Effective Date
6 Fees.

7 1.89 “Post Effective Date Interest” means per annum non-compounded interest, accruing
8 after the Effective Date, at the fixed rate of the prime rate reported by the Board of Governors of
9 the Federal Reserve on the Effective Date.

10 1.90 “Priority Claim” means a Claim entitled to priority under Bankruptcy Code sections
11 507(a)(2) through (7).

12 1.91 “Priority Tax Claims” means any Claim that is entitled to priority under section 502(i)
13 or Bankruptcy Code section 507(a)(8). Priority Tax Claims do not include *ad valorem* tax Claims
14 if such Claims under applicable state law are Secured by a Lien on Debtor’s Assets.

15 1.92 “Professional” means an Person or Entity: (a) employed pursuant to a Bankruptcy
16 Court order in accordance with Bankruptcy Code sections 327 or 1103 and to be compensated for
17 services rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327, 328,
18 329, 330, or 331; or (b) awarded compensation and reimbursement by the Bankruptcy Court,
19 pursuant to Bankruptcy Code section 503(b)(4).

20 1.93 “Professional Fees” means all reasonable fees and expenses incurred by Professionals
21 and allowed by the Bankruptcy Court.

22 1.94 “Professional Fee Claim” means any Claim for compensation or reimbursement of
23 fees and expenses as may be requested by a Professional to the extent such Professional is required
24 to apply to the Bankruptcy Court for payment of such Claim pursuant to Bankruptcy Code sections
25 326, 328, 330 or 331 and the terms of this Plan.

26 1.95 “Proof of Claim” means a proof of claim filed against Debtor in the Chapter 11 Case.

27 1.96 “Property” means, collectively, all real estate owned by the Debtor and listed on the
28 Debtor’s Schedules, as amended or modified, together with all Land.

1 1.97 “Property Sales” means all sales of Property by the Sales Agent on behalf of the
2 Reorganized Debtor.

3 1.98 “Proponent” means Debtor as proponent of this Plan.

4 1.99 “Pro Rata” means, with respect to an amount of Cash or other consideration to be paid
5 or distributed on a particular date to a Holder of an Allowed Claim, that such Distribution shall be
6 made in accordance with the ratio, as of such date, of the amount such Allowed Claim is to the
7 aggregate of the amounts of Claims in the Class to which such Allowed Claim belongs.

8 1.100 “Released Liabilities” means, with respect to a given Releasor, all claims, obligations,
9 suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities based on any act,
10 omission, transaction, event or other occurrence (other than rights to enforce the terms of this Plan
11 or any related document or agreement), whether known or unknown, foreseen or unforeseen, then
12 existing or thereafter arising, in law, equity or otherwise that arose prior to the Effective Date and
13 relate to the Debtor, this Plan, the Chapter 11 Case, which could have been asserted by such Releasor
14 (or on behalf of Debtor or their Estate) against any Releasee or any of its Representatives.

15 1.101 “Releasees” means the Debtor, the DIP Lender, the Reorganized Debtor and any
16 current shareholders, subsidiaries, partners, members or affiliates of the aforementioned Persons
17 and any of their respective Representatives.

18 1.102 “Releasors” means the Debtor, the DIP Lender, the Reorganized Debtor and any
19 current shareholders, subsidiaries, partners, members or affiliates of the aforementioned Persons
20 and any of their Representatives.

21 1.103 “Reorganized Debtor” means, on or after the Effective Date, Avery Land Group, LLC,
22 as a reorganized debtor.

23 1.104 “Representatives” means, with respect to a given Person or Entity, its past and current
24 directors, officers, shareholders, members, partners, employees, agents, attorneys, professionals,
25 advisors, trustees, consultants, accountants, contractors and other representatives.

26 1.105 “Ritchie” means John Ritchie.

27 1.106 “Ritchie Collateral” means all Assets that secure the Ritchie Secured Claim by means
28 of a Lien that is not Avoidable.

1 1.107 “Ritchie Secured Claim” means the Secured Claim Scheduled by Debtor in favor of
2 Ritchie.

3 1.108 “Sales Agent” means John R. Gall.

4 1.109 “Schedule of Disputed Claims” means the non-exhaustive list of Claims whose
5 amounts are disputed, which is attached as an exhibit to the Disclosure Statement.

6 1.110 “Scheduled” means, with respect to a Claim, listed by Debtor in the Schedules as non-
7 disputed, non-contingent, and liquidated.

8 1.111 “Schedules” means the schedules of Assets and liabilities, the list of Holders of
9 Interests and the statements of financial affairs Filed by Debtor under Bankruptcy Code section 521
10 and Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation
11 Date.

12 1.112 “Secured” means when referring to a Claim: (a) secured by a Lien on property in
13 which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to
14 applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to
15 section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the
16 Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as
17 determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to this Plan
18 as a secured Claim.

19 1.113 “Shortfall” has the meaning ascribed to it in Section 5.1(b) of this Plan.

20 1.114 “Thompson” means William Ray Thompson.

21 1.115 “Thompson Collateral” means all Assets that secure the Thompson Secured Claim by
22 means of a Lien that is not Avoidable.

23 1.116 “Thompson Secured Claim” means the Secured Claim Scheduled by Debtor in favor
24 of Thompson.

25 1.117 “Thompson Secured Note” means the promissory note, signed by the Reorganized
26 Debtor and reflecting the obligations of the Reorganized Debtor to Thompson under this Plan,
27 substantially in the form annexed as an exhibit to the Disclosure Statement.

28 1.118 “Unclassified Claims” means Administrative Claims and Priority Tax Claims.

1 1.119 “US Trustee Fees” means fees payable pursuant to 28 U.S.C. § 1930.

2 1.120 “Utica” means Utica Leaseco, LLC.

3 1.121 “Utica Guarantees” means, collectively, those certain Master Lease Guarantees, each
4 dated March 6, 2015, and executed separately by James M. Rhodes and Truckee Springs Holdings,
5 Inc., in favor of Utica.

6 1.122 “Utica Unsecured Claim” means the Claim asserted by Utica in Amended Proof of
7 Claim No. 31.

8 1.123 “Utica Unsecured Claim Balance” has the meaning ascribed to it in Section 2.3(g) of
9 this Plan.

10 1.124 “Value” means, for any Asset, its value as determined by either (a) the Bankruptcy
11 Court, or (b) an agreement between the Debtor or Reorganized Debtor, on the one hand, and a
12 Creditor that asserts a Lien against and/or will receive such Asset under this Plan, on the other.

13 **B. Rules of Interpretation.**

14 Any term used in this Plan that is not defined in this Plan, either in this Article I or elsewhere,
15 but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that
16 term in the Bankruptcy Code or the Bankruptcy Rules. For purposes of this Plan: (a) whenever
17 from the context it is appropriate, each term, whether stated in the singular or the plural, shall include
18 both the singular and the plural; (b) to the extent a reference or description in this Plan to an
19 Operative Document is inconsistent with the terms or conditions of that Operative Document, the
20 terms and conditions of the Operative Document shall govern over the reference or description
21 contained in this Plan; (c) any reference in this Plan to an existing document, schedule, Operative
22 Document, or exhibit Filed or to be Filed means such document, schedule, Operative Document, or
23 exhibit, as it may have been or may be amended, modified, or supplemented as of the Confirmation
24 Date in accordance with the terms hereof; (d) unless otherwise specified in a particular reference,
25 all references in this Plan to Sections, Articles, and exhibits are references to Sections, Articles, and
26 exhibits of or to this Plan; (e) the words “herein”, “hereof”, “hereto”, “hereunder”, and others of
27 similar import refer to this Plan in its entirety rather than to only a particular portion of this Plan; (f)
28 the word “all” shall mean “any and all;” (g) captions and headings to Articles and Sections are

1 inserted for convenience of reference only and are not intended to be a part of or to affect the
 2 interpretations of this Plan; (h) the rules of construction set forth in Bankruptcy Code section 102
 3 shall apply, including that the terms “includes,” “shall include,” and “including” are not limiting;
 4 (i) reference to a pleading, request, or document being “Filed” means duly and properly filed with
 5 the Bankruptcy Court as reflected on the docket of the Bankruptcy Court; (j) all exhibits and
 6 schedules to this Plan are incorporated into this Plan, and shall be deemed to be included in this
 7 Plan, regardless of when they are Filed; (k) any service or notice provided for in this Plan shall be
 8 provided at the addresses specified in Article XIII hereof; (l) except to the extent that the
 9 Bankruptcy Code or other federal law is applicable, or to the extent the exhibits or Operative
 10 Documents provide otherwise, the rights, duties and obligations under this Plan shall be governed,
 11 construed and enforced in accordance with the laws of the State of Nevada; and (m) to the extent a
 12 reference or description in the Disclosure Statement to this Plan or an Operative Document is
 13 inconsistent with the terms or conditions of this Plan or the Operative Document, the terms and
 14 conditions of this Plan or the Operative Document, as applicable, shall govern over the reference
 15 contained in the Disclosure Statement.

16 **ARTICLE II**

17 **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

18 2.1 Introduction.

19 (a) All Claims and Interests, except Administrative Claims (including
 20 Professional Fee Claims) and Priority Tax Claims, are placed in the Classes set forth below. In
 21 accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax
 22 Claims, as described below, have not been classified.

23 (b) A Claim or Interest is placed in a particular Class only to the extent that the
 24 Claim or Interest falls within the description of that Class and is classified in other Classes to the
 25 extent that any portion of the Claim or Interest falls within the description of such other Classes. A
 26 Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions
 27 pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class
 28 and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

2.2 Unclassified Claims.

(a) Administrative Claims.

