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8

Electronically Filed December 10, 2018

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re

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

12  
13 AVERY LAND GROUP, LLC, a Nevada  
14 limited liability company,

Chapter 11

15 Debtor.  
16  
17  
18

**DISCLOSURE STATEMENT  
PREPARED IN CONNECTION WITH  
DEBTOR'S THIRD AMENDED  
CHAPTER 11 PLAN OF  
REORGANIZATION DATED  
DECEMBER 10, 2018**

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**EXHIBITS**

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**EXHIBIT A—THIRD AMENDED CHAPTER 11 PLAN OF REORGANIZATION DATED DECEMBER 10, 2018**

**EXHIBIT B – BAUM SECURED NOTE**

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**EXHIBIT I – DEBTOR’S LIQUIDATION ANALYSIS**

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1 THIS DISCLOSURE STATEMENT IS SUBMITTED FOR APPROVAL IN  
2 CONNECTION WITH DEBTOR'S THIRD AMENDED CHAPTER 11 PLAN OF  
3 REORGANIZATION (THE "PLAN"), DATED DECEMBER 10, 2018, FILED BY AVERY  
4 LAND GROUP, LLC ("DEBTOR"), DEBTOR AND DEBTOR IN POSSESSION IN THE  
5 ABOVE-CAPTIONED CHAPTER 11 CASE (THE "CHAPTER 11 CASE"). THIS  
6 DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE SECURITIES AND  
7 EXCHANGE COMMISSION ("SEC") OR ANY OTHER REGULATORY AUTHORITY.

8 This Disclosure Statement has been prepared in accordance with section 1125 of title 11 of  
9 the United States Code (the "Bankruptcy Code") and Rule 3016(c) of the Federal Rules of  
10 Bankruptcy Procedure (the "Bankruptcy Rules") and not necessarily in accordance with federal or  
11 state securities laws or other laws governing disclosure outside the context of the Bankruptcy Code.  
12 This Disclosure Statement has neither been approved nor disapproved by the SEC, nor has the SEC  
13 passed judgment upon the accuracy or adequacy of the statements contained herein.

14 Capitalized terms utilized in this Disclosure Statement, if not defined herein, shall have the  
15 meaning used or defined in Article I(A) of the Plan, the Bankruptcy Code or the Bankruptcy Rules,  
16 as applicable, unless the context hereof requires a different meaning.

17 This Disclosure Statement is being provided to Holders of Impaired Claims and Interests, in  
18 connection with the solicitation of their votes on the Plan, in order to provide adequate information  
19 to enable them to make reasonably informed decisions in the exercise of their rights to vote on the  
20 Plan. In making a decision in connection with the Plan, Holders of Impaired Claims and Interests  
21 must rely on their own examination of Debtor's financial situation and the terms of the Plan,  
22 including the merits and risks involved. **HOLDERS OF IMPAIRED CLAIMS AND INTERESTS**  
23 **ARE URGED TO REVIEW ALL OF THE TERMS AND CONDITIONS OF THE PLAN**  
24 **CAREFULLY, AND NOT TO RELY SOLELY ON THE SUMMARY IN THIS DISCLOSURE**  
25 **STATEMENT. HOLDERS OF IMPAIRED CLAIMS ALSO SHOULD CAREFULLY REVIEW**  
26 **THE VOTING INSTRUCTIONS SET FORTH IN ARTICLE VI, SECTION 6.2 OF THIS**  
27 **DISCLOSURE STATEMENT.**

28

1           HOLDERS OF IMPAIRED CLAIMS AND ANY OTHER PARTIES IN INTEREST  
2 SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS  
3 PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH  
4 HOLDER AND PARTY SHOULD, THEREFORE, CONSULT WITH THEIR OWN LEGAL,  
5 BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY MATTERS CONCERNING  
6 SOLICITATION OF VOTES, THE PLAN AND THE TRANSACTIONS CONTEMPLATED  
7 THEREBY.

8           THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BASED  
9 UPON FINANCIAL AND OTHER INFORMATION DEVELOPED BY DEBTOR. ALTHOUGH  
10 DEBTOR HAS REASONABLY ENDEAVORED TO OBTAIN AND SUPPLY ALL MATERIAL  
11 INFORMATION, THE INFORMATION PROVIDED HAS NOT BEEN SUBJECT TO  
12 CERTIFIED AUDIT OR INDEPENDENT REVIEW EXCEPT WHERE EXPRESSLY  
13 INDICATED. ACCORDINGLY, DEBTOR IS UNABLE TO WARRANT OR REPRESENT  
14 THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY OR  
15 IS COMPLETE. NO REPRESENTATION CONCERNING DEBTOR IS AUTHORIZED OTHER  
16 THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

17           Except as otherwise noted, the ballots being solicited (the “Ballots”) hereby will not be used  
18 by Debtor for any purpose other than to determine votes for acceptance or rejection of the Plan (and  
19 any permitted non-materially modified version thereof) under chapter 11 of the Bankruptcy Code.

20           The information presented in this Disclosure Statement includes forward-looking statements  
21 in addition to historical information. These statements involve known and unknown risks and relate  
22 to future events, future financial performance or projected business results. In some cases, you can  
23 identify forward-looking statements by terminology such as “may,” “will,” “should,” “expects,”  
24 “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “targets,” “potential” or “continue” or the  
25 negative of these terms or other comparable terminology. Forward-looking statements are only  
26 predictions. Actual events or results may differ materially from any forward-looking statement as a  
27 result of various factors, including those contained in the section entitled “Risk Factors” and other  
28 sections of this Disclosure Statement, including the documents incorporated by reference herein.

1 Although Debtor believes that the expectations reflected in the forward-looking statements are  
2 reasonable, Debtor cannot guarantee future results, events, levels of activity, performance or  
3 achievements. Debtor expressly disclaims a duty to update any of the forward-looking statements.

4 **AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER**  
5 **ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL**  
6 **NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR**  
7 **LIABILITY, STIPULATION, OR WAIVER, BUT RATHER (IF AT ALL) AS A**  
8 **STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE**  
9 **STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY**  
10 **PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON**  
11 **THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE PLAN AS TO**  
12 **HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, DEBTOR OR ANY OF**  
13 **ITS AFFILIATES.**

14 **ARTICLE I.**

15 **INTRODUCTION**

16 The following introductory statements are qualified in their entirety by the more detailed  
17 information contained in the Plan and elsewhere in this Disclosure Statement.

18 On September 9, 2016 (the "Petition Date"), Debtor filed a voluntary petition for relief  
19 under the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the  
20 "Bankruptcy Court"). Debtor commenced this chapter 11 case (the "Chapter 11 Case") in order to  
21 reorganize its financial affairs, restructure its debts, and pay off its debts in full.

22 This Disclosure Statement was prepared by Debtor for use in conjunction with Debtor's  
23 *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* [Docket No. 698]  
24 (the "Plan"), a copy of which is attached as **Exhibit "A"** to this Disclosure Statement. The Plan  
25 sets forth the means by which Debtor will use its Assets to satisfy its liabilities in accordance with  
26 the Bankruptcy Code. The purpose of this Disclosure Statement is to describe the Plan and provide  
27 adequate information to allow Creditors entitled to vote on the Plan to make an informed decision  
28 about how to cast their Ballot.

1 The balance of this Introduction will cover certain aspects of Debtor's financial condition  
2 and how the Plan will operate to reorganize Debtor's financial affairs. Following this Introduction,  
3 the remaining sections of this Disclosure Statement will discuss in greater detail Debtor's business  
4 and background, the history and anticipated course of Debtor's Chapter 11 Case, the operative  
5 provisions of the Plan, the Bankruptcy Code requirements that the Plan must satisfy (and the  
6 process for doing so), and certain other information that should be considered when evaluating the  
7 Plan, including risk factors and tax consequences.

8 **Section 1.1 Plan Overview.**

9 The Plan separates Claims against Debtor into fifteen (15) classes based on their level of  
10 priority under the Bankruptcy Code and the legal nature of the Claims. There is also one (1) class  
11 of Old Equity Interests. Administrative Claims and Priority Tax Claims are not classified because  
12 the Bankruptcy Code requires that they receive specific treatment. Priority Claims and Secured  
13 Property Tax Claims will be paid in full on the Effective Date. The Baxter Secured Claim will  
14 receive the treatment provided in the Baxter Settlement (defined below), which includes transferring  
15 the Baxter Collateral to a newly formed subsidiary. The Baum Secured Claim, the McKenna  
16 Secured Claim, and the Thompson Secured Claim will each remain secured by its respective  
17 Collateral and be paid out over three years, with interest at the rate of 5.75% per annum. The  
18 Moreno Secured Claim, Ritchie Secured Claim, and Lysgaard Secured Claim will each be satisfied  
19 by the Debtor's surrender to its Holder of the collateral securing its respective Claim (the  
20 "Surrendered Collateral"). The General Unsecured Claims, Loftin Unsecured Claim, Cashman  
21 Unsecured Claim, and Utica Unsecured Claim will receive Junior Lien Notes, secured by a pari  
22 passu junior lien on all Unencumbered Collateral, and to be paid out, with Post Effective Date  
23 Interest, from the proceeds of Refinancing and/or Property Sales; if such Junior Lien Notes have not  
24 been paid in full in two years from the Effective Date, HB Farms will transfer Property to the  
25 Holders of such Claims of a Value equal to their outstanding balances. Insider Claims will receive  
26 a Pro Rata share of the Insider Claim Fund. In satisfaction of the DIP Lender Secured Claim, the  
27 DIP Lender will receive 100% of the New Equity Interests. The Old Equity Interests will be  
28 cancelled.



1 On the Effective Date, the Reorganized Debtor shall transfer all of its Assets other than the  
2 Baxter Collateral and the Surrendered Collateral to HB Farms. In exchange: (i) Cashton Land  
3 Development, LLC ("Cashton") shall provide the Exit Financing; (ii) the Reorganized Debtor shall  
4 receive membership interests in Harris Brunner Farms, LLC ("HB Farms"); and (iii) HB Farms  
5 shall assume all of the Reorganized Debtor's obligations under the Baum, McKenna and Thompson  
6 Secured Notes (the "Secured Creditor Notes"), and the Junior Lien Notes. The Exit Financing will  
7 be converted into membership interests in HB Farms upon the Reorganized Debtor's contribution of  
8 its Assets to HB Farms.

9 The Exit Financing and the DIP Loan shall be used to provide all Confirmation Funds for  
10 Distribution under the Plan. On the Effective Date, Debtor shall draw down the full amount of the  
11 Exit Financing, and the DIP Loan in the amount of the Insider Claim Fund. To the extent that the  
12 Exit Financing, together with the Insider Claim Fund, is less than the Confirmation Funds (the  
13 "Shortfall"), the Reorganized Debtor shall draw down again on the DIP Loan in the amount of the  
14 Shortfall (the "DIP Drawdown"). The Reorganized Debtor shall turn the Exit Financing, Insider  
15 Claim Fund, and DIP Drawdown over to the Distribution Agent for Distribution pursuant to the  
16 Plan.

17 **Section 1.2 Debtor's Principal Assets and Indebtedness.**

18 Debtor was formed in 2013 as a wholly owned subsidiary of Kingman Farms, LLC  
19 ("Kingman Farms"), for the purpose of holding certain land as an investment. Immediately before  
20 the Petition Date, Debtor and Kingman Farms merged (the "Merger"), with Debtor becoming the  
21 sole post-Merger entity.

22 Before the Merger, Kingman Farms conducted all of the development activity on behalf of  
23 Debtor and its affiliates holding land in Mohave County. In essence, Kingman Farms acted as the  
24 general contractor for Debtor and the affiliates, and contracted with the various material suppliers,  
25 equipment companies, and other vendors (the "Vendors"). As a result, Kingman Farms had claims  
26 against Debtor and the affiliates for amounts advanced. After the Merger, Debtor became the entity  
27 holding the claims against the affiliates (the "Affiliate Account Debtors").  
28

1 Debtor's principal assets are: (a) ten (10) parcels of land in Mohave County, with a current  
 2 value of approximately \$19,645,445.00, received pursuant to a settlement between Debtor and the  
 3 Affiliate Account Debtors that was approved by Court Order entered on May 25, 2018 (Docket No.  
 4 570); (b) twenty (24) parcels of land in Mohave County, with a current value of \$5,509,723.00; and  
 5 (c) six (6) parcels of land in Mohave County with a current value of between \$10,774,140.00 and  
 6 \$12,152,400.00, received by Debtor under the *First Amended Plan of Reorganization Dated*  
 7 *January 12, 2018* of Debtor's affiliate, Yucca Land Company, LLC.

8 Debtor's total liabilities were \$12,836,669.62 as of the Petition Date, consisting of:  
 9 (1) \$8,131,442.19 in secured claims; (2) \$10,506.80 in priority claims; and (3) \$4,694,720.63 in  
 10 unsecured claims.

### 11 **Section 1.3 Treatment of Claims and Interests.**

12 The Plan's classification and treatment of Claims and Equity Interests is summarized below:

13 <b>Class</b>	14 <b>Description</b>	15 <b>Treatment</b>	16 <b>Estimated Amount of Claims<sup>1</sup></b>
17 <b>Class 1</b>	18 <b>Priority Claims</b>	19 The legal and equitable rights of the Holders of 20 Allowed Priority Claims are unaltered by the Plan. 21 Each Holder of an Allowed Priority Claim shall, in 22 full satisfaction, settlement, release and exchange 23 for such Allowed Priority Claim, be paid in Cash in the Allowed amount of such Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the date upon which such Priority Claim becomes Allowed, or (iii) such date as is otherwise agreed by Debtor and the Holder of such Claim.  <i>Class 1 is not Impaired and the Holders of Class 1 Allowed Priority Claims are conclusively deemed to have accepted the Plan.</i>	\$10,278.80

24  
 25 <sup>1</sup> These amounts were compiled by combining the undisputed Claims listed on Debtor's  
 26 bankruptcy Schedules and any additional amounts included in the Proofs of Claim filed in this case.  
 27 As such, these amounts are estimates only as of March 31, 2018, and may change as the  
 28 adjudication or other resolution of pending contingent, unliquidated and/or Disputed Claims occurs  
 and/or as interest continues to accrue with respect to oversecured claims. Debtor reserves the right  
 to object to any Proof of Claim filed.

Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
Class 2(a)	<b>DIP Lender Secured Claim</b>	<p>On the Effective Date, the Holder of the Allowed DIP Lender Secured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed DIP Lender Secured Claim, be issued 100% of the New Equity Interests.</p> <p><i>Class 2(a) is Impaired and the Holder of the Class 2(a) DIP Lender Secured Claim is entitled to vote to accept or reject the Plan.</i></p>	\$40,000.00
Class 2(b)	<b>Baxter Secured Claim</b>	<p>On the Effective Date, the Holder of the Allowed Baxter Secured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Baxter Secured Claim, receive the following treatment: (1) the Reorganized Debtor shall form the Baxter Subsidiary and shall transfer the Baxter Collateral to the Baxter Subsidiary; (2) the Baxter Subsidiary shall become a borrower under the Baxter Loan; and (3) the Baxter Assignee shall release the Baxter Liens and cease to be a borrower under the Baxter Loan.</p> <p><i>Class 2(b) is Impaired and the Holder of the Class 2(b) Baxter Secured Claim is entitled to vote to accept or reject the Plan.</i></p>	\$5,632,289.47
Class 2(c)	<b>Baum Secured Claim</b>	<p>On the Effective Date, the Holder of the Allowed Baum Secured Claim shall receive the Baum Secured Note, which will be secured by the Baum Collateral, will be executed by the Reorganized Debtor, and will provide that the Holder of the Allowed Baum Secured Claim, be paid in monthly installments of principal, together with non-compounded interest at the rate of 5.75% per annum, based on a thirty (30) year amortization schedule, with all remaining principal and interest due on the third anniversary of the Effective Date.</p> <p><i>Class 2(c) is Impaired and the Holder of the Class 2(c) Baum Secured Claim is entitled to vote to accept or reject the Plan.</i></p>	\$17,337.00
Class 2(d)	<b>McKenna Secured Claim</b>	<p>On the Effective Date, the Holder of the Allowed McKenna Secured Claim shall receive the McKenna Secured Note, which will be secured by the McKenna Collateral, will be executed by the Reorganized Debtor, and will provide that the Holder of the Allowed McKenna Secured Claim, be</p>	\$16,633.00

Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
		<p>paid in monthly installments of principal, together with non-compounded interest at the rate of 5.75% per annum, based on a thirty (30) year amortization schedule, with all remaining principal and interest due on the third anniversary of the Effective Date.</p> <p><i>Class 2(d) is Impaired and the Holder of the Class 2(d) Allowed McKenna Secured Claim is entitled to vote to accept or reject the Plan.</i></p>	
<b>Class 2(e)</b>	<b>Thompson Secured Claim</b>	<p>On the Effective Date, the Holder of the Allowed Thompson Secured Claim shall receive the Thompson Secured Note, which will be secured by the Thompson Collateral, will be executed by the Reorganized Debtor, and will provide that the Holder of the Allowed Thompson Secured Claim, be paid in monthly installments of principal, together with non-compounded interest at the rate of 5.75% per annum, based on a thirty (30) year amortization schedule, with all remaining principal and interest due on the third anniversary of the Effective Date.</p> <p><i>Class 2(e) is Impaired and the Holder of the Class 2(e) Allowed Thompson Secured Claim is entitled to vote to accept or reject the Plan.</i></p>	\$25,490.00
<b>Class 2(f)</b>	<b>Moreno Secured Claim</b>	<p>On the Effective Date, the Debtor shall surrender the Moreno Collateral to the Holder of the Allowed Moreno Secured Claim in full satisfaction, settlement, release and exchange for the Allowed Moreno Secured Claim; <i>provided, however</i>, that if the Holder of the Allowed Moreno Secured Claim believes that the amount of its Claim exceeds the value of the Moreno Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the surrender of the Moreno Collateral, then the Holder of the Allowed Moreno Secured Claim shall File an objection to the Plan, with evidence supporting its opinion on the value of the Moreno Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the Moreno Collateral; and <i>provided, further</i>, that if the Holder of the Allowed Moreno Secured Claim fails to file an objection with supporting evidence by the Objection Deadline, then any and all of its Claims will conclusively be deemed satisfied in full by the</p>	\$16,769.00

Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
		<p>surrender of the Moreno Collateral.</p> <p><i>Class 2(f) is Unimpaired and the Holder of the Class 2(f) Allowed Moreno Secured Claim is conclusively deemed to have accepted the Plan, pursuant to Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(f) Allowed Moreno Secured Claim is not entitled to vote to accept or reject the Plan.</i></p>	
<b>Class 2(g)</b>	<b>Ritchie Secured Claim</b>	<p>On the Effective Date, the Debtor shall surrender the Ritchie Collateral to the Holder of the Allowed Ritchie Secured Claim in full satisfaction, settlement, release and exchange for the Allowed Ritchie Secured Claim; <i>provided, however</i>, that if the Holder of the Allowed Ritchie Secured Claim believes that the amount of its Claim exceeds the value of the Ritchie Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the surrender of the Ritchie Collateral, then the Holder of the Allowed Ritchie Secured Claim shall File an objection to the Plan, with evidence supporting its opinion on the value of the Ritchie Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the Ritchie Collateral; and <i>provided, further</i>, that if the Holder of the Allowed Ritchie Secured Claim fails to file an objection with supporting evidence by the Objection Deadline, then any and all of its Claims will conclusively be deemed satisfied in full by the surrender of the Ritchie Collateral.</p> <p><i>Class 2(g) is Unimpaired and the Holder of the Class 2(g) Allowed Ritchie Secured Claim is conclusively deemed to have accepted the Plan, pursuant to Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(g) Allowed Ritchie Secured Claim is not entitled to vote to accept or reject the Plan.</i></p>	\$55,460.00
<b>Class 2(h)</b>	<b>Lysgaard Secured Claim</b>	<p>On the Effective Date, the Debtor shall surrender the Lysgaard Collateral to the Holder of the Allowed Lysgaard Secured Claim in full satisfaction, settlement, release and exchange for the Allowed Lysgaard Secured Claim; <i>provided, however</i>, that if the Holder of the Allowed Lysgaard Secured Claim believes that the amount of its Claim</p>	\$48,015.00

Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
		<p>exceeds the value of the Lysgaard Collateral, such that it will be entitled to a Class 4(a) General Unsecured Claim after the surrender of the Lysgaard Collateral, then the Holder of the Allowed Lysgaard Secured Claim shall File an objection to the Plan, with evidence supporting its opinion on the value of the Lysgaard Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the Lysgaard Collateral; and <i>provided, further</i>, that if the Holder of the Allowed Lysgaard Secured Claim fails to file an objection with supporting evidence by the Objection Deadline, then any and all of its Claims will conclusively be deemed satisfied in full by the surrender of the Lysgaard Collateral.</p> <p><i>Class 2(h) is Unimpaired and the Holder of the Class 2(h) Allowed Lysgaard Secured Claim is conclusively deemed to have accepted the Plan, pursuant to Bankruptcy Code section 1126(f). Therefore, the Holder of the Class 2(h) Allowed Lysgaard Secured Claim is not entitled to vote to accept or reject the Plan.</i></p>	
<b>Class 3</b>	<b>Secured Property Tax Claims</b>	<p>On the Effective Date, the Holder of the Class 3 Allowed Secured Property Tax Claims shall, in full satisfaction, settlement, release and exchange for such Allowed Secured Property Tax Claims, be paid in Cash in the Allowed amount of such Secured Property Tax Claims on, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) such date as is otherwise agreed by Debtor and the Holder of such Claim.</p> <p><i>Class 3 is not Impaired and the Holder of Class 3 Allowed Secured Property Tax Claims is not entitled to vote to accept or reject the Plan.</i></p>	\$31,651.00
<b>Class 4(a)</b>	<b>General Unsecured Claims</b>	<p>Each Holder of a Class 4(a) Allowed General Unsecured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed General Unsecured Claim, receive a Class 4(a) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property, bear Post Effective Date Interest and be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and Pro</p>	\$2,857,692.42

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Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
		<p>Rata with the Allowed Class 4(b) Loftin Unsecured Claim, the Allowed Class 4(c) Cashman Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; <i>provided, however</i>, that if all Class 4(a) Junior Lien Notes have not been paid in full, including post-Effective Date Interest, on the second anniversary of the Effective Date, then the Holders shall, in full satisfaction, settlement, release and exchange for any remaining unpaid balances of such Class 4(a) Junior Lien Notes (the “<u>General Unsecured Claim Balances</u>”), receive Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second anniversary of the Effective Date, equal to each Holder’s General Unsecured Claim Balance.</p> <p><b><i>Class 4(a) is Impaired and the Holders of Class 4(a) Allowed General Unsecured Claims are entitled to vote to accept or reject the Plan.</i></b></p>	
<b>Class 4(b)</b>	<b>Loftin Unsecured Claim</b>	<p>The Holder of the Class 4(b) Allowed Loftin Unsecured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Loftin Unsecured Claim, receive the Class 4(b) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property, bear Post Effective Date Interest and be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(c) Cashman Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; <i>provided, however</i>, that if the Class 4(b) Junior Lien Note has not been paid in full, including Post Effective Date Interest, on the second anniversary of the Effective Date, then the Holder shall, in full satisfaction, settlement, release and exchange for any remaining unpaid balance of such Class 4(b) Junior Lien Note (the “<u>Loftin Unsecured Claim Balance</u>”), receive Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second anniversary of the Effective Date, equal to the Loftin Unsecured Claim</p>	\$98,000.00

Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
		<p>Balance.</p> <p><i>Class 4(b) is Impaired and the Holder of the Class 4(b) Allowed Loftin Unsecured Claim is entitled to vote to accept or reject the Plan.</i></p>	
<b>Class 4(c)</b>	<b>Cashman Unsecured Claim</b>	<p>The Holder of the Class 4(c) Allowed Cashman Unsecured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Cashman Unsecured Claim, receive the Class 4(c) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property, bear Post Effective Date Interest, and be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(b) Loftin Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; <i>provided, however</i>, that if the Class 4(c) Junior Lien Note has not been paid in full, including Post Effective Date Interest, on the second anniversary of the Effective Date, then the Holder shall, in full satisfaction, settlement, release and exchange for any remaining unpaid balance of such Class 4(c) Junior Lien Note (the “<u>Cashman Unsecured Claim Balance</u>”), receive Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second anniversary of the Effective Date, equal to the Cashman Unsecured Claim Balance.</p> <p><i>Class 4(c) is Impaired and the Holder of the Class 4(b) Allowed Cashman Unsecured Claim is entitled to vote to accept or reject the Plan.</i></p>	\$32,060.20
<b>Class 4(d)</b>	<b>Utica Unsecured Claim</b>	<p>The Holder of the Class 4(d) Allowed Utica Unsecured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Utica Unsecured Claim, receive the Class 4(d) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property, bear Post Effective Date Interest, and be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(b) Loftin</p>	\$427,163.75



Class	Description	Treatment	Estimated Amount of Claims <sup>1</sup>
		<p>Unsecured Claim and the Allowed Class 4(c) Cashman Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; <i>provided, however,</i> that if the Class 4(d) Junior Lien Note has not been paid in full, including Post Effective Date Interest, on the second anniversary of the Effective Date, then the Holder shall, in full satisfaction, settlement, release and exchange for any remaining unpaid balance of such Class 4(d) Junior Lien Note (the “<u>Utica Unsecured Claim Balance</u>”), receive Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second anniversary of the Effective Date, equal to the Utica Unsecured Claim Balance.</p> <p><i>Class 4(d) is Impaired and the Holder of the Class 4(d) Allowed Utica Unsecured Claim is entitled to vote to accept or reject the Plan.</i></p>	
<b>Class 5</b>	<b>Insider Claims</b>	<p>Each Holder of a Class 5 Allowed Insider Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Insider Claim, receive its Pro Rata share of the Insider Claim Fund.</p> <p><i>Class 5 is Impaired and the Holders of the Class 5 Allowed Insider Claims are entitled to vote to accept or reject the Plan.</i></p>	\$913,485.01
<b>Class 6</b>	<b>Old Equity Interests</b>	<p>All Old Equity Interests shall be extinguished on the Effective Date.</p> <p><i>Class 6 is Impaired. Because the Holders of Class 6 Allowed Old Equity Interests will not receive or retain any property under the Plan on account of such Interests, they are conclusively deemed to have rejected the Plan under Bankruptcy Code section 1126(g).</i></p>	N/A

For a more detailed description of the treatment of the foregoing Classes of Claims and Interests, see Article V, Section 5.5 below.

1 **Section 1.4 Voting, Objection to Confirmation and Confirmation Hearing.**

2 Creditors holding Claims or Interests in Classes 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c),  
3 4(d) and 5 shall receive a Ballot to vote to accept or reject the Plan. The Voting Deadline to submit  
4 the Ballot is **January 16, 2019**. Ballots must be returned to Fox Rothschild LLP, Attention: Brett  
5 A. Axelrod, 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135. For more information  
6 regarding voting, see Article VI, Section 6.3 below.

7 The Bankruptcy Court has established **January 16, 2019** as the deadline to object to the  
8 Plan. Any objection to the Plan raised after the objection deadline may not be considered by the  
9 Bankruptcy Court. The Bankruptcy Court will hold a hearing on Confirmation of the Plan starting  
10 at **1:30 p.m. on January 30, 2019 at Courtroom 1, Foley Federal Building and U.S.**  
11 **Courthouse, 300 Las Vegas Boulevard, South, Las Vegas, Nevada 89101**. For more information  
12 regarding the Confirmation hearing and objections, see Article VI, Section 6.3 below.