(1) Deadline to File Administrative Claims. The Holder of an Administrative Claim, other than (i) a Professional Fee Claim, or (ii) a liability incurred and paid in the ordinary course of business by the Debtor, must file with the Bankruptcy Court and serve on Debtor and its counsel, notice of such Administrative Claim on or before the Administrative Claim Bar Date. Such notice must include, at minimum, (i) the name of the Holder of such Claim, (ii) the basis of the Claim, and (iii) the amount of the Claim. Failure to file such notice timely and properly shall result in the Administrative Expense Claim being forever barred and discharged.

(2) Payment Provisions. Subject to the provisions of Bankruptcy Code sections 330(a), 331 and 503(b), each Holder of an Administrative Claim shall, from the Confirmation Funds, be paid in Cash in the Allowed amount of any such Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the date upon which such Administrative Claim becomes Allowed, or (iii) such date as is otherwise agreed by Debtor and the Holder of such Claim (a “Deferred Administrative Claim”).

(3) Professional Fee Claims and US Trustee Fees. Notwithstanding the foregoing or anything to the contrary in this Plan:

(A) all final applications for Professional Fee Claims constituting amounts due for services rendered on or before the Effective Date shall be Filed no later than twenty (20) days prior to the Effective Date, unless otherwise ordered by the Bankruptcy Court;

(B) Debtor shall pay, or cause to be paid, all accrued US Trustee Fees on or before the Effective Date of the Plan; and following the Effective Date, the Reorganized Debtor shall be responsible for timely payment of all US Trustee Fees until such time as the Final Decree closing this Chapter 11 Case is entered and all US Trustee Fees due are paid in full; and

(C) Debtor or the Reorganized Debtor shall File with the Bankruptcy Court and serve on the United States Trustee a quarterly financial report for each quarter (or portion thereof) that the Chapter 11 Case remains open in such format as reasonably may be required by the United States Trustee.

1 (b) Priority Tax Claims. The legal and equitable rights of the Holders of Priority
2 Tax Claims are unaltered by this Plan. Each Holder of an Allowed Priority Tax Claim shall, from
3 the Confirmation Funds, be paid in Cash in the Allowed amount of such Claim on, or as soon as
4 reasonably practicable after, the later of (i) the Effective Date, (ii) the date upon which such Priority
5 Tax Claim becomes Allowed, or (iii) such date as is otherwise agreed by Debtor and the Holder of
6 such Claim. Under the Plan, Holders of Allowed Priority Tax Claims against the Debtor shall not
7 be entitled to any payments on account of any post-Petition Date interest or penalty with respect to
8 or in connection with an Allowed Priority Tax Claim. Any such Claim or demand for any post-
9 Petition Date interest or penalty will be discharged upon the entry of the Confirmation Order by
10 Bankruptcy Code section 1141(d)(1), and the Allowed Priority Tax Claim Holder shall not assess
11 or attempt to collect such accrued post-Petition Date interest or penalty from the Debtor, the
12 Reorganized Debtor, or their property.

13 2.3 Classified Claims and Interests

14 (a) Class 1: Priority Claims

15 *Claims in Class:* Class 1 consists of Priority Claims against Debtor.

16 *Treatment:* The legal and equitable rights of the Holders of Allowed Priority
17 Claims are unaltered by this Plan. Each Holder of an Allowed Priority Claim shall, in full
18 satisfaction, settlement, release and exchange for such Allowed Priority Claim, be paid in Cash in
19 the Allowed amount of such Claim on, or as soon as reasonably practicable after, the later of (i) the
20 Effective Date, (ii) the date upon which such Priority Claim becomes Allowed, or (iii) such date as
21 is otherwise agreed by Debtor and the Holder of such Claim.

22 *Impairment and Voting:* Class 1 is not Impaired and the Holders of Allowed Priority
23 Claims are conclusively deemed to have accepted this Plan, pursuant to Bankruptcy Code section
24 1126(f). Therefore, the Holders of Class 1 Allowed Priority Claims are not entitled to vote to accept
25 or reject this Plan.

26 (b) Class 2: Secured Claims

27 (i) Class 2(a): DIP Lender Secured Claim

28 *Claims in Class:* Class 2(a) consists of the DIP Lender Secured Claim.

1 *Treatment:* On the Effective Date, the Holder of the Allowed DIP Lender Secured
2 Claim shall, in full satisfaction, settlement, release and exchange for such Allowed DIP Lender
3 Secured Claim and the New Capital Contribution, be issued 100% of the New Equity Interests.

4 *Impairment and Voting:* Class 2(a) is Impaired. Therefore, the Holder of the
5 Class 2(a) DIP Lender Secured Claim is entitled to vote to accept or reject this Plan.

6 (ii) Class 2(b): K&L Baxter Secured Claim

7 *Claims in Class:* Class 2(b) consists of the Allowed K&L Baxter Secured Claim.

8 *Treatment:* On the Effective Date, the Holder of the Allowed K&L Baxter Secured
9 Claim shall receive the K&L Baxter Secured Note, which will be secured by the K&L Baxter
10 Collateral, will be executed by the Reorganized Debtor, and will provide that the Holder of the
11 Allowed K&L Baxter Secured Claim shall, in full satisfaction, settlement, release and exchange for
12 such Allowed K&L Baxter Secured Claim, be paid in monthly installments of principal, together
13 with non-compounded interest at the rate of 6.75% per annum, based on a thirty (30) year
14 amortization schedule, with all remaining principal and interest due on the eighth anniversary of the
15 Effective Date.

16 *Impairment and Voting:* Class 2(b) is Impaired. Therefore, the Holder of the
17 Class 2(b) K&L Baxter Secured Claim is entitled to vote to accept or reject this Plan.

18 (iii) Class 2(c): Baum Secured Claim

19 *Claims in Class:* Class 2(c) consists of the Allowed Baum Secured Claim.

20 *Treatment:* On the Effective Date, the Holder of the Allowed Baum Secured Claim
21 shall receive the Baum Secured Note, which will be secured by the Baum Collateral, will be
22 executed by the Reorganized Debtor, and will provide that the Holder of the Allowed Baum Secured
23 Claim, be paid in monthly installments of principal, together with non-compounded interest at the
24 rate of 5.75% per annum, based on a thirty (30) year amortization schedule, with all remaining
25 principal and interest due on the third anniversary of the Effective Date.

26 *Impairment and Voting:* Class 2(c) is Impaired. Therefore, the Holder of the
27 Class 2(c) Baum Secured Claim is entitled to vote to accept or reject this Plan.

28

1 (iv) Class 2(d): McKenna Secured Claim

2 *Claims in Class:* Class 2(d) consists of the Allowed McKenna Secured Claim.

3 *Treatment:* On the Effective Date, the Holder of the Allowed McKenna Secured
4 Claim shall receive the McKenna Secured Note, which will be secured by the McKenna Collateral,
5 will be executed by the Reorganized Debtor, and will provide that the Holder of the Allowed
6 McKenna Secured Claim, be paid in monthly installments of principal, together with non-
7 compounded interest at the rate of 5.75% per annum, based on a thirty (30) year amortization
8 schedule, with all remaining principal and interest due on the third anniversary of the Effective Date.

9 *Impairment and Voting:* Class 2(d) is Impaired. Therefore, the Holder of the
10 Class 2(d) Allowed McKenna Secured Claim is entitled to vote to accept or reject this Plan.

11 (v) Class 2(e): Thompson Secured Claim

12 *Claims in Class:* Class 2(e) consists of the Allowed Thompson Secured Claim.

13 *Treatment:* On the Effective Date, the Holder of the Allowed Thompson Secured
14 Claim shall receive the Thompson Secured Note, which will be secured by the Thompson Collateral,
15 will be executed by the Reorganized Debtor, and will provide that the Holder of the Allowed
16 Thompson Secured Claim, be paid in monthly installments of principal, together with non-
17 compounded interest at the rate of 5.75% per annum, based on a thirty (30) year amortization
18 schedule, with all remaining principal and interest due on the third anniversary of the Effective Date.

19 *Impairment and Voting:* Class 2(e) is Impaired. Therefore, the Holder of the
20 Class 2(e) Allowed Thompson Secured Claim is entitled to vote to accept or reject this Plan.

21 (vi) Class 2(f): Moreno Secured Claim

22 *Claims in Class:* Class 2(f) consists of the Allowed Moreno Secured Claim.

23 *Treatment:* On the Effective Date, the Debtor shall surrender the Moreno Collateral
24 to the Holder of the Allowed Moreno Secured Claim in full satisfaction, settlement, release and
25 exchange for the Allowed Moreno Secured Claim; *provided, however,* that if the Holder of the
26 Allowed Moreno Secured Claim believes that the amount of its Claim exceeds the value of the
27 Moreno Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the
28 surrender of the Moreno Collateral, then the Holder of the Allowed Moreno Secured Claim shall

1 File an objection to the Plan, with evidence supporting its opinion on the value of the Moreno
2 Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the
3 Moreno Collateral; and *provided, further*, that if the Holder of the Allowed Moreno Secured Claim
4 fails to file an objection with supporting evidence by the Objection Deadline, then any and all of its
5 Claims will conclusively be deemed satisfied in full by the surrender of the Moreno Collateral.

6 *Impairment and Voting:* Class 2(f) is Unimpaired and the Holder of the Class 2(f)
7 Allowed Moreno Secured Claim is conclusively deemed to have accepted this Plan, pursuant to
8 Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(f) Allowed Moreno Secured
9 Claim is not entitled to vote to accept or reject this Plan.

10 (vii) Class 2(g): Ritchie Secured Claim

11 *Claims in Class:* Class 2(g) consists of the Allowed Ritchie Secured Claim.

12 *Treatment:* On the Effective Date, the Debtor shall surrender the Ritchie Collateral
13 to the Holder of the Allowed Ritchie Secured Claim in full satisfaction, settlement, release and
14 exchange for the Allowed Ritchie Secured Claim; *provided, however*, that if the Holder of the
15 Allowed Ritchie Secured Claim believes that the amount of its Claim exceeds the value of the
16 Ritchie Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the
17 surrender of the Ritchie Collateral, then the Holder of the Allowed Ritchie Secured Claim shall File
18 an objection to the Plan, with evidence supporting its opinion on the value of the Ritchie Collateral,
19 by the Objection Deadline, and the Bankruptcy Court will determine the Value of the Ritchie
20 Collateral; and *provided, further*, that if the Holder of the Allowed Ritchie Secured Claim fails to
21 file an objection with supporting evidence by the Objection Deadline, then any and all of its Claims
22 will conclusively be deemed satisfied in full by the surrender of the Ritchie Collateral.

23 *Impairment and Voting:* Class 2(g) is Unimpaired and the Holder of the Class 2(g)
24 Allowed Ritchie Secured Claim is conclusively deemed to have accepted this Plan, pursuant to
25 Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(g) Allowed Ritchie Secured
26 Claim is not entitled to vote to accept or reject this Plan.

27 (viii) Class 2(h): Lysgaard Secured Claim

28 *Claims in Class:* Class 2(h) consists of the Allowed Lysgaard Secured Claim.

1 *Treatment:* On the Effective Date, the Debtor shall surrender the Lysgaard Collateral
2 to the Holder of the Allowed Lysgaard Secured Claim in full satisfaction, settlement, release and
3 exchange for the Allowed Lysgaard Secured Claim; *provided, however,* that if the Holder of the
4 Allowed Lysgaard Secured Claim believes that the amount of its Claim exceeds the value of the
5 Lysgaard Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the
6 surrender of the Lysgaard Collateral, then the Holder of the Allowed Lysgaard Secured Claim shall
7 File an objection to the Plan, with evidence supporting its opinion on the value of the Lysgaard
8 Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the
9 Lysgaard Collateral; and *provided, further,* that if the Holder of the Allowed Lysgaard Secured
10 Claim fails to file an objection with supporting evidence by the Objection Deadline, then any and
11 all of its Claims will conclusively be deemed satisfied in full by the surrender of the Lysgaard
12 Collateral.

13 *Impairment and Voting:* Class 2(h) is Unimpaired and the Holder of the Class 2(h)
14 Allowed Lysgaard Secured Claim is conclusively deemed to have accepted this Plan, pursuant to
15 Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(h) Allowed Lysgaard
16 Secured Claim is not entitled to vote to accept or reject this Plan.

17 (ix) Class 2(i): 101 Pipe Secured Claim

18 *Claims in Class:* Class 2(i) consists of the Allowed 101 Pipe Secured Claim.

19 *Treatment:* On the Effective Date, the Debtor shall surrender the 101 Pipe Collateral
20 to the Holder of the Allowed 101 Pipe Secured Claim in full satisfaction, settlement, release and
21 exchange for the Allowed 101 Pipe Secured Claim; *provided, however,* that if the Holder of the
22 Allowed 101 Pipe Secured Claim believes that the amount of its Claim exceeds the value of the
23 101 Pipe Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the
24 surrender of the 101 Pipe Collateral, then the Holder of the Allowed 101 Pipe Secured Claim shall
25 File an objection to the Plan, with evidence supporting its opinion on the value of the 101 Pipe
26 Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the
27 101 Pipe Collateral; and *provided, further,* that if the Holder of the Allowed 101 Pipe Secured Claim
28 fails to file an objection with supporting evidence by the Objection Deadline, then any and all of its

1 Claims will conclusively be deemed satisfied in full by the surrender of the 101 Pipe Collateral.

2 *Impairment and Voting:* Class 2(i) is Unimpaired and the Holder of the Class 2(i)
3 Allowed 101 Pipe Secured Claim is conclusively deemed to have accepted this Plan, pursuant to
4 Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(i) Allowed 101 Pipe Secured
5 Claim is not entitled to vote to accept or reject this Plan.

6 (c) Class 3: Secured Property Tax Claims

7 *Interests in Class:* Class 3 consists of Allowed Secured Property Tax Claims against
8 Debtor.

9 *Treatment:* On the Effective Date, the Holder of the Class 3 Allowed Secured
10 Property Tax Claims shall, in full satisfaction, settlement, release and exchange for such Allowed
11 Secured Property Tax Claims, be paid in Cash in the Allowed amount of such Secured Property Tax
12 Claims on, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) such
13 date as is otherwise agreed by Debtor and the Holder of such Claim.

14 *Impairment and Voting:* Class 3 is not Impaired. Therefore, the Holder of Class 3
15 Allowed Secured Property Tax Claims is not entitled to vote to accept or reject this Plan.

16 (d) Class 4: Unsecured Claims

17 (i) Class 4(a): General Unsecured Claims

18 *Claims in Class:* Class 4(a) consists of Allowed General Unsecured Claims.

19 *Treatment:* Each Holder of a Class 4(a) Allowed General Unsecured Claim shall, in
20 full satisfaction, settlement, release and exchange for such Allowed General Unsecured Claim, be
21 paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and pro rata with the
22 Allowed Class 4(b) Loftin Unsecured Claim, the Allowed Class 4(c) Cashman Unsecured Claim
23 and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of the Property Sales until
24 its Allowed General Unsecured Claim has been paid in full and in Cash, including Post Effective
25 Date Interest; *provided, however,* that if all Holders of Allowed General Unsecured Claims have
26 not been paid in full and in Cash, including post-Effective Date Interest, on the second
27 anniversary of the Effective Date, then such Holders shall, in full satisfaction, settlement, release
28 and exchange for any remaining unpaid balances of such Allowed General Unsecured Claims (the

1 “General Unsecured Claim Balances”), receive Property of a Value equal to each Holder’s General
2 Unsecured Claim Balance.

3 *Impairment and Voting:* Class 4(a) is Impaired. Therefore, Holders of Class 4(a)
4 Allowed General Unsecured Claims are entitled to vote to accept or reject this Plan.

5 (ii) Class 4(b): Loftin Unsecured Claim

6 *Claims in Class:* Class 4(b) consists of the Allowed Loftin Unsecured Claim.

7 *Treatment:* The Holder of the Class 4(b) Allowed Loftin Unsecured Claim shall, in
8 full satisfaction, settlement, release and exchange for such Allowed Loftin Unsecured Claim, be
9 paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and pro rata with the
10 Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(c) Cashman Unsecured Claim
11 and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of the Property Sales until
12 the Allowed Loftin Unsecured Claim has been paid in full and in Cash, including Post Effective
13 Date Interest; *provided, however,* that if the Holder of the Allowed Loftin Unsecured Claim has not
14 been paid in full and in Cash, including Post Effective Date Interest, on the second
15 anniversary of the Effective Date, then such Holder shall, in full satisfaction, settlement, release and
16 exchange for any remaining unpaid balance of such Allowed Loftin Unsecured Claim (the “Loftin
17 Unsecured Claim Balance”), receive Property of a Value equal to the Loftin Unsecured Claim
18 Balance.

19 *Impairment and Voting:* Class 4(b) is Impaired. Therefore, the Holder of the Class
20 4(b) Allowed Loftin Unsecured Claim is entitled to vote to accept or reject this Plan.

21 (iii) Class 4(c): Cashman Unsecured Claim

22 *Claims in Class:* Class 4(c) consists of the Allowed Cashman Unsecured Claim.

23 *Treatment:* The Holder of the Class 4(c) Allowed Cashman Unsecured Claim shall,
24 in full satisfaction, settlement, release and exchange for such Allowed Cashman Unsecured Claim,
25 be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and pro rata with
26 the Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(b) Loftin Unsecured Claim
27 and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of the Property Sales until
28 the Allowed Cashman Unsecured Claim has been paid in full and in Cash, including Post Effective

1 Date Interest; *provided, however*, that if the Holder of the Allowed Cashman Unsecured Claim has
2 not been paid in full and in Cash, including Post Effective Date Interest, on the second
3 anniversary of the Effective Date, then such Holder shall, in full satisfaction, settlement, release and
4 exchange for any remaining unpaid balance of such Allowed Cashman Unsecured Claim (the
5 “Cashman Unsecured Claim Balance”), receive Property of a Value equal to the Cashman
6 Unsecured Claim Balance.

7 *Impairment and Voting:* Class 4(c) is Impaired. Therefore, the Holder of the Class
8 4(b) Allowed Cashman Unsecured Claim is entitled to vote to accept or reject this Plan.

9 (iv) Class 4(d): Utica Unsecured Claim

10 *Claims in Class:* Class 4(d) consists of the Allowed Utica Unsecured Claim.

11 *Treatment:* The Holder of the Class 4(d) Allowed Utica Unsecured Claim shall, in
12 full satisfaction, settlement, release and exchange for such Allowed Utica Unsecured Claim, be paid,
13 after satisfaction in full of the Allowed Deferred Administrative Claims, and pro rata with the
14 Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(b) Loftin Unsecured Claim
15 and the Allowed Class 4(c) Cashman Unsecured Claim, from the proceeds of the Property Sales
16 until the Allowed Utica Unsecured Claim has been paid in full and in Cash, including Post Effective
17 Date Interest; *provided, however*, that if the Holder of the Allowed Utica Unsecured Claim has not
18 been paid in full and in Cash, including Post Effective Date Interest, on the second
19 anniversary of the Effective Date, then such Holder shall, in full satisfaction, settlement, release and
20 exchange for any remaining unpaid balance of such Allowed Utica Unsecured Claim (the “Utica
21 Unsecured Claim Balance”), receive Property of a Value equal to the Utica Unsecured Claim
22 Balance.

23 *Impairment and Voting:* Class 4(d) is Impaired. Therefore, the Holder of the Class
24 4(d) Allowed Utica Unsecured Claim is entitled to vote to accept or reject this Plan.