13 **Section 1.5 Effectiveness of the Plan.**

14 In order for the Plan to become effective, it must be confirmed by the Bankruptcy Court and  
15 certain other conditions must be satisfied. In order for the Bankruptcy Court to confirm the Plan,  
16 the Plan must satisfy certain requirements of the Bankruptcy Code. For more information regarding  
17 these requirements, see Article V, Section 5.10 below.

18 Once the conditions to the Plan's effectiveness have occurred, the Plan will be implemented  
19 according to its terms. For more information about these and other effects of the Plan, see Article V  
20 below.

21 **ARTICLE II.**

22 **EXPLANATION OF CHAPTER 11**

23 **Section 2.1 Overview of Chapter 11.**

24 Chapter 11 is the principal reorganization chapter of the Bankruptcy Code pursuant to which  
25 a debtor may reorganize its business for the benefit of its creditors, equity holders, and other parties  
26 in interest. Debtor commenced the Chapter 11 Case on the Petition Date by filing a petition for  
27 voluntary relief under chapter 11 of the Bankruptcy Code.

28

1 The commencement of a chapter 11 case creates an “estate” comprising all the legal and  
2 equitable interests of a debtor in property wherever located by whomever held as of the date the  
3 petition is filed. Bankruptcy Code sections 1101, 1107 and 1108 provide that a debtor may  
4 continue to operate its business and remain in possession of its property as a “debtor in possession”  
5 unless the bankruptcy court for cause orders the appointment of a trustee. In the Chapter 11 Case,  
6 Debtor remains in possession of its property and continues to operate its business as a debtor in  
7 possession. See Article IV, Section 4.1 below.

8 The filing of a chapter 11 petition triggers the automatic stay provisions of the Bankruptcy  
9 Code. Bankruptcy Code section 362 provides, among other things, for an automatic stay of all  
10 attempts by creditors or other third parties to collect pre-petition claims from the debtor or  
11 otherwise interfere with its property or business. There are certain limited exceptions to the  
12 automatic stay, including for governmental authorities seeking to exercise regulatory or policing  
13 powers. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full  
14 force and effect until the effective date of a confirmed plan of reorganization.

15 Confirmation of a plan of reorganization is the primary goal of a chapter 11 case. The plan  
16 sets forth the means for satisfying claims against and interests in a debtor’s estate. Unless a trustee  
17 is appointed, only a debtor may file a plan during the first 120 days of a chapter 11 case (the “Filing  
18 Period”), and the debtor will have 180 days to obtain acceptance of such plan by each Impaired  
19 Class (the “Solicitation Period”). However, Bankruptcy Code section 1121(d) permits the  
20 bankruptcy court to extend or reduce the Filing Period and Solicitation Period upon a showing of  
21 “cause.” The Filing Period and Solicitation Period may not be extended beyond 18 months and  
22 20 months, respectively, from the Petition Date. Both the Filing and Solicitation Periods have  
23 expired in this Chapter 11 Case.

## 24 **Section 2.2 Plan of Reorganization.**

25 Although referred to as a plan of reorganization, a plan may provide anything from a  
26 complex restructuring of a debtor’s business and its related obligations to a simple liquidation of a  
27 debtor’s assets. In either event, once a confirmed plan becomes effective, the plan becomes binding  
28 on the debtor and all of its creditors and equity holders, and the prior obligations owed by the debtor

1 to such parties are compromised and exchanged for the obligations specified in the plan. For a  
2 description of key components of the Plan, see Article V below.

3 After a plan of reorganization has been filed, the holders of impaired claims against and  
4 equity interests in a debtor are permitted to vote to accept or reject the plan, unless the plan does not  
5 provide for the impaired class to receive or retain any property on account of its claims or interests,  
6 in which case the class is deemed to reject the plan. Before soliciting acceptances of the proposed  
7 plan, Bankruptcy Code section 1125 requires the debtor to prepare and file a disclosure statement  
8 containing adequate information (under the circumstances) of a kind, and in sufficient detail, to  
9 enable a hypothetical reasonable investor to make an informed judgment about the plan. This  
10 Disclosure Statement is presented to Holders of Impaired Claims and Interests against Debtor to  
11 satisfy the requirements of Bankruptcy Code section 1125 in connection with Debtor's solicitation  
12 of votes on the Plan.

13 **Section 2.3 Confirmation of a Plan of Reorganization.**

14 If all impaired classes of claims and equity interests accept or are deemed to accept a plan of  
15 reorganization, the bankruptcy court may confirm the plan if the bankruptcy court independently  
16 determines that the other requirements of Bankruptcy Code section 1129(a) have been satisfied.  
17 See Article VI, Section 6.4. Classes of claims or equity interests that are not "impaired" under a  
18 plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled  
19 to vote. Furthermore, classes that are to neither receive nor retain any property under the plan are  
20 conclusively deemed to have rejected the plan. Accordingly, acceptances of a plan will generally be  
21 solicited only from those persons who hold claims or equity interests in an impaired class. See  
22 Article VI, Section 7.1.

23 In general, a bankruptcy court also may confirm a plan of reorganization even though fewer  
24 than all the classes of impaired claims against and equity interests in a debtor accept such plan. For  
25 a plan of reorganization to be confirmed, despite its rejection by a class of impaired claims or equity  
26 interests, the plan must be accepted by at least one class of impaired claims (determined without  
27 counting the vote of insiders) and the proponent of the plan must show, among other things, that the  
28 plan does not "discriminate unfairly" and that the plan is "fair and equitable" with respect to each

1 class of impaired claims or equity interests that has not accepted the plan. See Article VI, Section  
2 6.4.

3 The Plan has been structured by Debtor so that it will satisfy the foregoing requirements as  
4 to any rejecting Class of Impaired Claims or Equity Interests, and therefore can be confirmed, if  
5 necessary, over the objection of any (but not all) Classes of Claims or Equity Interests.

6 **ARTICLE III.**

7 **BACKGROUND**

8 **Section 3.1 Overview and History of Debtor's Business Operations.**

9 Debtor was formed in 2013 as a wholly owned subsidiary of Kingman Farms, for the  
10 purpose of holding certain land as an investment. Immediately before the Petition Date, Debtor and  
11 Kingman Farms merged, with Debtor becoming the sole post-Merger entity.

12 Before the Merger, Kingman Farms conducted all of the development activity on behalf of  
13 Debtor and its affiliates holding land in Mohave County. In essence, Kingman Farms acted as the  
14 general contractor for Debtor and the affiliates and contracted with the Vendors. As a result,  
15 Kingman Farms had claims against Debtor and the Affiliate Account Debtors for amounts  
16 advanced. After the Merger, Debtor became the entity holding the claims against the Affiliate  
17 Account Debtors.

18 **Section 3.2 Financial Information and Capital Structure.**

19 • **Financial Information.**

20 Debtor's total liabilities were \$12,836,669.62 as of the Petition Date, consisting of:  
21 (1) \$8,131,442.19 in secured claims; (2) \$10,506.80 in priority claims; and (3) \$4,694,720.63 in  
22 unsecured claims.

23 • **Capital Structure.**

24 The JMR Irrevocable Investment Trust owns 100% of the membership interests in Debtor.

25 **Section 3.3 Events Leading to the Commencement of the Chapter 11 Case.**

26 Kingman Farms, Debtor's pre-Merger predecessor, made a strategic decision (based upon  
27 advice of counsel) to perfect its water rights and obtain a competitive advantage in the agricultural  
28 market in Mohave County. In that regard, it proceeded to develop wells throughout Mohave

1 County on land owned by it and the Affiliate Account Debtors. In addition, it undertook land  
 2 development activities, including the installation of waterlines, clearing, and grading, to convert the  
 3 land into crop-ready farm land. After Kingman Farms had incurred debt to the Vendors to develop  
 4 the wells and the land, the Affiliate Account Debtors were unable to pay their obligations due to  
 5 adverse market conditions (they were unable to sell their land, or obtain financing or other capital  
 6 investment). Kingman Farms, in turn, was unable to pay the Vendors. It merged into Debtor and  
 7 Debtor filed the Chapter 11 Case.

#### 8 **ARTICLE IV.**

#### 9 **THE CHAPTER 11 CASE**

10 Debtor has decided to reorganize by entering into a joint venture with Cashton – i.e., HB  
 11 Farms – as the means of providing its creditors with the highest possible recovery. Cashton will  
 12 provide the Exit Financing to Debtor, and the management capabilities and financial connections to  
 13 HB Farms, and Debtor will transfer its Property (other than the Baxter Collateral and Surrendered  
 14 Collateral) to HB Farms, which will assume all of the Reorganized Debtor’s obligations under the  
 15 Secured Creditor Notes and the Junior Lien Notes issued pursuant to the Plan. Both Debtor and  
 16 Cashton will receive membership interests in HB Farms. Debtor anticipates that all Claims will be  
 17 satisfied in full under the Plan. Debtor intends to proceed on a prompt, yet prudent, schedule  
 18 towards Confirmation of the Plan in order to minimize the administrative cost of the Chapter 11  
 19 Case. The following is a summary of the events that have taken place in Debtor’s Chapter 11 Case  
 20 and the anticipated course of events.

#### 21 **Section 4.1 Continuation as Debtor In Possession.**

22 Following the commencement of the Chapter 11 Case, Debtor remains in control over its  
 23 assets and business as debtor in possession pursuant to Bankruptcy Code section 1108 absent  
 24 further order of the Bankruptcy Court. As a debtor in possession, the Debtor will be required to  
 25 obtain Bankruptcy Court approval (i) for any transactions that are outside of the ordinary course of  
 26 business, (ii) before making payment of any Claims that arose prior to the Petition Date, and (iii) as  
 27 otherwise required under the Bankruptcy Code for certain specific types of actions or relief.  
 28

1 **Section 4.2 Significant Requests for Court Approval.**

2 Debtor filed certain motions and applications for relief following commencement of the  
3 Chapter 11 case, that are summarized below.

4 • **Employment of Professionals.**

5 The Bankruptcy Code has certain requirements for the employment and compensation of  
6 professionals at the expense of a debtor’s estate. In compliance with these requirements, Debtor  
7 filed applications for approval to employ the professionals listed below.

8 (i) **Debtor’s Counsel—Fox Rothschild LLP**

9 Prior to the Petition Date, Debtor retained the law firm of Fox Rothschild LLP (“Fox  
10 Rothschild”) as its general bankruptcy and reorganization counsel. Based on the firm’s  
11 qualifications and prior experience in representing Debtor, Debtor sought to employ Fox Rothschild  
12 as its counsel in connection with the Chapter 11 Case. See Docket No. 42. The Bankruptcy Court  
13 granted Debtor’s application on November 16, 2016 pursuant to Bankruptcy Code sections 327,  
14 329, 1107 and 1108. See Docket No. 102. Fox Rothschild bills Debtor for its services on an hourly  
15 basis, plus reimbursement of necessary expenses incurred.

16 (ii) **Debtor’s Conflicts Counsel – The Bach Law Firm, LLC**

17 After it filed for bankruptcy, the Debtor sought to employ The Bach Law Firm, LLC (the  
18 “Bach Firm”) as conflicts counsel to handle those matters for which it was necessary and/or  
19 appropriate for Debtor to rely on counsel other than Fox Rothschild, whether by reason of potential  
20 conflict of interest concerns or otherwise. See Docket No. 46.

21 The Bankruptcy Court granted Debtor’s application on November 16, 2016, pursuant to  
22 Bankruptcy Code sections 327 and 1107, and authorized Debtor’s employment of The Bach Firm,  
23 effective as of the Petition Date, for the discrete purpose of representing Debtor with respect to and  
24 in connection with chapter 11 case of Mohave Agrarian Group, LLC (No. BK-S-16-10025-mkn).  
25 See Docket No. 103. The Bach Firm bills Debtor for its services on an hourly basis, plus  
26 reimbursement of necessary expenses incurred.

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

1 (iii) **Debtor's Interest Rate Expert – Mac Restructuring**

2 On May 18, 2018, the Debtor sought to employ MAC Restructuring Advisors, LLC as its  
3 interest rate expert to assist the Debtor in confirming a plan of reorganization. See Docket No. 555.  
4 The Bankruptcy Court granted Debtor's application on June 18, 2018, pursuant to Bankruptcy Code  
5 sections 327, 328, 1107 and 1108, and authorized Debtor's employment of Mac Restructuring  
6 Advisors, LLC, for the purpose of providing the Debtor with its interest rate expertise. See Docket  
7 No. 593. Mac Restructuring Advisors, LLC bills Debtor for its services on an hourly basis, plus  
8 reimbursement of necessary expenses incurred.

9 • **Motion to Extend Deadline to file Schedules or Provided**  
10 **Required Information**

11 On September 12, 2016, Debtor filed its *Motion to Extend Deadline to file Schedules or*  
12 *Provided Required Information with Proposed Order* (see Docket No. 10), which was granted by  
13 Court Order entered on October 24, 2016. See Docket No. 77.

14 • **Motion for Authority to Pay Prepetition Employee Salaries**  
15 **and Benefits**

16 On September 13, 2016, Debtor filed an emergency motion for authority to pay prepetition  
17 employee salaries and benefits. See Docket No. 14. At the time, Debtor employed approximately  
18 19 full-time employees, whose continued service was essential to Debtor's ongoing operations. On  
19 September 28, 2016, the Court granted the motion in part, permitting the payment of prepetition  
20 employee deductions, benefits contributions, paid time off and reimbursable business expenses. See  
21 Docket No. 33.

22 • **Utilities Motion**

23 On September 29, 2016, Debtor filed a motion for an order prohibiting utilities from  
24 discontinuing service, authorizing Debtor to pay utilities in the ordinary course of business, and  
25 deeming utilities adequately assured of future performance (see Docket No. 36), which was granted  
26 in part and denied in part by Court Order entered on October 11, 2016. See Docket No. 56.

27 • **Chapter 11 Status Report**

28 On October 14, 2016, Debtor filed its Chapter 11 Status Report. See Docket No. 61. On  
February 20, 2018, Debtor filed its second Chapter 11 Status Report. See Docket No. 483.