25 (e) Class 5: Insider Unsecured Claims

26 *Claims in Class.* Class 5 consists of Allowed Insider Unsecured Claims.

27 *Treatment:* Each Holder of a Class 5 Allowed Insider Unsecured Claim shall, in full
28 satisfaction, settlement, release and exchange for such Allowed Insider Unsecured Claim, be paid,

1 after satisfaction in full of the Allowed Deferred Administrative Claims and the Class 4(a)–(d)
 2 Allowed Unsecured Claims, pro rata from the proceeds of the Property Sales until its Allowed
 3 Insider Unsecured Claim has been paid in full and in Cash, including Post Effective Date Interest;
 4 *provided, however*, that if all Holders of Allowed Insider Unsecured Claims have not been paid been
 5 paid in full and in Cash, including Post Effective Date Interest, on the second anniversary of the
 6 Effective Date, then such Holders shall, in full satisfaction, settlement, release and exchange for any
 7 remaining unpaid balances of such Allowed Insider Unsecured Claims (the “Insider Unsecured
 8 Claim Balances”), receive Property of a Value equal to each Holder’s Insider Unsecured Claim
 9 Balance.

10 *Impairment and Voting:* Class 5 is Impaired. Therefore, Holders of Class 5 Allowed
 11 Insider Unsecured Claims are entitled to vote to accept or reject this Plan.

12 (f) Class 6: Old Equity Interests.

13 *Interests in Class:* Class 6 consists of Allowed Old Equity Interests in Debtor.

14 *Treatment:* All Old Equity Interests shall be extinguished on the Effective Date.

15 *Impairment and Voting:* Class 6 is Impaired. Because the Holders of Class 6
 16 Allowed Old Equity Interests will not receive or retain any property under the Plan on account of
 17 such Interests, they are conclusively deemed to have rejected the Plan under Bankruptcy Code
 18 section 1126(g).

19 2.4 Retention of Defenses Regarding Claims. Except as otherwise provided in this Plan,
 20 nothing shall affect Debtor’s rights and defenses, both legal and equitable, with respect to any
 21 Claims.

22 2.5 Voting by Impaired Classes. Classes 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d),
 23 and 5 are impaired and entitled to vote to reject or accept this Plan. Class 6 is also impaired, but is
 24 conclusively deemed to have rejected the Plan under Bankruptcy Code section 1126(g).

25 2.6 Disputed, Contingent and Unliquidated Claims and Interests. Any Claim or Interest
 26 that has been or is hereafter listed in the Schedules as disputed, contingent, or unliquidated, and for
 27 which no Proof of Claim or Interest has been timely Filed by the Bar Date, is not considered Allowed
 28 and shall be expunged without further action by Debtor and without any further notice to or action,

1 order, or approval of the Bankruptcy Court.

2 **ARTICLE III**

3 **ACCEPTANCE OR REJECTION OF THIS PLAN**

4 3.1 Acceptance by an Impaired Class. In accordance with Bankruptcy Code section
5 1126(c) and except as provided in Bankruptcy Code section 1126(e), an Impaired Class of Claims
6 shall be deemed to have accepted this Plan if this Plan is accepted by the Holders of at least two-
7 third (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such
8 Class that have timely and properly voted to accept or reject this Plan.

9 3.2 Summary of Classes Voting on this Plan. Only the votes of Holders of Claims in
10 Classes 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d), and 5 will be solicited with respect to this
11 Plan.

12 3.3 Tabulation of Votes. Debtor will tabulate all votes on this Plan for the purpose of
13 determining whether this Plan satisfies Bankruptcy Code sections 1129(a)(8) and (10).

14 3.4 Nonconsensual Confirmation. If any Impaired Class of Claims entitled to vote shall
15 not accept the Plan by the requisite statutory majorities provided in Bankruptcy Code
16 section 1126(c), the Debtor reserves the right to amend the Plan in accordance with Section 13.1
17 hereof or undertake to have the Bankruptcy Court confirm the Plan under Bankruptcy Code section
18 1129(b) or both.

19 **ARTICLE IV**

20 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

21 4.1 Rejection of All Executory Contracts and Unexpired Leases.

22 (a) Entry of the Confirmation Order shall, subject to and upon the occurrence of
23 the Effective Date, constitute the approval, pursuant to Bankruptcy Code sections 365(a) and
24 1123(b)(2), of the rejection of all executory contracts and unexpired leases.

25 (b) Any non-insider Creditor whose Claim arises from the rejection of an
26 executory contract or unexpired lease with Debtor shall have the rights of a Holder of a General
27 Unsecured Claim and shall receive the treatment provided to Holders of Class 4(a) General
28 Unsecured Claims as set forth in this Plan. Any insider Creditor whose Claim arises from the

1 rejection of an executory contract or unexpired lease with Debtor shall have the rights of a Holder
2 of an Insider Unsecured Claim and shall receive the treatment provided to Holders of Class 5 Insider
3 Unsecured Claims as set forth in this Plan.

4 4.2 Filing of Rejection Claims. Any Person or Entity who believes they are entitled to
5 assert a Claim against Debtor by virtue of the rejection of an executory contract or unexpired lease
6 pursuant to this Article IV may File a Claim with the clerk of the Bankruptcy Court not later than
7 twenty (20) days after the Effective Date. If such Claim is not so Filed, it shall be forever barred
8 from assertion against Debtor and the Reorganized Debtor. Nothing in this Section 4.2 shall affect
9 the right of any party-in-interest to object to any Claim which has been improperly Filed or not Filed
10 on a timely basis.

11 4.3 Reservation of Rights. Nothing contained in this Plan shall constitute an admission
12 by Debtor or the Reorganized Debtor that any contract or lease is in fact an executory contract or
13 unexpired lease or that Debtor or the Reorganized Debtor has any liability thereunder.

14 ARTICLE V

15 PLAN IMPLEMENTATION

16 5.1 Plan Implementation.

17 (a) This Plan shall be implemented in all respects in a manner that is consistent
18 with the terms and conditions of the Operative Documents, and the requirements of section 1123(a)
19 and other applicable provisions of the Bankruptcy Code.

20 (b) To the extent necessary, the DIP Loan shall be used to provide all required
21 Confirmation Funds for Distribution pursuant to this Plan. On the Effective Date, Debtor shall draw
22 down the DIP Loan (the "DIP Drawdown") in the amount of the Confirmation Funds, and shall turn
23 over the Confirmation Funds to the Distribution Agent for Distribution pursuant to this Plan. To
24 the extent that the full amount of the DIP Loan is less than the Confirmation Funds (the "Shortfall"),
25 the DIP Lender will make the New Capital Contribution in the amount of the Shortfall on the
26 Effective Date.

27 (c) The Bankruptcy Court will determine the Values of the parcels of Land in the
28 Confirmation Order. After the Effective Date, any affiliate of the Reorganized Debtor or third party

1 purchaser shall be entitled to purchase any parcel of Land at a price equivalent to the Value set by
2 the Bankruptcy Court without the need to seek further authority from the Bankruptcy Court.

3 (d) The Sales Agent will market the Property. The Distribution Agent will
4 distribute all proceeds from Property Sales, as provided in this Plan.

5 5.2 Cancellation of Old Equity Interests. On the Effective Date, all Old Equity Interests
6 shall be extinguished, canceled, terminated and of no force and effect.

7 5.3 Issuance of New Equity Interests. On the Effective Date, 100% of the Reorganized
8 Debtor New Equity Interests shall be issued to the DIP Lender in satisfaction of the DIP Lender
9 Secured Claim and in exchange for the New Capital Contribution, as provided in this Plan.

10 5.4 Corporate Actions.

11 (a) Adoption of Reorganized Debtor Operating Agreement. On the Effective Date and
12 without further order of the Bankruptcy Court or need for corporate approval, the Reorganized
13 Debtor Operating Agreement shall supersede and replace all other corporate agreements and/ or
14 operating agreements previously governing the Debtor.

15 (b) Authority to Execute Operative Documents. The Confirmation Order shall, among
16 other things, constitute an Order authorizing the managers, officers, and agents of Debtor and
17 Reorganized Debtor to execute and deliver the Operative Documents, as applicable (to the extent
18 they have not already been executed and delivered), without requiring any further corporate
19 authorizations and notwithstanding the requirements under any applicable non-bankruptcy law.

20 5.5 Good Faith and Non Avoidability. The Confirmation Order shall, among other things,
21 provide that: (i) Debtor and the DIP Lender have acted in good faith; and (ii) the Distributions
22 and/or consideration received by the DIP Lender shall not be subject to avoidance, turnover or
23 disgorgement in any subsequent insolvency proceeding by any Person or Entity.

24 5.6 Management. Following the Effective Date, Reorganized Debtor shall be managed
25 as provided in the Reorganized Debtor Operating Agreement. It is anticipated that Reorganized
26 Debtor will be managed by James M. Rhodes.

27 5.7 Exemption from Certain Transfer Taxes and Further Transactions. Pursuant to
28 Bankruptcy Code section 1146(a), the issuance or exchange of any security, or the making or

1 delivery of any instrument of transfer under, in furtherance, or in connection with this Plan,
2 including, but not limited to, any deeds, bills of sale, assignments or other instruments of transfer
3 (including those with respect to the Properties), shall not be subject to any stamp tax, real estate
4 transfer tax or similar tax.

5 5.8 Final Decree. Notwithstanding otherwise applicable law, the Chapter 11 Case shall
6 be closed and a Final Decree entered as soon as possible after the occurrence of the Effective Date.

7 5.9 Effectuating Documents, Further Transactions. On and after the Effective Date, the
8 Reorganized Debtor is authorized to and may issue, execute, deliver, file, or record such contracts,
9 securities, instruments, releases, and other agreements or documents and take such actions as may
10 be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions
11 of this Plan in the name of and on behalf of Debtor, as applicable, without the need for any approvals,
12 authorizations, or consents except for those expressly required pursuant to this Plan.

13 5.10 Post Effective Date Fees and Expenses.

14 (a) From and after the Effective Date, the Distribution Agent shall pay all Post
15 Effective Date Fees from the Post Effective Date Fee Fund without the necessity of any approval
16 by the Bankruptcy Court.

17 (b) In the event, and to the extent, that there are not sufficient funds in the Post
18 Effective Date Fee Fund from which to pay any of the Post Effective Date Fees, the Distribution
19 Agent shall, without the necessity of any approval by the Bankruptcy Court, pay any Post Effective
20 Date Fees from Cash on hand and/or the proceeds of Property Sales.

21 (c) In order to seek payment of Post Effective Date Fees, each respective
22 Professional will send its invoice to the Reorganized Debtor, and the Reorganized Debtor shall have
23 ten (10) business days thereafter within which to notify the Professional in writing that it objects to
24 the invoice. If no objection is made within that time frame, the Distribution Agent shall pay the
25 invoice within thirty (30) days thereafter. In the event the Distribution Agent objects and the parties
26 are unable to resolve the objection, the Professional may bring the matter before the Bankruptcy
27 Court on a motion for determination.

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ARTICLE VI

PROVISIONS CONCERNING PLAN DISTRIBUTIONS

6.1 Distributions on Account of Claims Allowed as of the Effective Date. Distributions under this Plan on account of Claims Allowed on or before the Effective Date shall be made on the Effective Date, or on the first date thereafter as is reasonably practicable.

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

(a) Payments and Distributions on Disputed Claims. In the event that there are Disputed Administrative Claims or Disputed Priority Claims requiring adjudication and resolution and such Claims have not become Allowed or Disallowed prior to the Effective Date, then the obligation to satisfy such Claims shall be from the Disputed Claims Reserve. Except as otherwise provided in this Plan, or Final Order, any Disputed Administrative Claim or Disputed Priority Claim that becomes Allowed after the Effective Date shall be satisfied from the Disputed Claims Reserve.

(b) Special Rules for Distributions to Holders of Disputed Claims. Except as otherwise provided in this Plan and except as otherwise agreed by the relevant parties: (i) no partial payments and no partial Distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order, and (ii) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any Distribution on the Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order and the Claims have been Allowed.

6.3 Manner of Payment Under this Plan. Distributions of Cash to be made by the Distribution Agent pursuant to this Plan shall be made, at the discretion of the Distribution Agent, by check drawn on the Reorganized Debtor's bank account or by wire transfer from a domestic bank.

6.4 Whole Dollars. Any other provision of this Plan to the contrary notwithstanding, no payments of cents will be made. Whenever any payment of cents would otherwise be called for, the actual payment may reflect a rounding of such fraction to the nearest whole dollar (up or down).

6.5 Escheat. Holders of Allowed Claims shall have three (3) months from the check date to negotiate Distribution checks issued by the Reorganized Debtor under the terms of this Plan,

1 otherwise payment on such checks may at the Reorganized Debtor's sole discretion be stopped and
2 the funds shall escheat to the Reorganized Debtor.

3 6.6 Delivery of Distributions.

4 (a) Record Date for Distributions. On the Distribution Record Date, the Claims
5 Register shall be closed and any Person responsible for making Distributions shall be authorized
6 and entitled to recognize only those record Holders listed on the Claims Register as of the close of
7 business on the Distribution Record Date. Notwithstanding the foregoing, if a Claim is transferred
8 twenty or fewer days before the Distribution Record Date, the Distribution Agent shall make
9 Distributions to the transferee only to the extent practical and in any event only if the relevant
10 transfer form contains an unconditional and explicit certification and waiver of any objection to the
11 transfer by the transferor.

12 (b) Distribution Agent. The Distribution Agent shall make all Distributions
13 required under this Plan.

14 (c) Delivery of Distributions in General. Except as otherwise provided in this
15 Plan, and notwithstanding any authority to the contrary, Distributions to all Holders of Allowed
16 Claims shall be made to Holders of record as of the Distribution Record Date by the Distribution
17 Agent: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable
18 by Bankruptcy Rule 7004; (b) to the signatory set forth on any of the Proofs of Claim Filed by such
19 Holder or other representative identified therein (or at the last known addresses of such Holder if
20 no Proof of Claim is Filed or if Debtor has been notified in writing of a change of address); (c) at
21 the addresses set forth in any written notices of address changes delivered to Debtor or the
22 Reorganized Debtor after the date of any related Proof of Claim; (d) at the addresses reflected in the
23 Schedules if no Proof of Claim has been Filed and the Reorganized Debtor has not received a written
24 notice of a change of address; or (e) on any counsel that has appeared in the Chapter 11 Case on the
25 Holder's behalf. Except as otherwise provided in this Plan, Distributions under this Plan on account
26 of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so
27 that each Holder of an Allowed Claim shall have and receive the benefit of the Distributions in the
28 manner set forth in this Plan. Absent willful misconduct or gross negligence, Debtor, the

1 Reorganized Debtor, and the Distribution Agent, as applicable, shall not incur any liability on
2 account of any Distributions made under this Plan.

3 6.7 Returned Distributions. In the case of Distributions to the Holders of Allowed Claims
4 that are returned to the Distribution Agent due to an incorrect or incomplete address, the Distribution
5 Agent shall retain any such returned Distribution in a segregated account established by the
6 Distribution Agent to keep track of any returned Distributions. Unless the Holder of the Allowed
7 Claim relating to any such returned Distribution contacts the Reorganized Debtor (or its designee)
8 within three (3) months from the date on which such Distribution was returned and provides the
9 Reorganized Debtor (or its designee) with acceptable proof of identity and an accurate address, such
10 Holder shall forfeit all rights thereto, and to any and all future Distributions or rights under this Plan.
11 In such event, the Claim for which such Distribution was issued shall be treated as a Disallowed
12 Claim.

13 6.8 Disputed Distributions. In the event of any dispute between or among Holders of
14 Claims as to the right to any Holder of a Claim to receive or retain any Distribution to be made to
15 such Holder under this Plan, the Distribution Agent, in lieu of making such Distribution to such
16 Holder, may make it instead into an escrow account for payment as ordered by the Bankruptcy Court
17 or as the interested parties to such dispute may otherwise agree among themselves. Any such Holder
18 who fails to raise such dispute by filing an appropriate request for relief with the Bankruptcy Court
19 prior to the issuance of such disputed Distribution by the Distribution Agent shall be deemed to
20 have forever waived any right to dispute such Distribution or to enjoin, impair or otherwise restrict
21 the use of any such Distribution.

22 6.9 Setoffs. The Distribution Agent may, but shall not be required to, set-off against any
23 Distributions to be made pursuant to this Plan to a Holder of an Allowed Claim, Claims of any
24 nature whatsoever that Debtor may have, or may have had, against such Holder that have not been
25 previously released, but neither the failure to do so, nor the allowance of any Claim held by such
26 Holder shall constitute a waiver or release by the Reorganized Debtor of any such Claim Debtor
27 may have, or may have had, against such Holder.

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1 Disputed Claim for all purposes related to Distributions under the Plan. The Holder of a contingent
2 Claim will only be entitled to a Distribution under the Plan when and if such contingent Claim
3 becomes an Allowed Claim.

4 7.4 Personal Injury Claims. All objections to Claims Filed for personal injury tort
5 damages, if any, shall be determined by the United States District Court for the District of Nevada.

6 7.5 Estimation of Claims. Debtor or the Reorganized Debtor shall be permitted, at any
7 time, to request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant
8 to section Bankruptcy Code 502(c), regardless of whether Debtor or the Reorganized Debtor
9 previously had objected to such Claim or whether the Bankruptcy Court had ruled on such objection,
10 and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during any
11 litigation concerning any objection to such Claim, including during the pendency of any appeal
12 relating to such objection. In the event that the Bankruptcy Court estimates any contingent or
13 unliquidated Claim, the amount so estimated shall constitute either the Allowed amount of such
14 Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If such
15 estimated amount constitutes a maximum limitation on the amount of such Claim, Debtor or the
16 Reorganized Debtor may elect to pursue any supplemental proceedings to object to the allowance
17 of such Claim.

18 7.6 Reserve for Disputed Claims. On and after the Effective Date, the Distribution Agent
19 shall hold in a segregated reserve account (the "Disputed Claims Reserve"), Cash in an aggregate
20 amount sufficient to make Distributions to each Holder of a Disputed Claim at the time distributions
21 are made pursuant to the Plan in the amount that such Holder would have been entitled to receive if
22 such Claim had been an Allowed Claim on the Effective Date. Nothing contained herein shall be
23 deemed to entitle the Holder of a Disputed Claim to post-Petition Date or post-Effective Date
24 interest on such Claim. Any funds remaining in the Disputed Claims Reserve after all Distributions
25 on account of Allowed Claims have been made shall be promptly returned to the Reorganized
26 Debtor.

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1 **ARTICLE VIII**

2 **RESERVATION OF RIGHTS PENDING CONFIRMATION AND EFFECTIVE DATE**

3 8.1 Withdrawal of Plan; Rights if Plan Not Confirmed or Effective Date Does Not Occur.

4 Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File
5 subsequent plans of reorganization. If Debtor revokes or withdraws this Plan, or if Confirmation of
6 this Plan or the Effective Date does not ultimately occur, then: (1) this Plan shall be null and void
7 in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or
8 limiting to an amount certain of any Claim or Class of Claims), rejection of executory contracts or
9 unexpired leases effected by this Plan, and any document or agreement executed pursuant to this
10 Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a
11 waiver or release of any Claims or Interests by or against the Debtor or any Person or Entity;
12 (b) prejudice in any manner the rights of Debtor or any other Person or Entity in any further
13 proceedings involving the Debtor; or (c) constitute an admission, acknowledgment, offer, or
14 undertaking of any sort by Debtor or any other Person or Entity.