- **Debtor's Chapter 11 Schedules and Statement of Financial Affairs**

On October 21, 2016 Debtor filed its *Schedules, Statement of Financial Affairs, List of Equity Security Holders, Verification of Creditor Matrix, Disclosure of Compensation of Attorney for Debtor and Corporate Ownership Statement*. See Docket Nos. 70, 71, 72, 73, 74 and 75.

On November 2, 2016, Debtor filed its *Amended Schedules A/B, D, E/F, G, H, Summary of Assets and Liabilities, Declaration Concerning Debtor's Schedules* and its *Amended Statement of Financial Affairs*. See Docket No. 97.

On November 4, 2016, Debtor filed its *Amended Schedules A/B and E/F* and its *Amended Statement of Financial Affairs*. See Docket No. 98.

On March 30, 2017, Debtor filed its *Amended Schedules*. See Docket No. 290.

On August 2, 2017, Debtor filed its *Amended Schedules A/B* and its *Amended Statement of Financial Affairs*. See Docket Nos. 376 & 377.

On December 7, 2017, Debtor filed its *Amended Schedules A/B and E/F*. See Docket No. 441.

On March 30, 2018, Debtor filed its *Amended Schedule A/B* and *Amended Statement of Financial Affairs*. See Docket No. 505.

On April 17, 2018, Debtor filed its *Amended Schedule A/B* and *Amended Statement of Financial Affairs*. See Docket No. 524.

On June 20, 2018, Debtor filed its *Amended Schedules D and E/F*. See Docket No. 597.

The numerous amendments to Debtor's Schedules and SOFA were the result of, among other things, turnover of personnel in Debtor's accounting department, and renewed efforts to reconcile the figures reported.

- **Debtor's Monthly Operating Reports**

Debtor filed its: *Monthly Operating Report for September 2016* [Docket No. 76]; *Monthly Operating Report for October 2016* [Docket No. 115]; *Monthly Operating Report for November 2016* [Docket No. 152]; *Monthly Operating Report for December 2016* [Docket No. 222]; *Monthly Operating Report for January 2017* [Docket No. 255]; *Monthly Operating Report for February*

1 2017 [Docket No. 277]; *Monthly Operating Report for March 2017* [Docket No. 299]; *Monthly*  
 2 *Operating Report for April 2017* [Docket No. 341]; *Monthly Operating Report for May 2017*  
 3 [Docket No. 337]; *Monthly Operating Report for June 2017* [Docket No. 380]; *Monthly Operating*  
 4 *Report for July 2017* [Docket No. 387]; *Monthly Operating Report for August 2017* [Docket No.  
 5 424]; *Monthly Operating Report for September 2017* [Docket No. 426]; *Monthly Operating Report*  
 6 *for October 2017* [Docket No. 435]; *Monthly Operating Report for November 2017* [Docket No.  
 7 445]; *Monthly Operating Report for December 2017* [Docket No. 478]; *Monthly Operating Report*  
 8 *for January, 2018* [Docket No. 484]; *Monthly Operating Report for February, 2018* [Docket No.  
 9 497]; *Monthly Operating Report for March, 2018* [Docket No. 533]; *Monthly Operating Report for*  
 10 *April, 2018* [Docket No. 563]; *Monthly Operating Report for May, 2018* [Docket No. 606]; *Monthly*  
 11 *Operating Report for June, 2018* [Docket No. 639]; *Monthly Operating Report for July, 2018*  
 12 [Docket No. 664]; *Monthly Operating Report for August, 2018* [Docket No. 676]; *Monthly*  
 13 *Operating Report for September, 2018* [Docket No. 688]; and *Monthly Operating Report for*  
 14 *October, 2018* [Docket No. 697].

15 • **Motions to Approve Compromises under Rule 9019.**

16 (i) **National EWP**

17 On October 27, 2016, Debtor filed its *Motion to Approve Compromise under Rule 9019 By*  
 18 *and Among Avery Land Group, LLC, London Land Holdings, LLC, Yucca Land Company, LLC,*  
 19 *National EWP, Inc., Sun Pacific Marketing Cooperative, Inc., James M. Rhodes, and First*  
 20 *American Title Insurance Company, Inc.* (see Docket No. 85), which was granted by Court Order  
 21 entered on November 16, 2016. See Docket No. 101.

22 (ii) **Mertens**

23 On March 10, 2017, Debtor filed its *Motion for Approval of Settlement, Pursuant to Fed. R.*  
 24 *Bankr. P. 9019, by and among Avery Land Group, LLC, and Mertens Heavy Equipment Repair,*  
 25 *LLC* (see Docket No. 265), which was granted by Court Order entered on March 20, 2017. See  
 26 Docket No. 274.

1                   **(iii) Affiliate Account Debtors**

2                   On April 17, 2018, Debtor filed its *Motion for Approval of Settlement, Pursuant to Fed. R.*  
3 *Bankr. P. 9019, between Debtor and Affiliate Account Debtors* (see Docket No. 525), which was  
4 granted by Court Order entered on May 25, 2018. See Docket No. 570. Pursuant to the Settlement,  
5 Debtor received ten (10) parcels of land in Mohave County, with a current value of approximately  
6 \$19,645,445.00.

7                   **(iv) Baxter Assignee**

8                   On August 13, 2018, Debtor filed its *Motion for Approval of Settlement, Pursuant to Fed. R.*  
9 *Bankr. P. 9019, between Debtor and Baxter Lienholder, LLC* [Docket No. 652] (the “Baxter  
10 Settlement Motion”). The Baxter Settlement Motion sought approval of a settlement (the “Baxter  
11 Settlement”) between the Debtor and the Baxter Assignee, providing that, in exchange for releasing  
12 the Baxter Secured Claim and the Baxter Liens, the Baxter Assignee will receive the treatment of  
13 the Baxter Secured Claim provided in Section 2(b)(ii) of the Plan. The Baxter Settlement Motion  
14 was approved by Court Order entered on September 11, 2018. See Docket No. 673.

15                   •           **Motion Authorizing Debtor to Obtain Post-Petition**  
16                   **Financing**

17                   On October 31, 2016, Debtor filed its *Motion for Final Order Pursuant to 11 U.S.C. §§ 105,*  
18 *364, Fed R. Bankr. P. Rule 4001(c) and L.R. 4001(b) and (c): (I) Authorizing Debtor to Obtain*  
19 *Post-Petition Financing; (II) Granting Related Relief.* See Docket No. 90 (the “*DIP Motion*”).

20                   On November 23, 2016, the Office of the U.S. Trustee filed its *Objection* to the DIP Motion.  
21 See Docket No. 117 (“UST DIP Objection”).

22                   On November 30, 2016, Debtor filed its *Reply* to the UST DIP Objection. See Docket  
23 No. 123.

24                   On December 13, 2016, the Court entered its *Order Granting [the DIP Motion]*. See Docket  
25 No. 139.

26                   •           **Application to Employ Independent Restructuring Officer**

27                   On November 9, 2016, Debtor filed its *Notice of Appointment of James Wong of Armory*  
28 *Consulting Co. as Independent Restructuring Officer of Avery Land Group, LLC.* See Docket

1 No. 100.

2 On November 18, 2016, Debtor filed its *Application to Employ Armory Consulting Co. as*  
3 *Independent Restructuring Officer of Avery Land Group, LLC Nunc Pro Tunc to November 8, 2016.*  
4 See Docket No. 109 (the “Armory Application”).

5 On December 9, 2016 the Trustee filed its *Objection* to the Armory Application. See  
6 Docket No. 135 (the “UST Armory Application Objection”).

7 On January 12, 2017 Debtor filed its *Reply* to the UST Armory Application Objection. See  
8 Docket No. 213.

9 On February 7, 2017, the Court entered its *Order Denying [the Armory Application]*. See  
10 Docket No. 243.

11 On February 15, 2017, Debtor filed its *Motion to Employ James Wong of Armory Consulting*  
12 *Co. as Independent Restructuring Officer Under 11 U.S.C. §§ 105(a) & 363(b)*. See Docket No.  
13 248 (the “Armory Motion”).

14 On March 1, 2017 the Trustee filed its *Objection* to the Armory Motion. See Docket No.  
15 256 (the “UST Armory Motion Objection”).

16 On March 8, 2017, Debtor filed its *Reply* to the UST Armory Motion Objection. See Docket  
17 No. 263.

18 On March 17, 2017, the Court entered its *Order Granting [the Armory Motion]*. See  
19 Docket No. 272.

20 • **Motions to Sell Property**

21 (i) **Utica Leaseco, LLC**

22 On November 22, 2016, Debtor entered into a *Stipulation with Utica Leaseco, LLC to Sell*  
23 *Utica Leaseco, LLC’s Equipment and Forbear Claim Objection*. See Docket No. 116 (the “Utica  
24 Stipulation”), which was approved by Court Order entered on November 28, 2016. See Docket No.  
25 120.

26 On December 2, 2016, Debtor filed its *Motion for Order Authorizing Sale of Equipment*  
27 *Subject to Master Lease Agreement With Utica Leaseco, LLC*. See Docket No. 125 (the “Utica Sale  
28 Motion”).

1 On December 21, 2016 Debtor filed its *Errata* and *Supplement* to the Utica Sale Motion. See  
2 Docket Nos. 164 and 165.

3 On January 9, 2017, the Court entered its *Order Granting [the Utica Sale Motion]*. See  
4 Docket No. 209.

5 As a result of the sale, Utica Leasco, LLC's secured claim was satisfied in full.

6 (ii) **Tiger Sale**

7 On December 16, 2016, Debtor filed its *Application to Employ and Compensate Tiger*  
8 *Capital Group and Rabin Worldwide, Inc., as Auctioneers; Motion for Order Authorizing Sale of*  
9 *Equipment and Related Assets Free and Clear*. See Docket No. 144 (the "Tiger Application").

10 On December 21, 2016, Debtor filed its *Errata* to the Tiger Application. See Docket  
11 No. 166.

12 On December 22, 2016, Signature Financial and Leasing, LLC, filed its *Objection* to the  
13 Tiger Application (see Docket No. 176), and Caterpillar Financial Services Corporation filed its  
14 *Objection* to the Tiger Application (see Docket No. 185).

15 On December 23, 2016, Deere & Company filed its *Objection* to the Tiger Application (see  
16 Docket No. 187), and the US Trustee filed its *Objection* to the Tiger Application (see Docket No.  
17 188).

18 On December 28, 2016, Debtor filed its *Omnibus Reply* to the Objections to the Tiger  
19 Application. See Docket No. 198.

20 On January 27, 2017, the Court entered its *Order Granting [the Tiger Application]*. See  
21 Docket No. 229 (the "Tiger Order").

22 On March 23, 2017 Debtor conducted its Auction for sale of equipment.

23 On March 31, 2017, Debtor filed its *Notice of Report of Sale of Equipment*. See Docket No.  
24 291.

25 On April 14, 2017, Debtor filed its *Notice of Auction Sale Report*. See Docket No. 295.

26 On May 2, 2017, the Debtor filed its *Notice of Payment of Distributions Pursuant to [Tiger*  
27 *Order]*. See Docket No. 311.

28

1 On June 2, 2017, the Court entered its *Order: Authorizing Distributions Pursuant to the*  
2 *Order: Authorizing Employment and Compensation of Tiger Capital Group, LLC and Rabin*  
3 *Worldwide, Inc., as Auctioneers; and Authorizing Sale of Equipment and Related Assets Free and*  
4 *Clear*. See Docket No. 315.

5 On March 20, 2017, Debtor entered into a *Stipulation By CNH CAPITAL AMERICA LLC*  
6 *and Between AVERY LAND GROUP Regarding Equipment* (see Docket No. 275), which was  
7 approved by Court Order entered on March 24, 2017. See Docket No. 285.

8 On March 21, 2017, Debtor entered into a *Stipulation By AVERY LAND GROUP, LLC and*  
9 *Between Wells Fargo Equipment Finance* (see Docket No. 278), which was approved by Court  
10 Order entered on March 22, 2017. See Docket No. 279.

11 On March 23, 2017, Debtor entered into a *Stipulation By CATERPILLAR FINANCIAL*  
12 *SERVICES CORPORATION and Between Avery Land Group, LLC* (see Docket No. 280), which  
13 was approved by Court Order entered on March 27, 2017. See Docket No. 284.

14 On April 7, 2017, the Debtor filed its *Stipulation By And Between Avery Land Group, LLC,*  
15 *Signature Financial LLC A/K/A Signature Financial And Leasing LLC, And Tiger Capital Group,*  
16 *LLC* (see Docket No. 292), which was denied by Court Order entered on April 13, 2017. See  
17 Docket No. 293.

18 (iii) **Westside Disposal Services, Inc.**

19 On December 21, 2016, Debtor filed its *Motion for Order Authorizing Private Sale of*  
20 *Debtor's Real Property to Westside Disposal Services, Inc., Free and Clear* (see Docket No. 170),  
21 which was granted by Court Order entered on December 29, 2016. See Docket No. 202.

22 • **Motion to Extend Exclusivity**

23 On December 21, 2016, Debtor filed its *Motion for an Order Extending the Debtors*  
24 *Exclusive Periods Within Which to File a Plan and to Solicit Acceptances Thereto* (see Docket No.  
25 167), which was granted by Court Order entered on January 20, 2017. See Docket No. 220.

26 • **Motion to Vote to Accept Yucca Plan**

27 (i) On January 16, 2016, Debtor filed its *Motion for Order Authorizing Debtor*  
28 *to Vote to Accept Plan of Reorganization for Yucca Land Company, LLC* (see Docket No. 464),

1 which was granted by the Court *Order Authorizing Debtor To Vote To Accept Plan Of*  
2 *Reorganization For Yucca Land Company, LLC*, entered on January 23, 2018. See Docket No. 479.

3 • **Applications for Compensation**

4 (i) **Fox Rothschild, LLP**

5 On January 25, 2017, Fox Rothschild LLP filed *Fox Rothschild LLP's First Interim*  
6 *Application for Compensation and Reimbursement of Expenses for the Interim Fee Period from*  
7 *September 9, 2016 through December 31, 2016* (see Docket No. 223), which was granted by Court  
8 Order entered on March 3, 2017. See Docket No. 258.

9 On October 5, 2018, Fox Rothschild LLP filed *Fox Rothschild LLP's Second Interim*  
10 *Application for Compensation and Reimbursement of Expenses for the Interim Fee Period from*  
11 *January 1, 2017 through August 31, 2018* (see Docket No. 677), which was granted by Court Order  
12 entered on November 13, 2018. See Docket No. 692.

13 (ii) **The Bach Law Firm**

14 On January 31, 2017, The Bach Law Firm filed *The Bach Law Firm, LLC's First Interim*  
15 *Application for Compensation and Reimbursement of Expenses for the Period Ending January 31,*  
16 *2017* (see Docket No. 235), which was granted by Court Order entered on March 3, 2017. See  
17 Docket No. 259.

18 On July 17, 2018, The Bach Law Firm filed *The Bach Law Firm, LLC's Second Interim and*  
19 *Final Application for Compensation and Reimbursement of Expenses for the Period Ending July 10,*  
20 *2018* (see Docket No. 626), which was granted by Court Order entered on August 16, 2018. See  
21 Docket No. 660.

22 (iii) **MAC Restructuring Advisors, LLC**

23 On October 5, 2018, MAC Restructuring Advisors, LLC filed its *Frist Interim Application*  
24 *for Compensation and Reimbursement of Expenses for MAC Restructuring Advisors, LLC, as*  
25 *Interest Rate Expert to Debtor, for the Interim Fee Period May 7, 2018 through August 31, 2018*  
26 (see Docket No. 681), which was granted by Court Order entered on November 13, 2018. See  
27 Docket No. 693.

28

• **Debtor’s Chapter 11 Plan of Reorganization**

On December 7, 2017, Debtor filed its *Chapter 11 Plan of Reorganization Dated December 7, 2017*. See Docket No. 442. On April 4, 2018, Debtor filed its *First Amended Chapter 11 Plan of Reorganization Dated April 4, 2018*. See Docket No. 508. On June 6, 2018, Debtor filed its *Second Amended Chapter 11 Plan of Reorganization Dated June 6, 2018*. See Docket No. 576. On December 10, 2018, Debtor filed its *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018*. See Docket No. 698.

**Section 4.3 Litigation.**

On June 5, 2017, K&L Baxter Family LP (“Baxter”), filed its *Motion for Relief from Stay* [Docket No. 324] (the “Initial Stay Motion”). On July 28, 2017, Debtor filed its *Opposition* to the Initial Stay Motion [Docket No. 373], and on November 29, 2017, the Court entered its *Order* denying the Initial Stay Motion [Docket No. 437].

On March 16, 2018, Baxter filed its renewed *Motion for Relief from Automatic Stay* (the “Renewed Stay Motion”) [Docket No. 492]. On April 4, 2018, Debtor filed its *Opposition* to the Renewed Stay Motion [Docket No. 509]. On April 18, 2018 the Court held a hearing on the Renewed Stay Motion and subsequently scheduled an evidentiary hearing on the Renewed Stay Motion for June 26, 2018 at 1:30 p.m.

On June 26, 2018, Debtor filed its *Objection to Secured Claim of K&L Baxter Family Ltd. Partnership (POC 34-1)* [Docket No. 608] (the “Objection to Baxter Claim”).

The Baxter Renewed Stay Motion and the Objection to Baxter Claim were settled in the Baxter Settlement, pursuant to which the Baxter Assignee will receive the treatment of the Baxter Claim provided in Section 2(b)(ii) of the Plan. The Baxter Settlement Motion was approved by Court Order entered on September 11, 2018. See Docket No. 673.

**Section 4.4 Compliance with Statutory Requirements.**

The Bankruptcy Code imposes certain reporting and compliance requirements on chapter 11 debtors in order to provide transparency and disclosure regarding their financial affairs both before and during the course of the chapter 11 case. At the outset of the case, a debtor must: (1) file Schedules of Assets and Liabilities; (2) file a Statement of Financial Affairs; (3) attend a meeting of



1 creditors under Bankruptcy Code section 341(a); and (4) provide certain initial financial  
 2 information to the Office of the United States Trustee (“OUST”), followed by additional post-  
 3 petition reporting to the OUST on a monthly basis. With the goal of a smooth and expeditious  
 4 resolution of the Chapter 11 Case, Debtor has fully and timely complied with these requirements, as  
 5 described below.

6 **Section 4.5 Schedules of Assets and Liabilities.**

7 For a chapter 11 debtor, the Schedules of Assets and Liabilities must include:

- 8 • Schedule A: Real Property Assets
- 9 • Schedule B: Personal Property Assets
- 10 • Schedule D: Secured Claims
- 11 • Schedule E: Priority Claims
- 12 • Schedule F: Unsecured Claims
- 13 • Schedule G: Executory Contracts and Unexpired Leases
- 14 • Schedule H: Codebtors

15 Debtor filed its Schedules of Assets and Liabilities on October 21, 2016 [Docket Nos. 70, 71],  
 16 which were subsequently amended on November 2, 2016 [Docket No. 97], November 4, 2016  
 17 [Docket No. 98], March 30, 2017 [Docket No. 290], on August 2, 2017 [Docket No. 376],  
 18 December 7, 2017 [Docket No. 441], March 30, 2018 [Docket No. 505], April 17, 2018 [Docket  
 19 No. 524], June 20, 2018 [Docket No. 597] and August 13, 2018 [Docket No. 651] (collectively,  
 20 “Schedules”), the contents of which are summarized below.

21 **Section 4.6 Assets**

22 Debtor listed on its Schedule A real property assets in the amount of \$5,509,723.00  
 23 consisting of twenty-four (24) parcels of property in Mohave County. Debtor listed approximately  
 24 \$7,266,390.37 in personal property assets on Schedule B, which consisted primarily of its claims  
 25 against the Affiliate Account Debtors, machinery, equipment and vehicles and a prepayment.

26 **Section 4.7 Liabilities**

27 Debtor’s total liabilities were \$12,836,669.62 as of the Petition Date. The total liabilities  
 28 consist of the following: (1) \$8,131,442.19 – secured claims; (2) \$10,506.80 – priority claims; and

1 (3) \$4,694,720.63 – unsecured claims.

2 The Bankruptcy Code provides for certain unsecured claims existing on the petition date to  
3 receive priority above other unsecured claims, such as tax claims, employee wage claims (subject to  
4 certain limits) and consumer deposit claims. Debtor listed Priority Claims in the amount of  
5 \$10,506.80 on Schedule E.

6 Debtor listed Unsecured Claims in the amount of \$4,694,720.63, consisting primarily of  
7 trade debts, on Schedule F.

8 There were sixty-one (61) proofs of claim filed in the Chapter 11 Case, totaling  
9 \$10,081,643.79.

10 **Section 4.8 Executory Contracts and Unexpired Leases**

11 Bankruptcy Code section 365 authorizes a debtor in possession to assume, assume and  
12 assign, or reject executory contracts and unexpired leases, subject to certain conditions. Generally  
13 speaking, an “executory contract” is a contract under which material obligations remain to be  
14 performed by the debtor and the contract counter-party(ies). The contracts listed on Schedule G  
15 consist of six (6) shared services agreements, eleven (11) equipment/vehicle leases, two (2)  
16 settlement agreements and one (1) purchase agreement.

17 **Section 4.9 Statement of Financial Affairs.**

18 The Statement of Financial Affairs contains a series of questions to be completed by the  
19 debtor regarding various financial and corporate matters. The debtor must provide information  
20 regarding its income, payments to creditors, pending litigation, shareholders, and officers and  
21 directors, among other items.

22 Debtor filed its Fourth Amended Statement of Financial Affairs on April 17, 2018. In  
23 response to Part 1: Question 1, Debtor listed income of \$300,354.73 for the beginning of the fiscal  
24 year to the Petition Date. In response to Part 2: Question 4, Debtor listed payments totaling  
25 approximately \$11,462,806.10 to insider Creditors within one year of the Petition Date, all in  
26 connection with Shared Services Agreements. In response to Part 11: Question 21, Debtor listed 2  
27 Schramm Drill Rigs used on its Property which is owned by Red Lake Ventures. In response to  
28 Part 6: Question 13, Debtor listed payments totaling approximately \$24,382,973.30 to insider

1 Creditors between one and two years of the Petition Date, all in connection with Shared Services  
2 Agreements.

3 **Section 4.10 341(a) Meeting.**

4 Pursuant to Bankruptcy Code section 341(a), the OUST conducts an initial meeting of  
5 creditors shortly after the commencement of a bankruptcy case. At the section 341(a) meeting,  
6 OUST personnel review the debtor's Schedules of Assets and Liabilities and Statements of  
7 Financial Affairs, and creditors have the opportunity to ask questions of a debtor representative  
8 regarding the same. The 341(a) meeting for Debtor took place on October 13, 2016, was continued  
9 to November 3, 2016 and was closed by the OUST at the conclusion thereof.

10 **Section 4.11 Office of the United States Trustee Reporting.**

11 At the outset of a chapter 11 case, the OUST requires the debtor in possession to provide  
12 certain initial information regarding insurance coverage and other matters. The OUST also requires  
13 the debtor in possession to provide monthly post-petition financial reporting in a format determined  
14 on a case-by-case basis. Debtor filed its: *Monthly Operating Report for September 2016* [Docket  
15 No. 76]; *Monthly Operating Report for October 2016* [Docket No. 115]; *Monthly Operating Report*  
16 *for November 2016* [Docket No. 152]; *Monthly Operating Report for December 2016* [Docket No.  
17 222]; *Monthly Operating Report for January 2017* [Docket No. 255]; *Monthly Operating Report for*  
18 *February 2017* [Docket No. 277]; *Monthly Operating Report for March 2017* [Docket No. 299];  
19 *Monthly Operating Report for April 2017* [Docket No. 341]; *Monthly Operating Report for May*  
20 *2017* [Docket No. 337]; *Monthly Operating Report for June 2017* [Docket No. 380]; *Monthly*  
21 *Operating Report for July 2017* [Docket No. 387]; *Monthly Operating Report for August 2017*  
22 [Docket No. 424]; *Monthly Operating Report for September 2017* [Docket No. 426]; *Monthly*  
23 *Operating Report for October 2017* [Docket No. 435]; *Monthly Operating Report for November*  
24 *2017* [Docket No. 445]; *Monthly Operating Report for December 2017* [Docket No. 478]; *Monthly*  
25 *Operating Report for January, 2018* [Docket No. 484]; *Monthly Operating Report for February,*  
26 *2018* [Docket No. 497]; *Monthly Operating Report for March, 2018* [Docket No. 533]; *Monthly*  
27 *Operating Report for April, 2018* [Docket No. 563]; *Monthly Operating Report for May, 2018*  
28 [Docket No. 606]; *Monthly Operating Report for June, 2018* [Docket No. 639]; *Monthly Operating*

1 *Report for July, 2018* [Docket No. 664]; *Monthly Operating Report for August, 2018* [Docket No.  
2 676]; *Monthly Operating Report for September, 2018* [Docket No. 688]; and *Monthly Operating*  
3 *Report for October, 2018* [Docket No. 697].

4 **Section 4.12 Creditors Committee.**

5 Bankruptcy Code section 1102 directs the OUST to appoint a committee of creditors holding  
6 unsecured claims, and also authorizes the OUST to appoint additional committees of creditors or of  
7 equity security holders as the OUST deems appropriate. To date, no creditors committee has been  
8 appointed.

9 **Section 4.13 Plan Solicitation and Confirmation Process.**

10 As noted above, Debtor filed its Chapter 11 Case with the intent to proceed down the path to  
11 presenting the Plan to its Creditors for their acceptance or rejection and to the Bankruptcy Court for  
12 confirmation. Debtor has targeted January 30, 2019 for the hearing on approval of this Disclosure  
13 Statement and Confirmation of the Plan, and February 20, 2019 for the Plan Effective Date. In  
14 order to ensure that this process moves forward smoothly and expeditiously, Debtor seeks to  
15 establish certain procedures for providing notice of, and soliciting votes on, the Plan.

16 **Section 4.14 Solicitation Procedures.**

17 Debtor developed certain customized procedures and forms for the solicitation of votes to  
18 accept or reject the Plan. The forms of Disclosure Statement, along with various other forms of  
19 notice and proposed ballot forms, are to be used in connection with certain Solicitation Procedures,  
20 which cover four main topics:

- 21 (a) Voting Eligibility: Establishment of the Voting Record Date, Identification of  
22 Claims Eligible to Vote, Identification of Eligible Holders, Determination of  
23 Amount of Claims for Voting Purposes and Reservation of Rights re:  
24 Estimation and/or Designation;
- 25 (b) Noticing: The Confirmation Hearing Notice, Notice of Non-Voting Status,  
26 Solicitation Packages, Disputed Claim Notice, Addresses, Undeliverable  
27 Mail and the Plan Supplement;
- 28

- 1 (c) Submission and Tabulation of Votes: Voting Deadline; Completion,
- 2 Submission and Tabulation of Ballots; and
- 3 (d) Confirmation Hearing: Confirmation Hearing and Objection Deadline.

4 The Solicitation Procedures are attached as an exhibit to the Solicitation Procedures Order,  
5 which is included in the Disclosure Statement solicitation package. In addition, certain key  
6 provisions of the Solicitation Procedures are referenced in Article VI of this Disclosure Statement.

7 **ARTICLE V.**

8 **SUMMARY OF THE PLAN**

9 THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND MEANS FOR  
10 IMPLEMENTATION OF THE PLAN AND OF THE CLASSIFICATION AND TREATMENT  
11 OF CLAIMS AND INTERESTS UNDER THE PLAN. IT IS QUALIFIED IN ITS ENTIRETY  
12 BY REFERENCE TO THE PLAN, WHICH IS ANNEXED TO THIS DISCLOSURE  
13 STATEMENT AS **EXHIBIT "A"** AND WHICH SHALL CONTROL IN THE EVENT THAT IT  
14 VARIES FROM THE TERMS OF THIS DISCLOSURE STATEMENT.