15 8.2 No Admissions or Waiver. Without limiting the generality of any similar provision

16 in this Plan, notwithstanding anything in the Plan to the contrary, nothing contained in the Plan,
17 Plan Supplement or in the Disclosure Statement shall be deemed an admission by Debtor or any
18 Person or Entity with respect to any matter set forth herein. If Confirmation of this Plan or the
19 Effective Date does not ultimately occur, no statement contained in the Plan, Plan Supplement or in
20 the Disclosure Statement may be used or relied on in any manner in any suit, action, proceeding or
21 controversy within or outside of the Chapter 11 Case against the Debtor. Without in any way
22 limiting the provisions set forth in Section 9.1, the Debtor reserves any and all of its rights as against
23 all Persons and Entities in the event Confirmation of this Plan or the Effective Date does not
24 ultimately occur.

25 8.3 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the

26 Chapter 11 Case under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the
27 Confirmation Date, shall remain in full force and effect until the Effective Date unless the
28 Bankruptcy Court shall order otherwise.

1 **ARTICLE IX**

2 **CONDITIONS TO EFFECTIVE DATE**

3 9.1 Conditions to Occurrence of Effective Date. Each of the following are conditions to
4 be met on or before the Effective Date, which conditions must be satisfied or waived in writing by
5 Debtor:

6 (a) That the Confirmation Order shall be entered by the Bankruptcy Court and
7 shall have become a Final Order;

8 (b) Debtor shall make the DIP Drawdown in the amount of the Confirmation
9 Funds;

10 (c) Debtor shall have turned over the Confirmation Funds to the Distribution
11 Agent for Distribution in accordance with this Plan;

12 (d) The Confirmation Order authorizes the rejection of all executory contracts and
13 unexpired leases; and

14 (e) Any outstanding US Trustee Fees shall have been paid in full.

15 Debtor, in its sole discretion, may waive the Final Order condition in subpart (a) above at
16 any time from and after the Confirmation Date. In that event, Debtor will be entitled to render any
17 or all performance under the Plan prior to what otherwise would be the Effective Date if the above-
18 referenced conditions were not waived; including, but not limited to, the right to perform under any
19 circumstances which would moot any appeal, review or other challenge of any kind to the
20 Confirmation Order if the Confirmation Order is not stayed pending such appeal, review or other
21 challenge.

22 **ARTICLE X**

23 **RETENTION OF JURISDICTION**

24 10.1 Retention of Jurisdiction. Except to the extent otherwise expressly set forth herein,
25 the Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case following the Confirmation
26 Date for the following purposes, it being expressly intended that such retention of jurisdiction shall
27 in all cases hereafter set forth, extend to any actions or proceedings commenced prior or subsequent
28 to the Confirmation Date and/or the Effective Date whether by Debtor, the Distribution Agent, or

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the parties specified herein:

(a) To hear and determine any objections to the allowance of Claims, including any objections by the Reorganized Debtor with respect to any Claims which have been reinstated or assumed in accordance with the terms of this Plan;

(b) To determine any and all applications for compensation for any Professionals and similar fees to the extent made specifically subject to a hearing under this Plan and applicable provisions of the Bankruptcy Code;

(c) To modify this Plan pursuant to Bankruptcy Code section 1127 or to remedy any defect or omission or reconcile any inconsistency in the Confirmation Order to the extent authorized by the Bankruptcy Code;

(d) To hear and determine all controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of this Plan;

(e) To hear and determine all controversies, suits and disputes, if any, as may arise with regard to orders of this Bankruptcy Court entered in the Chapter 11 Case;

(f) To adjudicate all controversies concerning the classification of any Claim or Interest;

(g) To liquidate damages in connection with any disputed, contingent or unliquidated Claim;

(h) To adjudicate all Claims to a security or ownership interest in any of the Assets, or in any proceeds thereof,

(i) To adjudicate all Claims or controversies arising out of any purchases, sales or contracts made or undertaken by Debtor;

(j) To determine all questions and disputes regarding recovery of and entitlement to any property of Debtor, or in any proceeds thereof;

(k) To adjudicate all Causes of Action with respect to which Debtor and/or the Reorganized Debtor are a party, whether or not such Claim or controversy is raised or filed before or after the Effective Date;

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(702) 597-5503 (fax)

1 (l) To determine issues and disputes concerning entitlement to Distributions to be
2 made under and pursuant to this Plan;

3 (m) To enter any order, including injunctions, necessary to enforce the title, rights
4 and powers of Debtor, the Reorganized Debtor or the rights of any Person or Entity hereunder and
5 to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the
6 Bankruptcy Court may deem necessary or appropriate;

7 (n) To determine such other matters as may be provided for in the Confirmation
8 Order and this Plan, or as may from time to time be authorized under the provisions of the
9 Bankruptcy Code or any other applicable law;

10 (o) To enter a Final Decree closing the Chapter 11 Case;

11 (p) To enforce the provisions of any Administrative Claim Bar Date entered by
12 the Bankruptcy Court;

13 (q) To make such orders as are necessary or appropriate to carry out the provisions
14 of this Plan, including but not limited to orders interpreting, clarifying or enforcing the provisions
15 thereof; and

16 (r) Without limiting the generality of any of the foregoing, to hear and determine
17 matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 345,
18 505, and 1146.

19 10.2 Consent. Unless a timely objection is filed to this Plan and approved as part of the
20 Confirmation Order, to the extent the Court has retained jurisdiction over any matter described in
21 Section 11.1 above, all parties who have participated in this Bankruptcy Case, including, without
22 limitation, any party who has filed a Proof of Claim, whether or not such Proof of Claim has been
23 withdrawn, shall be deemed to have consented to the Bankruptcy Court's jurisdiction of any matter
24 retained pursuant to this Plan.

25 10.3 Jurisdiction Unaffected. The occurrence of the Effective Date and/or the entry of a
26 Final Decree shall not divest the Bankruptcy Court of any jurisdiction otherwise retained under this
27 Article XI or the Confirmation Order.
28

1 ON THE EFFECTIVE DATE, THE RIGHTS AND INTERESTS OF ALL HOLDERS OF OLD
2 EQUITY INTERESTS SHALL BE TERMINATED, CANCELED AND OF NO FORCE AND
3 EFFECT, AND (III) ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST
4 THE DEBTOR, THE REORGANIZED DEBTOR, THE DISTRIBUTION AGENT, THEIR
5 SUCCESSORS, OR ANY OF THEIR ASSETS OR PROPERTIES, ANY OTHER OR FURTHER
6 CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION,
7 TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED
8 BEFORE THE EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND SPECIFIED IN
9 BANKRUPTCY CODE SECTIONS 502(G), 502(H), OR 502(I), IRRESPECTIVE OF WHETHER
10 (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO
11 HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(a), (Y) SUCH
12 CLAIM IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502, OR (Z) THE HOLDER
13 OF THE CLAIM HAS ACCEPTED THE PLAN.

14 11.2 Binding Effect of Plan/Injunction.

15 (a) UPON THE EFFECTIVE DATE, BANKRUPTCY CODE SECTION 1141
16 SHALL BECOME APPLICABLE WITH RESPECT TO THE PLAN AND THE PLAN SHALL
17 BE BINDING ON ALL PARTIES TO THE FULLEST EXTENT PERMITTED BY
18 BANKRUPTCY CODE SECTION 1141(A). IN ACCORDANCE WITH BANKRUPTCY CODE
19 SECTION 1141, ALL OF THE DEBTOR'S PROPERTY TRANSFERRED TO THE
20 REORGANIZED DEBTOR SHALL BE FREE AND CLEAR OF ALL CLAIMS, LIENS AND
21 INTERESTS OF CREDITORS AND EQUITY INTEREST HOLDERS, EXCEPT TO THE
22 EXTENT PROVIDED IN THIS PLAN.

23 (b) UPON THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES SHALL
24 BE PERMANENTLY ENJOINED BY THE PLAN FROM (I) COMMENCING OR
25 CONTINUING ANY ACTION, EMPLOYING ANY PROCESS, ASSERTING OR
26 UNDERTAKING AN ACT TO COLLECT, RECOVER, OR OFFSET, DIRECTLY OR
27 INDIRECTLY, ANY CLAIM, RIGHTS, CAUSES OF ACTION, LIABILITIES, OR INTERESTS
28 IN OR AGAINST ANY PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE

1 PLAN, OR TRANSFERRED TO THE REORGANIZED DEBTOR, BASED UPON ANY ACT,
2 OMISSION, TRANSACTION, OR OTHER ACTIVITY THAT OCCURRED BEFORE THE
3 EFFECTIVE DATE, (II) CREATING, PERFECTING OR ENFORCING ANY LIEN OR
4 ENCUMBRANCE AGAINST ANY PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED
5 UNDER THE PLAN OTHER THAN AS PERMITTED UNDER THE PLAN, AND (III)
6 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ASSERTING ANY
7 CLAIMS AGAINST THE REORGANIZED DEBTOR BASED ON SUCCESSOR LIABILITY
8 OR SIMILAR OR RELATED THEORY, EXCEPT TO THE EXTENT A PERSON OR ENTITY
9 HOLDS AN ALLOWED CLAIM UNDER THE PLAN AND IS ENTITLED TO A
10 DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN ACCORDANCE WITH ITS TERMS,
11 AND TO ENFORCE ITS RIGHTS TO DISTRIBUTION UNDER THE PLAN.