15 THE PLAN, SUBJECT TO THE PROVISIONS OF THE BANKRUPTCY CODE,  
16 PROVIDES FOR THE TREATMENT OF ALL CREDITORS THAT HOLD CLAIMS ARISING  
17 PRIOR TO THE CONFIRMATION DATE OF THE PLAN, FOR THE PAYMENT OF  
18 ADMINISTRATIVE PRIORITY CLAIMS AND FOR THE TREATMENT OF EQUITY  
19 INTERESTS IN DEBTOR.

20 THE SUMMARIES OF THE PLAN AND OF OTHER DOCUMENTS REFERRED TO  
21 HEREIN DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE  
22 TERMS AND PROVISIONS OF THOSE DOCUMENTS. REFERENCE IS MADE TO THE  
23 PLAN AND THE OTHER DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS  
24 OF THEIR TERMS AND PROVISIONS.

25 SINCE THE PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS, AND  
26 INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY  
27 CODE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING  
28 YOUR DECISION REGARDING YOUR VOTE ON THE PLAN. TO THE EXTENT THAT THE

1 TERMS OF THIS DISCLOSURE STATEMENT VARY FROM THE TERMS OF THE PLAN OR  
2 ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN OR SUCH OTHER  
3 OPERATIVE DOCUMENT SHALL BE CONTROLLING.

4 ARTICLE V OF THE PLAN, EFFECT OF CONFIRMATION OF THE PLAN,  
5 CONTAINS DISCHARGES, INJUNCTIONS, RELEASES AND EXCULPATIONS THAT  
6 SHOULD BE READ CAREFULLY BY ALL STAKEHOLDERS. THE USE THEREIN OF  
7 “RELEASED PARTY” OR “RELEASEES” INCLUDES, AMONG OTHERS, CURRENT AND  
8 FORMER OFFICERS AND DIRECTORS OF THE DEBTOR AND THE OTHER PERSONS  
9 AND ENTITIES THAT FALL WITHIN THE DEFINITION OF RELATED PARTY PURSUANT  
10 TO THE PLAN.

11 **Section 5.1 Overall Structure of the Plan.**

12 The Plan is premised upon: (a) the Baxter Settlement; and (b) the Reorganized Debtor’s  
13 transfer all of its Assets (other than the Baxter Collateral and the Surrendered Collateral) to HB  
14 Farms in exchange for the Exit Financing, membership interests in HB Farms, and HB Farms’  
15 assumption of all of the Reorganized Debtor’s obligations under the Secured Creditor Notes and the  
16 Junior Lien Notes.

17 The Plan separates Claims against and Equity Interests in Debtor into Classes according to  
18 their relative seniority and other criteria.

19 In short, if the Plan is confirmed by the Bankruptcy Court and consummated:

20 (a) the Allowed Administrative Claims (unclassified), Allowed Priority Tax Claims  
21 (unclassified) and Allowed Priority Claims (Class 1) will receive Distributions equal to the full  
22 Allowed amount of the Claims as required by the Bankruptcy Code (unless otherwise agreed by the  
23 Holders of such Claims);

24 (b) the Class 2(a) DIP Lender Secured Claim, shall, in full satisfaction, settlement, release  
25 and exchange for such Allowed DIP Lender Secured Claim, be issued 100% of the New Equity  
26 Interests;

27 (c) the Class 2(b) Baxter Secured Claim shall receive the treatment provided in the Baxter  
28 Settlement, namely: (1) the Reorganized Debtor shall form the Baxter Subsidiary and shall transfer

1 the Baxter Collateral to the Baxter Subsidiary; (2) the Baxter Subsidiary shall become a borrower  
2 under the Baxter Loan; and (3) the Baxter Assignee shall release the Baxter Liens and cease to be a  
3 borrower under the Baxter Loan;

4 (d) the Class 2(c) Baum Secured Claim, the Class 2(d) McKenna Secured Claim, and the  
5 Class 2(e) Thompson Secured Claim shall receive the Baum Secured Note, the McKenna Secured  
6 Note and the Thompson Secured Note, respectively, which will be secured by the Baum Collateral,  
7 the McKenna Collateral and the Thompson Collateral, respectively, will be executed by the  
8 Reorganized Debtor and will provide that the Holders of the Allowed Baum Secured Claim,  
9 McKenna Secured Claim, and Allowed Thompson Secured Claim shall, in full satisfaction,  
10 settlement, release and exchange for such Secured Claims, be paid in monthly installments of  
11 principal, together with non-compounded interest at the rate of 5.75% per annum, based on a thirty  
12 (30) year amortization schedule, with all remaining principal and interest due on the third  
13 anniversary of the Effective Date;

14 (e) the Class 2(f) Moreno Secured Claim, the Class 2(g) Ritchie Secured Claim, and the  
15 Class 2(h) Lysgaard Secured Claim will each be satisfied in full by the surrender of the respective  
16 collateral to the Holders of such Claims; *provided, however*, that if the Holder of such Claim  
17 believes that the amount of its Claim exceeds the value of the Collateral, such that it will be entitled  
18 to a Class 4(a) Unsecured Claim after the surrender of the Collateral, then the Holder of the Claim  
19 shall File an objection to the Plan, with evidence supporting its opinion on the value of the  
20 Collateral, by the Objection Deadline, and the Bankruptcy Court will determine the Value of the  
21 Collateral; and *provided, further*, that if the Holder of the Claim fails to file an objection with  
22 supporting evidence by the Objection Deadline, then any and all of its Claims will conclusively be  
23 deemed satisfied in full by the surrender of the Collateral;

24 (f) the Class 3 Secured Property Tax Claims shall be paid in Cash on, or as soon as  
25 reasonably practicable after, the later of (i) the Effective Date, or (ii) such date as is otherwise  
26 agreed by Debtor and the Holder of such Claim;

27 (g) the Class 4(a) General Unsecured Claims, Class 4(b) Loftin Unsecured Claim, Class 4(c)  
28 Cashman Unsecured Claim, and Class 4(d) Utica Unsecured Claim (the "Unsecured Claims") shall

1 receive the Class 4(a) Junior Lien Notes, the Class 4(b) Junior Lien Note, the Class 4(c) Junior Lien  
 2 Note, and the Class 4(a) Junior Lien Note, respectively, which shall be secured by a Junior Lien on  
 3 all Unencumbered Property, bear Post Effective Date Interest, and be paid, after satisfaction in full  
 4 of the Allowed Deferred Administrative Claims, and pro rata with all Unsecured Claims, from the  
 5 proceeds of Refinancing and/or Property Sales; *provided, however*, that if all Holders of Unsecured  
 6 Claims have not been paid in full and in Cash, including post-Effective Date Interest, on  
 7 the second anniversary of the Effective Date, then such Holders shall, in full satisfaction of any  
 8 remaining unpaid balances of such General Unsecured Claims (the “General Unsecured Claim  
 9 Balances”), receive Property of a Value, as determined by the Bankruptcy Court as soon as  
 10 practicable after the second anniversary of the Effective Date, equal to each Holder’s General  
 11 Unsecured Claim Balance;

12 (h) the Class 5 Insider Claims shall receive a Pro Rata share of the Insider Claim Fund  
 13 (totaling \$40,000 Cash); and

14 (i) the Class 6 Old Equity Interests in Debtor shall be extinguished on the Effective Date.

15 **Section 5.2 Classification and Treatment of Claims and Interests Under the Plan.**

16 Bankruptcy Code section 1123 provides that a plan must classify the claims and interests of  
 17 a debtor's creditors and interest holders. In accordance with Bankruptcy Code section 1123, the  
 18 Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than  
 19 Administrative Claims and Priority Tax Claims which, pursuant to Bankruptcy Code section  
 20 1123(a)(1), need not be and have not been classified). Bankruptcy Code section 1122 requires that  
 21 each Class contain only Claims or Interests that are substantially similar to the other Claims or  
 22 Interests in such Class.

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



1 **Section 5.3 Unclassified Claims.**

2 • **Administrative Claims.**

3 Administrative Claims are Claims for costs and expenses of administration, pursuant to  
4 Bankruptcy Code sections 503(b), 507(a)(2) or 507(b), including: (a) the actual and necessary costs  
5 and expenses incurred after the Petition Date and through the Effective Date of preserving the  
6 Estate and operating the business of Debtor (such as wages, salaries, or commissions for services,  
7 and payments for goods and services); (b) compensation and reimbursement of expenses for legal,  
8 financial advisory, accounting, and other services, including but not limited to, Allowed  
9 Professional Fees, pursuant to Bankruptcy Code sections 328, 330(a), or 331 or otherwise for the  
10 period commencing on the Petition Date and ending on the Effective Date; and (c) all Bankruptcy  
11 Court approved requests for compensation or expense reimbursement for making a substantial  
12 contribution in the Chapter 11 Case, pursuant to Bankruptcy Code sections 503(b)(3), (4), and (5).

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

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

25 Debtor estimates that Administrative Claims will aggregate approximately \$1,350,000.00 as  
26 of the Effective Date.

27  
28

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• **Professional Fee Claims and US Trustee Fees.**

Notwithstanding the foregoing or anything to the contrary in the 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.

**Section 5.4 Priority Tax Claims.**

Priority Tax Claims are any Claims entitled to priority under Bankruptcy Code sections 502(i) or 507(a)(8). Priority tax claims do not include *ad valorem* tax claims if such claims under applicable state law are secured by a lien on a Debtor's assets.

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

1 property.

2 **Section 5.5 Classified Claims.**

3 • **Class 1 – Priority Claims.**

4 Class 1 consists of Priority Claims against Debtor which are Allowed Claims entitled to  
5 priority under Bankruptcy Code sections 507(a) other than under subsections (a)(2) through (a)(8)  
6 thereof. The legal and equitable rights of the Holders of Allowed Priority Claims are unaltered by  
7 the Plan. Each Holder of an Allowed Priority Claim shall, in full satisfaction, settlement, release  
8 and exchange for such Allowed Priority Claim, be paid in Cash in the Allowed amount of such  
9 Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the date  
10 upon which such Priority Claim becomes Allowed, or (iii) such date as is otherwise agreed by  
11 Debtor and the Holder of such Claim.

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

16 • **Classes 2(a)-(i) – Secured Claims.**

17 • **Class 2(a): DIP Lender Secured Claim**

18 On the Effective Date, the Holder of the Allowed DIP Lender Secured Claim shall, in full  
19 satisfaction, settlement, release and exchange for such Allowed DIP Lender Secured Claim, be  
20 issued 100% of the New Equity Interests.

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

23 • **Class 2(b): Baxter Secured Claim**

24 On the Effective Date, the Holder of the Allowed Baxter Secured Claim shall, in full  
25 satisfaction, settlement, release and exchange for such Allowed Baxter Secured Claim, receive the  
26 following treatment: (1) the Reorganized Debtor shall form the Baxter Subsidiary and shall transfer  
27 the Baxter Collateral to the Baxter Subsidiary; (2) the Baxter Subsidiary shall become a borrower  
28 under the Baxter Loan; and (3) the Baxter Assignee shall release the Baxter Liens and cease to be a

1 borrower under the Baxter Loan.

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

4 • **Class 2(c): Baum Secured Claim**

5 On the Effective Date, the Holder of the Allowed Baum Secured Claim shall receive the  
6 Baum Secured Note, substantially in the form annexed to this Disclosure Statement as **Exhibit “B.”**  
7 The Baum Secured Note will be secured by the Baum Collateral, will be executed by the  
8 Reorganized Debtor, and will provide that the Holder of the Allowed Baum Secured Claim, be paid  
9 in monthly installments of principal, together with non-compounded interest at the rate of 5.75%  
10 per annum, based on a thirty (30) year amortization schedule, with all remaining principal and  
11 interest due on the third anniversary of the Effective Date.

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

14 • **Class 2(d): McKenna Secured Claim**

15 On the Effective Date, the Holder of the Allowed McKenna Secured Claim shall receive the  
16 McKenna Secured Note, substantially in the form annexed to this Disclosure Statement as  
17 **Exhibit “C.”** The McKenna Secured Note will be secured by the McKenna Collateral, will be  
18 executed by the Reorganized Debtor, and will provide that the Holder of the Allowed McKenna  
19 Secured Claim, be paid in monthly installments of principal, together with non-compounded interest  
20 at the rate of 5.75% per annum, based on a thirty (30) year amortization schedule, with all  
21 remaining principal and interest due on the third anniversary of the Effective Date.

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

24 • **Class 2(e): Thompson Secured Claim**

25 On the Effective Date, the Holder of the Allowed Thompson Secured Claim shall receive the  
26 Thompson Secured Note, substantially in the form annexed to this Disclosure Statement as  
27 **Exhibit “D.”** The Thompson Secured Note will be secured by the Thompson Collateral, will be  
28 executed by the Reorganized Debtor, and will provide that the Holder of the Allowed Thompson

1 Secured Claim, be paid in monthly installments of principal, together with non-compounded interest  
2 at the rate of 5.75% per annum, based on a thirty (30) year amortization schedule, with all  
3 remaining principal and interest due on the third anniversary of the Effective Date.

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

6 • **Class 2(f): Moreno Secured Claim**

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

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

22 • **Class 2(g): Ritchie Secured Claim**

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

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

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

10 • **Class 2(h): Lysgaard Secured Claim**

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

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

26 • **Class 3 – Secured Property Tax Claims**

27 On the Effective Date, the Holder of the Class 3 Allowed Secured Property Tax Claims  
28 shall, in full satisfaction, settlement, release and exchange for such Allowed Secured Property Tax

1 Claims, be paid in Cash in the Allowed amount of such Secured Property Tax Claims on, or as soon  
2 as reasonably practicable after, the later of (i) the Effective Date, or (ii) such date as is otherwise  
3 agreed by Debtor and the Holder of such Claim.