12 (c) ON AND AFTER THE EFFECTIVE DATE, EACH HOLDER OF ANY
13 CLAIM AGAINST OR INTEREST IN DEBTOR IS PERMANENTLY ENJOINED FROM
14 TAKING OR PARTICIPATING IN ANY ACTION THAT WOULD INTERFERE OR
15 OTHERWISE HINDER DEBTOR OR THE REORGANIZED DEBTOR FROM
16 IMPLEMENTING THIS PLAN, THE CONFIRMATION ORDER OR ANY OPERATIVE
17 DOCUMENTS IN ACCORDANCE WITH THE TERMS THEREOF.

18 11.3 Exculpation. None of the Releasees nor any of their respective Representatives shall
19 have or incur any liability to any Holder of a Claim against or Interest in Debtor, or any other party-
20 in-interest, or any of their Representatives, or any of their successors or assigns, for any act,
21 omission, transaction or other occurrence in connection with, relating to, or arising out of the
22 Chapter 11 Case, the pursuit of confirmation of this Plan, or the consummation of this Plan, except
23 and solely to the extent such liability is based on fraud, gross negligence or willful misconduct. The
24 Releasees shall be entitled to reasonably rely upon the advice of counsel with respect to any of their
25 duties and responsibilities under this Plan or in the context of the Chapter 11 Case. No Holder of a
26 Claim against or Interest in Debtor, or any other party-in-interest, including their respective
27 Representatives, shall have any right of action against the Releasees or any of their Representatives,
28 for any act, omission, transaction or other occurrence in connection with, relating to, or arising out

1 of, the Chapter 11 Case, the pursuit of confirmation of this Plan, the consummation of this Plan or
2 the administration of this Plan, except to the extent arising from fraud. Nothing in this Section 12.3
3 shall: (a) be deemed an exculpation by any Releasor of any Releasee or any of its Representatives
4 for any acts, omissions, transactions, events or other occurrences taking place after the Effective
5 Date; or (b) affect the rights of K&L Baxter, Cashman, Utica and/or Loftin arising under the K&L
6 Baxter Guarantees, Cashman Settlement Agreement, the Utica Guarantees and the Loftin
7 Mechanic's Lien, respectively.

8 11.4 Releases. As of the Effective Date, for good and valuable consideration, the adequacy
9 of which is hereby confirmed, each Releasor will be deemed to release, waive and forever discharge
10 all Released Liabilities against each Releasee and each Releasee's respective Representatives;
11 *provided, however*, that, the releases provided in this Section 11.4 shall not constitute a release of
12 any liability based on willful misconduct, gross negligence or fraud; *provided, further*, that nothing
13 herein shall be deemed to constitute a release by any Releasor of any Releasee or any of its
14 Representatives for any acts, omissions, transactions, events or other occurrences taking place after
15 the Effective Date, and *provided, further*, that any party who is rightly included in the definition of
16 Releasee that challenges the Plan or its implementation shall no longer be classified as a Releasee.

17 11.5 Injunctions.

18 (a) Injunction Against Releasors. All of the Releasors, along with any of their
19 successors or assigns, are permanently enjoined, from and after the Effective Date, from
20 (i) commencing or continuing in any manner any action or other proceeding of any kind against the
21 Releasees or any of their respective Representatives in respect of any Released Liabilities,
22 (ii) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award,
23 decree or order against the Releasees or any of their respective Representatives in respect of any
24 Released Liabilities, (iii) creating, perfecting, or enforcing any encumbrance of any kind against the
25 Releasees or any of their respective Representatives in respect of any Released Liabilities, or
26 (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due
27 from the Releasees or any of their respective Representatives or against the property or interests in
28 property of the Releasees or any of their respective Representatives, in respect of any Released

1 Liabilities; *provided, however*, that nothing contained herein shall preclude such Releasors from
2 exercising their rights pursuant to and consistent with the terms hereof and the contracts,
3 instruments, releases and other agreements and documents delivered under or in connection with
4 this Plan; and *provided, further*, that nothing contained herein shall be deemed to enjoin any
5 Releasor from taking any action against any Releasee or any of its Representatives based on the
6 release exceptions contained in Section 12.4 of this Plan.

7 (b) Injunction Protecting Exculpation of Releasees. All Holders of Claims against
8 or Interests in Debtor and any other parties-in-interest, along with any of their Representatives and
9 any of their successors or assigns, are permanently enjoined, from and after the Effective Date, from
10 (i) commencing or continuing in any manner any action or other proceeding of any kind against
11 Releasees or any of their respective Representatives in respect of any potential liability for which
12 exculpation is granted pursuant to Section 12.3 of this Plan, (ii) enforcing, attaching, collecting or
13 recovering by any manner or means of any judgment, award, decree or order against Releasees or
14 any of their respective Representatives in respect of any potential liability for which exculpation is
15 granted pursuant to Section 12.3 of this Plan, (iii) creating, perfecting, or enforcing any
16 encumbrance of any kind against Releasees or any of their respective Representatives in respect of
17 any potential liability for which exculpation is granted pursuant to Section 12.3 of this Plan, or
18 (iv) asserting any right of setoff, subrogation or recoupment of any kind against any Releasee or any
19 of their respective Representatives or against the property or interests in property any Releasee or
20 any of their respective Representatives, in respect of any potential liability for which exculpation is
21 granted pursuant to Section 12.3 of this Plan; *provided, however*, that nothing contained herein shall
22 preclude any Holder or other party-in-interest from exercising its rights pursuant to and consistent
23 with the terms of this Plan and the Operative Documents delivered under or in connection with this
24 Plan; and, *provided further*, that nothing contained herein shall preclude K&L Baxter, Cashman,
25 Utica and/or Loftin from exercising their rights arising under the K&L Baxter Guarantees, the
26 Cashman Settlement Agreement, the Utica Guarantees and the Loftin Mechanic's Lien,
27 respectively.

28

1 (c) Injunction Against Interference With Plan. Upon the Effective Date, all
2 Holders of Claims against or Interests in Debtor and their respective Representatives and any of
3 their successors or assigns shall be enjoined from taking any actions to interfere with the
4 implementation or consummation of the Plan.

5 11.6 Termination of Debt Instruments. On the Effective Date, all instruments evidencing
6 indebtedness of Debtor held by Holders of Claims that are Impaired by this Plan or have been paid
7 in full pursuant thereto shall be deemed canceled as against Debtor and the Reorganized Debtor.

8 11.7 Judgments Void. Any judgment obtained before or after the Effective Date in any
9 court other than the Bankruptcy Court shall be null and void as a determination of liability of the
10 Debtor or the Reorganized Debtor with respect to any debt treated by the Plan.

11 11.8 Revesting of Assets in Reorganized Debtor. Except as otherwise expressly provided
12 herein or in the Confirmation Order, on the Effective Date, but retroactive to the Confirmation Date,
13 without any further action, the Reorganized Debtor will be vested with all of the property of the
14 Estate, wherever situate, free and clear of all Claims, Liens and Old Equity Interests (except for
15 Liens provided or authorized pursuant to this Plan). Without limiting the generality of the foregoing,
16 on and after the Effective Date, the Reorganized Debtor shall be vested with all of the property of
17 the Estate, wherever situated, free and clear of any Claims based on any form of successor liability
18 or similar or related theory of liability. On and after the Effective Date, (i) the Reorganized Debtor
19 shall be free of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate
20 its business and may use, acquire or dispose of its assets (including the Properties) free of any
21 restrictions imposed by the Bankruptcy Code and the Bankruptcy Rules and without supervision or
22 approval by the Bankruptcy Court, other than the obligations set forth in this Plan, or the
23 Confirmation Order. Without limiting the generality of the foregoing and except as otherwise
24 expressly provided herein or in the Confirmation Order, any Causes of Action, will be preserved
25 and retained solely for the Reorganized Debtor's commencement, prosecution, use and benefit.

26 11.9 Preservation of Causes of Action. Pursuant to Bankruptcy Code section 1123(b),
27 Debtor as the Reorganized Debtor shall retain and reserve the right to enforce all rights to commence
28 and pursue Causes of Action whether arising before or after the Petition Date, and whether pending

1 as of or Filed after the Effective Date, in any court or other tribunal. Unless a Cause of Action is
 2 expressly waived, relinquished, released, compromised or settled in the Plan, or any Final Order,
 3 the Debtor and the Reorganized Debtor expressly reserve all Causes of Action for later adjudication
 4 and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata,
 5 collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or
 6 laches shall apply to any Causes of Action upon Confirmation or the Effective Date. No entity may
 7 rely on the absence of a specific reference to any Cause of Action against it in the Plan, any Plan
 8 Supplement, or the Disclosure Statement as an indication that the Debtor or the Reorganized Debtor
 9 will not pursue any and all available Causes of Action against them. The Debtor and the
 10 Reorganized Debtor expressly reserve all rights to prosecute any and all Causes of Action against
 11 any Entity, except as otherwise expressly provided in the Plan.

12 11.10 Maintenance of Administrative Claim Status Post Discharge. Notwithstanding any
 13 discharge granted to the Debtor, Allowed Administrative Claims shall maintain their administrative
 14 priority status under Bankruptcy Code section 507(a)(2) until paid in full.

15 11.11 No Limitation on Effect of Confirmation. Nothing contained in the Plan or the
 16 Disclosure Statement will limit, waive or restrict in any way the effect of Confirmation as set forth
 17 in Bankruptcy Code section 1141. Confirmation will bind the Debtor, all Creditors, Equity Interest
 18 Holders and other parties in interest to the provisions of the Plan, whether or not the Claim or Equity
 19 Interest of such Creditor or Equity Interest Holder is Impaired under the Plan and whether or not
 20 such Creditor or Equity Interest Holder has accepted the Plan and whether or not a proof of Claim
 21 or Equity Interest has been filed or deemed to have been filed under Bankruptcy Code sections 501
 22 or 1111(a), or such Claim or Equity Interest is allowed under Bankruptcy Code section 502.