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

6 • **Classes 4(a)-(d): Unsecured Claims**

7 • **Class 4(a): General Unsecured Claims**

8 Each Holder of a Class 4(a) Allowed General Unsecured Claim shall, in full satisfaction,  
9 settlement, release and exchange for such Allowed General Unsecured Claim, receive a Class 4(a)  
10 Junior Lien Note (substantially in the form annexed to this Disclosure Statement as **Exhibit “E”**) in  
11 the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property,  
12 bear Post Effective Date Interest and be paid, after satisfaction in full of the Allowed Deferred  
13 Administrative Claims, and Pro Rata with the Allowed Class 4(b) Loftin Unsecured Claim, the  
14 Allowed Class 4(c) Cashman Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim,  
15 from the proceeds of Refinancing and/or Property Sales; *provided, however*, that if all Class 4(a)  
16 Junior Lien Notes have not been paid in full, including post-Effective Date Interest, on  
17 the second anniversary of the Effective Date, then the Holders shall, in full satisfaction, settlement,  
18 release and exchange for any remaining unpaid balances of such Class 4(a) Junior Lien Notes (the  
19 **“General Unsecured Claim Balances”**), receive Property of a Value, as determined by the  
20 Bankruptcy Court as soon as practicable after the second anniversary of the Effective Date, equal to  
21 each Holder’s General Unsecured Claim Balance.

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

24 • **Class 4(b) : Loftin Unsecured Claim**

25 The Holder of the Class 4(b) Allowed Loftin Unsecured Claim shall, in full satisfaction,  
26 settlement, release and exchange for such Allowed Loftin Unsecured Claim, receive the Class 4(b)  
27 Junior Lien Note (substantially in the form annexed to this Disclosure Statement as **Exhibit “F”**) in  
28 the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property,

1 bear Post Effective Date Interest and be paid, after satisfaction in full of the Allowed Deferred  
 2 Administrative Claims, and Pro Rata with the Allowed Class 4(a) General Unsecured Claims, the  
 3 Allowed Class 4(c) Cashman Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim,  
 4 from the proceeds of Refinancing and/or Property Sales; *provided, however*, that if the Class 4(b)  
 5 Junior Lien Note has not been paid in full, including Post Effective Date Interest, on the  
 6 second anniversary of the Effective Date, then the Holder shall, in full satisfaction, settlement,  
 7 release and exchange for any remaining unpaid balance of such Class 4(b) Junior Lien Note (the  
 8 “Loftin Unsecured Claim Balance”), receive Property of a Value, as determined by the Bankruptcy  
 9 Court as soon as practicable after the second anniversary of the Effective Date, equal to the Loftin  
 10 Unsecured Claim Balance.

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

13 • **Class 4(c) : Cashman Unsecured Claim**

14 The Holder of the Class 4(c) Allowed Cashman Unsecured Claim shall, in full satisfaction,  
 15 settlement, release and exchange for such Allowed Cashman Unsecured Claim, receive the Class  
 16 4(c) Junior Lien Note (substantially in the form annexed to this Disclosure Statement as  
 17 **Exhibit “G”**) in the amount of its Claim, which shall be secured by a Junior Lien on all  
 18 Unencumbered Property, bear Post Effective Date Interest, and be paid, after satisfaction in full of  
 19 the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(a) General  
 20 Unsecured Claims, the Allowed Class 4(b) Loftin Unsecured Claim and the Allowed Class 4(d)  
 21 Utica Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; *provided,*  
 22 *however*, that if the Class 4(c) Junior Lien Note has not been paid in full, including Post  
 23 Effective Date Interest, on the second anniversary of the Effective Date, then the Holder shall, in  
 24 full satisfaction, settlement, release and exchange for any remaining unpaid balance of such Class  
 25 4(c) Junior Lien Note (the “Cashman Unsecured Claim Balance”), receive Property of a Value, as  
 26 determined by the Bankruptcy Court as soon as practicable after the second anniversary of the  
 27 Effective Date, equal to the Cashman Unsecured Claim Balance.

28 *Impairment and Voting:* Class 4(c) is Impaired. Therefore, the Holder of the Class 4(b)



1 Allowed Cashman Unsecured Claim is entitled to vote to accept or reject the Plan.

2 • **Class 4(d) : Utica Unsecured Claim**

3 The Holder of the Class 4(d) Allowed Utica Unsecured Claim shall, in full satisfaction,  
4 settlement, release and exchange for such Allowed Utica Unsecured Claim, receive the Class 4(d)  
5 Junior Lien Note (substantially in the form annexed to this Disclosure Statement as **Exhibit “H”**) in  
6 the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property,  
7 bear Post Effective Date Interest, and be paid, after satisfaction in full of the Allowed Deferred  
8 Administrative Claims, and Pro Rata with the Allowed Class 4(a) General Unsecured Claims, the  
9 Allowed Class 4(b) Loftin Unsecured Claim and the Allowed Class 4(c) Cashman Unsecured  
10 Claim, from the proceeds of Refinancing and/or Property Sales; *provided, however*, that if the Class  
11 4(d) Junior Lien Note has not been paid in full, including Post Effective Date Interest, on  
12 the second anniversary of the Effective Date, then the Holder shall, in full satisfaction, settlement,  
13 release and exchange for any remaining unpaid balance of such Class 4(d) Junior Lien Note (the  
14 **“Utica Unsecured Claim Balance”**), receive Property of a Value, as determined by the Bankruptcy  
15 Court as soon as practicable after the second anniversary of the Effective Date, equal to the Utica  
16 Unsecured Claim Balance.

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

19 • **Class 5 - Insider Claims.**

20 Each Holder of a Class 5 Allowed Insider Claim shall, in full satisfaction, settlement, release  
21 and exchange for such Allowed Insider Claim, receive its Pro Rata share of the Insider Claim Fund.

22 *Impairment and Voting:* Class 5 is Impaired. Therefore, Holders of Class 5 Allowed Insider  
23 Claims are entitled to vote to accept or reject the Plan.

24 • **Class 6 – Old Equity Interests.**

25 All Old Equity Interests shall be extinguished on the Effective Date.

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

1 **Section 5.6 Executory Contracts and Unexpired Leases.**

2 • **Rejection of All Executory Contracts and Unexpired Leases**

3 (a) Entry of the Confirmation Order shall, subject to and upon the occurrence of the  
4 Effective Date, constitute the approval, pursuant to Bankruptcy Code sections 365(a) and  
5 1123(b)(2), of the rejection of all executory contracts and unexpired leases.

6 (b) Any non-insider Creditor whose Claim arises from the rejection of an executory  
7 contract or unexpired lease with Debtor shall have the rights of a Holder of a General Unsecured  
8 Claim and shall receive the treatment provided to Holders of Class 4(a) General Unsecured Claims  
9 as set forth in the Plan. Any insider Creditor whose Claim arises from the rejection of an executory  
10 contract or unexpired lease with Debtor shall have the rights of a Holder of an Insider Claim and  
11 shall receive the treatment provided to Holders of Class 5 Insider Claims as set forth in the Plan.

12 • **Filing of Rejection Claims.**

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

19 **Section 5.7 Means of Implementation of Plan.**

20 • **Plan Implementation.**

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

24 (b) On the Effective Date: (1) the Reorganized Debtor shall form the Baxter Subsidiary  
25 and shall transfer the Baxter Collateral to the Baxter Subsidiary; (2) the Baxter Subsidiary shall  
26 become a borrower under the Baxter Loan; and (3) the Baxter Assignee shall release the Baxter  
27 Liens and cease to be a borrower under the Baxter Loan.

28

1 (c) On the Effective Date, the Reorganized Debtor shall transfer all of its Assets other  
2 than the Baxter Collateral and the Surrendered Collateral to HB Farms. In exchange: (i) Cashton  
3 shall provide the Exit Financing; (ii) the Reorganized Debtor shall receive membership interests in  
4 HB Farms; and (iii) HB Farms shall assume all of the Reorganized Debtor's obligations under the  
5 Baum Secured Note, the McKenna Secured Note, the Thompson Secured Note, the Class 4(a)  
6 Junior Lien Notes, the Class 4(b) Junior Lien Note, the Class 4(c) Junior Lien Note, and the Class  
7 4(d) Junior Lien Note. The Exit Financing shall be converted into membership interests in HB  
8 Farms upon the Reorganized Debtor's contribution of its Assets to HB Farms.

9 (d) The Exit Financing and the DIP Loan shall be used to provide all Confirmation  
10 Funds for Distribution pursuant to this Plan. On the Effective Date, Debtor shall draw down the full  
11 amount of the Exit Financing and shall turn the Exit Financing over to the Distribution Agent for  
12 Distribution pursuant to this Plan. Debtor shall also draw down the DIP Loan in the amount of the  
13 Insider Claim Fund. To the extent that the Exit Financing, together with the Insider Claim Fund, is  
14 less than the Confirmation Funds (the "Shortfall"), the Reorganized Debtor shall draw down again  
15 on the DIP Loan in the amount of the Shortfall (the "DIP Drawdown") and shall turn the DIP  
16 Drawdown over to the Distribution Agent for Distribution pursuant to this Plan.

17 (d) In the event that any Claim in Class 4(a), Class 4(b), Class 4(c), or Class 4(d) has not  
18 been paid in full as provided in Article II of the Plan on the second anniversary of the Effective  
19 Date, the Bankruptcy Court will determine, as soon as practicable after the second anniversary of  
20 the Effective Date, the Value of the parcel(s) of Property proposed to be given by the Reorganized  
21 Debtor to the creditor in satisfaction of the unpaid balance of such Claim.

22 (f) The Sales Agent will market the Property. The Distribution Agent will distribute all  
23 proceeds from Property Sales, as provided in the Plan.

24 • **Cancellation of Equity Interests.**

25 On the Effective Date, all Old Equity Interests shall be extinguished, canceled, terminated  
26 and of no force and effect.

27  
28

1                   • **Issuance of New Equity Interests.**

2           On the Effective Date, 100% of the Reorganized Debtor New Equity Interests shall be  
3 issued to the DIP Lender in satisfaction of the DIP Lender Secured Claim, as provided in the Plan.

4                   • **Corporate Actions.**

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

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

14                   • **Good Faith and Non Avoidability.**

15           The Confirmation Order shall, among other things, provide that: (i) Debtor, the DIP Lender  
16 Cashton and HB Farms have acted in good faith; and (ii) the New Equity interests received by the  
17 DIP Lender shall not be subject to avoidance, turnover or disgorgement in any subsequent  
18 insolvency proceeding by any Person or Entity.

19                   • **Management.**

20           Following the Effective Date, Reorganized Debtor shall be managed as provided in the  
21 Reorganized Debtor Operating Agreement, substantially in the form annexed as **Exhibit “K”**  
22 hereto. It is anticipated that Reorganized Debtor will be managed by James M. Rhodes.

23                   • **Exemption from Certain Transfer Taxes and Further Transactions.**

24           Pursuant to Bankruptcy Code section 1146(a), the issuance or exchange of any security, or  
25 the making or delivery of any instrument of transfer under, in furtherance, or in connection with the  
26 Plan, including, but not limited to, any deeds, bills of sale, assignments or other instruments of  
27 transfer (including those with respect to the Properties), shall not be subject to any stamp tax, real  
28 estate transfer tax or similar tax.

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1                   •       **Effectuating Documents, Further Transactions.**

2                   On and after the Effective Date, the Reorganized Debtor is authorized to and may issue,  
3 execute, deliver, file, or record such contracts, securities, instruments, releases, and other  
4 agreements or documents and take such actions as may be necessary or appropriate to effectuate,  
5 implement, and further evidence the terms and conditions of the Plan in the name of and on behalf  
6 of Debtor, as applicable, without the need for any approvals, authorizations, or consents except for  
7 those expressly required pursuant to the Plan.

8                   •       **Final Decree.**

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

11                   •       **Effectuating Documents, Further Transactions.**

12                   On and after the Effective Date, the Reorganized Debtor is authorized to and may issue,  
13 execute, deliver, file, or record such contracts, securities, instruments, releases, and other  
14 agreements or documents and take such actions as may be necessary or appropriate to effectuate,  
15 implement, and further evidence the terms and conditions of the Plan in the name of and on behalf  
16 of Debtor, as applicable, without the need for any approvals, authorizations, or consents except for  
17 those expressly required pursuant to the Plan.

18                   •       **Post Effective Date Fees and Expenses.**

19                   From and after the Effective Date, the Distribution Agent shall pay all Post Effective Date  
20 Fees from the Post Effective Date Fee Fund without the necessity of any approval by the  
21 Bankruptcy Court.

22                   In the event, and to the extent, that there are not sufficient funds in the Post Effective Date  
23 Fee Fund from which to pay any of the Post Effective Date Fees, the Distribution Agent shall,  
24 without the necessity of any approval by the Bankruptcy Court, pay any Post Effective Date Fees  
25 from Cash on hand and/or the proceeds of Property Sales.

26                   In order to seek payment of Post Effective Date Fees, each respective Professional will send  
27 its invoice to the Reorganized Debtor, and the Reorganized Debtor shall have ten (10) business days  
28 thereafter within which to notify the Professional in writing that it objects to the invoice. If no

1 objection is made within that time frame, the Distribution Agent shall pay the invoice within thirty  
2 (30) days thereafter. In the event the Distribution Agent objects and the parties are unable to  
3 resolve the objection, the Professional may bring the matter before the Bankruptcy Court on a  
4 motion for determination.

5 **Section 5.8 Provisions Concerning Plan Distributions.**

6 • **Distributions on Account of Claims Allowed as of the Effective Date.**

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

9 • **Distributions on Account of Claims Allowed After the Effective Date.**

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

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

23 • **Manner of Payment Under the Plan.**

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

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1 • **Whole Dollars.**

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

5 • **Escheat.**

6 Holders of Allowed Claims shall have three (3) months from the check date to negotiate  
7 Distribution checks issued by the Reorganized Debtor under the terms of the Plan, otherwise  
8 payment on such checks may at the Reorganized Debtor's sole discretion be stopped and the funds  
9 shall escheat to the Reorganized Debtor.

10 • **Delivery of Distributions.**

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

19 (b) **Distribution Agent.** The Distribution Agent shall make all Distributions required  
20 under the Plan.