23 **ARTICLE XII**

24 **MISCELLANEOUS PROVISIONS**

25 12.1 Modification of this Plan.

26 (a) Debtor may alter, amend or modify the Plan at any time before the entry of the
 27 Confirmation Order, provided that the Plan, as altered, amended or modified, satisfies the conditions
 28 of Bankruptcy Code sections 1122 and 1123, and Debtor shall have complied with Bankruptcy Code

1 section 1125. However, the Bankruptcy Court may require a new disclosure statement and/or re-
2 voting on the Plan if Debtor modifies the Plan before Confirmation.

3 (b) The Debtor may also seek to alter, amend or modify the Plan at any time after
4 Confirmation so long as (1) the Plan has not been substantially consummated, (2) as altered,
5 amended or modified the Plan satisfies the conditions of Bankruptcy Code sections 1122 and 1123,
6 and (3) the Bankruptcy Court authorizes the proposed modification after notice and a hearing under
7 Bankruptcy Code section 1129.

8 (c) A Holder of a Claim that has accepted the Plan shall be deemed to have
9 accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or
10 modification does not materially and adversely change the treatment of the Claim of such Holder.
11 Prior to the Effective Date, Debtor may make appropriate technical non-material modifications to
12 the Plan or the Disclosure Statement without further order or approval of the Bankruptcy Court,
13 provided that such technical modifications do not adversely affect the treatment of Holders of
14 Claims or Equity Interests.

15 (d) Debtor further reserves the right to modify the treatment of any Allowed
16 Claims at any time after the Effective Date of the Plan upon the consent of the Creditor whose
17 Allowed Claim treatment is being modified, so long as no other Creditors are materially adversely
18 affected.

19 (e) Debtor reserves the right, in accordance with the Bankruptcy Code, to amend
20 or modify this Plan before or after the Confirmation Date, including to make any amendments or
21 modifications to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

22 12.2 Notices. Except as otherwise set forth in Section 12.3 below, all notices, requests,
23 elections or demands in connection with this Plan, including any change of address of any Holder
24 of a Claim for the purposes of receiving any Distributions under this Plan, shall be in writing and
25 shall be delivered personally or by facsimile, electronic mail or overnight courier (confirmed by
26 first class mail or express mail) or mailed by first class mail. Such notice shall be deemed to have
27 been given when received or, if mailed by first class mail, seven (7) days after the date of mailing,
28 or if express mailed, the next Business Day following the date of mailing and addressed to the

1 Debtor and the Reorganized Debtor as follows:

2 **Debtor / Reorganized Debtor:**

3 Ron Gillette
4 General Counsel
5 8912 Spanish Ridge Avenue, Suite 200
6 Las Vegas, NV 89148
7 Email: rgillette@kingmanfarms.com
8 Facsimile: 702-586-3527

9 **with copies to:**

10 Fox Rothschild LLP
11 1980 Festival Plaza Drive, Suite 700
12 Las Vegas, NV 89135
13 Attn: Brett A. Axelrod
14 Email: baxelrod@foxrothschild.com
15 Facsimile: 702-597-5503

16 All notices and requests to Holders of Claims of any Class shall be sent to them at their
17 known address. Any Holder of a Claim of any Class may designate in writing any other address for
18 purposes of this Section 12.2, which designation shall be effective upon receipt.

19 12.3 Limitation of Notice. Debtor shall give the following notice with regard to the
20 following matters, which notice shall be deemed to be good and sufficient notice of such matters,
21 with no requirement for any additional or further notice:

22 (a) Notice of Entry of Confirmation Order. Notice of the entry of the
23 Confirmation Order shall be sufficient if mailed to all known Holders of Claims (which have not
24 become Disallowed Claims) and Interests within five (5) Business Days of the entry of Confirmation
25 Order.

26 (b) Post-Confirmation Date Service List - Additional Persons Entitled to Notice.
27 Except as set forth in Section 12.2 hereof, from and after the date the Confirmation Order becomes
28 a Final Order, notices of appearances and demands for service of process Filed with the Bankruptcy
Court prior to such date shall no longer be effective, and no further notices, other than Notice of
Confirmation Order, shall be required to be sent to such parties, unless such parties File a new notice
of appearance and demand for service of process dated subsequent to the Effective Date, which
subsequent notice and demand must be Filed with the Bankruptcy Court and served upon the

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, NV 89135
(702) 262-6899
(702) 597-5503 (fax)

1 Persons and Entities listed in Section 12.2 above.

2 12.4 Headings. The headings used in this Plan are inserted for convenience only and
3 neither constitute a portion of this Plan nor in any manner affect the provisions of this Plan.

4 12.5 Exhibits. All exhibits and documents included in the Plan Supplement are
5 incorporated into and are a part of this Plan, as if set forth in full in this Plan. Except as otherwise
6 provided in this Plan, such exhibits and documents included in the Plan Supplement shall be Filed
7 with the Bankruptcy Court on or before the Plan Supplement Filing Date. After the exhibits and
8 documents are Filed, copies of such exhibits and documents shall have been available upon written
9 request to Debtor's counsel at the address above or by downloading such exhibits and documents
10 from the Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the extent any exhibit or
11 document is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy
12 Court, the non-exhibit or non-document portion of this Plan shall control.

13 12.6 Nonseverability of Plan Provisions. If, prior to Confirmation, any term or provision
14 of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy
15 Court shall have the power, at the request of Debtor and subject to the consent of any party adversely
16 affected thereby, to alter and interpret such term or provision to make it valid or enforceable to the
17 maximum extent practicable, consistent with the original purpose of the term or provision held to
18 be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or
19 interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the
20 terms and provisions of this Plan will remain in full force and effect and will in no way be affected,
21 impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall
22 constitute a judicial determination and shall provide that each term and provision of this Plan, as it
23 may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable
24 pursuant to its terms; (b) integral to this Plan and may not be deleted or modified without the consent
25 of Debtor and any other Person or Entity affected by such provision; and (c) nonseverable and
26 mutually dependent.

27 12.7 Waiver or Estoppel. Each Holder of a Claim or an Interest shall be deemed to have
28 waived any right to assert any argument, including the right to argue that its Claim or Interest should

1 be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an
2 agreement made with Debtor, its counsel, or any other Entity, if such agreement was not disclosed
3 in this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the
4 Confirmation Date.

5 12.8 Conflicts. To the extent that any provision of the Disclosure Statement, the Plan
6 Supplement (other than any amendments to the Plan or any New Secured Loan Documents), or any
7 other order (other than the Confirmation Order) referenced in this Plan (or any exhibits, schedules,
8 appendices, supplements or amendments to any of the foregoing), conflict with or are in any
9 inconsistent with any provision of this Plan, this Plan shall govern and control, unless expressly set
10 forth herein.

11 12.9 Computation of Time. In computing any period of time prescribed or allowed by this
12 Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

13 12.10 Governing Law. Except to the extent that the Bankruptcy Code or any other Federal
14 law is applicable, the rights and obligations arising under this Plan shall be governed by, and
15 construed and enforced in accordance with, the laws of the State of Nevada.

16 12.11 Successors and Assigns. The rights and obligations of any Person or Entity named or
17 referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and
18 assigns of such Person or Entity.

19 12.12 Good Faith. Confirmation of the Plan will constitute a finding that the Plan has been
20 proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

21 12.13 Post Confirmation Conversion or Dismissal. A creditor or party in interest may bring
22 a motion to convert or dismiss the Chapter 11 Cases under Bankruptcy Code section 1112(b), after
23 the Plan is confirmed, if there is a default in performance of the Plan or if cause exists under
24 Bankruptcy Code section 1112(b). If the Bankruptcy Court orders the case converted to chapter 7
25 after the Plan is confirmed, then all property that had been property of the Estate, and that has not
26 been disbursed or distributed pursuant to the Plan, will revert in the chapter 7 estate, and the
27 automatic stay will be re-imposed upon the re-vested property only to the extent that relief from
28 stay was not previously granted by the Bankruptcy Court during this Chapter 11 Case. In addition,

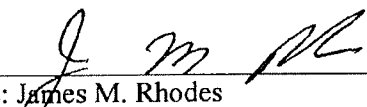
1 any Allowed Administrative Claims which are not paid on the Effective Date shall continue to be
2 entitled to administrative priority, under Bankruptcy Code section 507(a)(1) in any such subsequent
3 Chapter 7 case to which this case is converted.

4 12.14 Post Confirmation Quarterly Fees. US Trustee Fees continue to be payable to the
5 Office of the United States Trustee post-confirmation until such time as the case is converted,
6 dismissed, or closed pursuant to Final Decree.

7 12.15 Entire Agreement. The Plan, as described herein, the Disclosure Statement and
8 exhibits thereto, and the Plan Supplement set forth the entire agreement and understanding of the
9 parties hereto relating to the subject matter hereof and supersede all prior discussions and
10 documents. No party hereto shall be bound by any terms, conditions, definitions, warrants,
11 understandings or representations with respect to the subject matter hereof, other than as in expressly
12 provided for herein or as may hereafter be agreed by the parties in writing.

13 DATED this 4th day of April, 2018.

14 Avery Land Group, LLC,
15 a Nevada limited liability company

16
17 By: 
18 Name: James M. Rhodes
19 Title: Manager

20 Respectfully submitted by:

21 **FOX ROTHSCHILD LLP**

22
23 By: /s/Brett A. Axelrod
24 BRETT A. AXELROD, ESQ.
25 Nevada Bar No. 5859
26 1980 Festival Plaza Drive, Suite 700
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28 *Counsel for Avery Land Group, LLC*

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