21 (c) **Delivery of Distributions in General.** Except as otherwise provided in the Plan, and  
22 notwithstanding any authority to the contrary, Distributions to all Holders of Allowed Claims shall  
23 be made to Holders of record as of the Distribution Record Date by the Distribution Agent: (a) in  
24 accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy  
25 Rule 7004; (b) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other  
26 representative identified therein (or at the last known addresses of such Holder if no Proof of Claim  
27 is Filed or if Debtor has been notified in writing of a change of address); (c) at the addresses set  
28 forth in any written notices of address changes delivered to Debtor or the Reorganized Debtor after

1 the date of any related Proof of Claim; (d) at the addresses reflected in the Schedules if no Proof of  
2 Claim has been Filed and the Reorganized Debtor has not received a written notice of a change of  
3 address; or (e) on any counsel that has appeared in the Chapter 11 Case on the Holder's behalf.  
4 Except as otherwise provided in the Plan, Distributions under the Plan on account of Allowed  
5 Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each  
6 Holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set  
7 forth in the Plan. Absent willful misconduct or gross negligence, Debtor, the Reorganized Debtor,  
8 and the Distribution Agent, as applicable, shall not incur any liability on account of any  
9 Distributions made under the Plan.

10 • **Returned Distributions.**

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

20 • **Disputed Distributions.**

21 In the event of any dispute between or among Holders of Claims as to the right to any  
22 Holder of a Claim to receive or retain any Distribution to be made to such Holder under the Plan,  
23 the Distribution Agent, in lieu of making such Distribution to such Holder, may make it instead into  
24 an escrow account for payment as ordered by the Bankruptcy Court or as the interested parties to  
25 such dispute may otherwise agree among themselves. Any such Holder who fails to raise such  
26 dispute by filing an appropriate request for relief with the Bankruptcy Court prior to the issuance of  
27 such disputed Distribution by the Distribution Agent shall be deemed to have forever waived any  
28 right to dispute such Distribution or to enjoin, impair or otherwise restrict the use of any such



1 Distribution.

2 • **Setoffs.**

3 The Distribution Agent may, but shall not be required to, set-off against any Distributions to  
4 be made pursuant to the Plan to a Holder of an Allowed Claim, Claims of any nature whatsoever  
5 that Debtor may have, or may have had, against such Holder that have not been previously released,  
6 but neither the failure to do so, nor the allowance of any Claim held by such Holder shall constitute  
7 a waiver or release by the Reorganized Debtor of any such Claim Debtor may have, or may have  
8 had, against such Holder.

9 • **Withholding Taxes.**

10 The Reorganized Debtor shall be entitled to deduct any applicable federal or state  
11 withholding taxes from any payments made with respect to Allowed Claims, as appropriate, and  
12 shall otherwise comply with Bankruptcy Code section 346.

13 • **Allocation of Distributions.**

14 Distributions on account of Allowed Claims shall, for tax purposes, be treated as allocated  
15 first to principal, and thereafter to interest only to the extent that the entire principal amount has  
16 been recovered, if applicable.

17 **Section 5.9 Procedures for Resolving Disputed Claims.**

18 • **Objection to and Resolution of Claims.**

19 Except as to applications for allowance of compensation and reimbursement of expenses  
20 under Bankruptcy Code sections 330, 331 and/or 503, the Reorganized Debtor shall, on and after  
21 the Effective Date, have the exclusive right to make and file objections to Claims. On and after the  
22 Effective Date, the Reorganized Debtor shall have the authority to compromise, settle, otherwise  
23 resolve or withdraw any objections to any Claims and compromise, settle or otherwise resolve  
24 Disputed Claims without approval of the Bankruptcy Court. Unless otherwise ordered by the  
25 Bankruptcy Court, the Debtor and, on and after the Effective Date, the Reorganized Debtor, shall  
26 file all objections to Claims that are the subject of proofs of Claim or requests for payment filed  
27 with the Bankruptcy Court (other than applications for allowances of compensation and  
28 reimbursement of expenses with respect to Professional Fee Claims) and serve such objections upon

1 the Holder of the Claim as to which the objection is made as soon as is practicable, but in no event  
2 later than one (1) year after the Effective Date or such later date as may be approved by the  
3 Bankruptcy Court.

4 • **Payments.**

5 Payments and Distributions to each Holder of a Disputed Claim that ultimately becomes an  
6 Allowed Claim shall be made in accordance with the provision of the Plan with respect to the Class  
7 of Creditors to which the respective Holder of an Allowed Claim belongs. Without limiting the  
8 generality of the foregoing, Debtor shall not be required to object to any Claim irrespective of  
9 whether such Claim is Allowed or Disputed, whether in whole or in part.

10 • **Contingent Claims.**

11 Until such time as a contingent Claim or a contingent portion of an Allowed Claim becomes  
12 fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes  
13 related to Distributions under the Plan. The Holder of a contingent Claim will only be entitled to a  
14 Distribution under the Plan when and if such contingent Claim becomes an Allowed Claim.

15 • **Personal Injury Claims.**

16 All objections to Claims Filed for personal injury tort damages, if any, shall be determined  
17 by the United States District Court for the District of Nevada.

18 • **Estimation of Claims.**

19 Debtor or the Reorganized Debtor shall be permitted, at any time, to request that the  
20 Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section Bankruptcy  
21 Code 502(c), regardless of whether Debtor or the Reorganized Debtor previously had objected to  
22 such Claim or whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court  
23 shall retain jurisdiction to estimate any Claim at any time during any litigation concerning any  
24 objection to such Claim, including during the pendency of any appeal relating to such objection. In  
25 the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so  
26 estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on  
27 such Claim, as determined by the Bankruptcy Court. If such estimated amount constitutes a  
28

1 maximum limitation on the amount of such Claim, Debtor or the Reorganized Debtor may elect to  
2 pursue any supplemental proceedings to object to the allowance of such Claim.

3 • **Reserve for Disputed Claims.**

4 On and after the Effective Date, the Distribution Agent shall hold in a segregated reserve  
5 account (the “Disputed Claims Reserve”), Cash in an aggregate amount sufficient to make  
6 Distributions to each Holder of a Disputed Claim at the time distributions are made pursuant to the  
7 Plan in the amount that such Holder would have been entitled to receive if such Claim had been an  
8 Allowed Claim on the Effective Date. Nothing contained herein shall be deemed to entitle the  
9 Holder of a Disputed Claim to post-Petition Date or post-Effective Date interest on such Claim.  
10 Any funds remaining in the Disputed Claims Reserve after all Distributions on account of Allowed  
11 Claims have been made shall be promptly returned to the Reorganized Debtor.

12 **Section 5.10 Effect of Confirmation of Plan.**

13 • **Discharge.**

14 IN CONJUNCTION WITH BANKRUPTCY CODE SECTION 1141, EXCEPT AS  
15 OTHERWISE PROVIDED FOR IN THE PLAN, THE RIGHTS AFFORDED IN THE PLAN  
16 AND THE TREATMENT OF ALL CLAIMS AND EQUITY INTERESTS IN THE PLAN SHALL  
17 BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION, DISCHARGE AND  
18 RELEASE OF CLAIMS AND EQUITY INTERESTS OF ANY NATURE WHATSOEVER  
19 AGAINST THE DEBTOR, AND OF THE ASSETS OR PROPERTY OF THE ESTATE,  
20 INCLUDING ANY INTEREST ACCRUED ON SUCH CLAIMS FROM AND AFTER THE  
21 PETITION DATE.

22 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS  
23 PROVIDED IN THE CONFIRMATION ORDER, CONFIRMATION DISCHARGES THE  
24 DEBTOR FROM ALL CLAIMS, OR OTHER DEBTS THAT AROSE BEFORE THE  
25 EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN SECTIONS 502(G),  
26 502(H) OR 502(I) OF THE BANKRUPTCY CODE, WHETHER OR NOT: (X) A PROOF OF  
27 CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN  
28 FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(A); (Y) A CLAIM BASED

1 ON SUCH DEBT IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502 OF THE  
2 BANKRUPTCY CODE; OR (Z) THE HOLDER OF A CLAIM BASED ON SUCH DEBT HAS  
3 ACCEPTED THE PLAN.

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

19 • **Binding Effect of Plan/Injunction.**

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

28

FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, Suite 700  
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(702) 597-5503 (fax)

1 UPON THE EFFECTIVE DATE OF THE PLAN, ALL PERSONS AND ENTITIES  
2 SHALL BE PERMANENTLY ENJOINED BY THE PLAN FROM (I) COMMENCING OR  
3 CONTINUING ANY ACTION, EMPLOYING ANY PROCESS, ASSERTING OR  
4 UNDERTAKING AN ACT TO COLLECT, RECOVER, OR OFFSET, DIRECTLY OR  
5 INDIRECTLY, ANY CLAIM, RIGHTS, CAUSES OF ACTION, LIABILITIES, OR INTERESTS  
6 IN OR AGAINST ANY PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE  
7 PLAN, OR TRANSFERRED TO THE REORGANIZED DEBTOR, BASED UPON ANY ACT,  
8 OMISSION, TRANSACTION, OR OTHER ACTIVITY THAT OCCURRED BEFORE THE  
9 EFFECTIVE DATE, (II) CREATING, PERFECTING OR ENFORCING ANY LIEN OR  
10 ENCUMBRANCE AGAINST ANY PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED  
11 UNDER THE PLAN OTHER THAN AS PERMITTED UNDER THE PLAN, AND (III)  
12 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ASSERTING ANY  
13 CLAIMS AGAINST THE REORGANIZED DEBTOR BASED ON SUCCESSOR LIABILITY  
14 OR SIMILAR OR RELATED THEORY, EXCEPT TO THE EXTENT A PERSON OR ENTITY  
15 HOLDS AN ALLOWED CLAIM UNDER THE PLAN AND IS ENTITLED TO A  
16 DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN ACCORDANCE WITH ITS TERMS,  
17 AND TO ENFORCE ITS RIGHTS TO DISTRIBUTION UNDER THE PLAN.

18 ON AND AFTER THE EFFECTIVE DATE OF THE PLAN, EACH HOLDER OF ANY  
19 CLAIM AGAINST OR INTEREST IN DEBTOR IS PERMANENTLY ENJOINED FROM  
20 TAKING OR PARTICIPATING IN ANY ACTION THAT WOULD INTERFERE OR  
21 OTHERWISE HINDER DEBTOR OR REORGANIZED DEBTOR FROM IMPLEMENTING  
22 THE PLAN, THE CONFIRMATION ORDER OR ANY OPERATIVE DOCUMENTS IN  
23 ACCORDANCE WITH THE TERMS THEREOF.

24 • **Injunction Against Releasors.**

25 All of the Releasors, along with any of their successors or assigns, are permanently enjoined,  
26 from and after the Effective Date, from (i) commencing or continuing in any manner any action or  
27 other proceeding of any kind against the Releasees or any of their respective Representatives in  
28 respect of any Released Liabilities, (ii) enforcing, attaching, collecting or recovering by any manner

1 or means of any judgment, award, decree or order against the Releasees or any of their respective  
2 Representatives in respect of any Released Liabilities, (iii) creating, perfecting, or enforcing any  
3 encumbrance of any kind against the Releasees or any of their respective Representatives in respect  
4 of any Released Liabilities, or (iv) asserting any right of setoff, subrogation or recoupment of any  
5 kind against any obligation due from the Releasees or any of their respective Representatives or  
6 against the property or interests in property of the Releasees or any of their respective  
7 Representatives, in respect of any Released Liabilities; *provided, however*, that nothing contained  
8 herein shall preclude such Releasors from exercising their rights pursuant to and consistent with the  
9 terms hereof and the contracts, instruments, releases and other agreements and documents delivered  
10 under or in connection with the Plan; and *provided, further*, that nothing contained in the Plan shall  
11 be deemed to enjoin any Releasor from taking any action against any Releasee or any of its  
12 Representatives based on the release exceptions contained in Section 12.4 of the Plan.

13 • **Injunction Protecting Exculpation of Releasees.**

14 All Holders of Claims against or Interests in Debtor and any other parties-in-interest, along  
15 with any of their Representatives and any of their successors or assigns, are permanently enjoined,  
16 from and after the Effective Date, from (i) commencing or continuing in any manner any action or  
17 other proceeding of any kind against Releasees or any of their respective Representatives in respect  
18 of any potential liability for which exculpation is granted pursuant to Section 12.3 of the Plan, (ii)  
19 enforcing, attaching, collecting or recovering by any manner or means of any judgment, award,  
20 decree or order against Releasees or any of their respective Representatives in respect of any  
21 potential liability for which exculpation is granted pursuant to Section 12.3 of the Plan, (iii)  
22 creating, perfecting, or enforcing any encumbrance of any kind against Releasees or any of their  
23 respective Representatives in respect of any potential liability for which exculpation is granted  
24 pursuant to Section 12.3 of the Plan, or (iv) asserting any right of setoff, subrogation or recoupment  
25 of any kind against any Releasee or any of their respective Representatives or against the property  
26 or interests in property any Releasee or any of their respective Representatives, in respect of any  
27 potential liability for which exculpation is granted pursuant to Section 12.3 of the Plan; *provided*,  
28 *however*, that nothing contained herein shall preclude any Holder or other party-in-interest from

1 exercising its rights pursuant to and consistent with the terms of the Plan and the Operative  
2 Documents delivered under or in connection with the Plan; and, *provided further*, that nothing  
3 contained in the Plan shall preclude the Baxter Assignee, Cashman, Utica and/or Loftin from  
4 exercising their rights arising under the Baxter Guarantees, the Cashman Settlement Agreement, the  
5 Utica Guarantees and the Loftin Mechanic's Lien, respectively.

6 • **Injunction Against Interference With Plan.**

7 Upon the Effective Date, all Holders of Claims against or Interests in Debtor and their  
8 respective Representatives and any of their successors or assigns shall be enjoined from taking any  
9 actions to interfere with the implementation or consummation of the Plan.

10 • **Exculpation.**

11 None of the Releasees nor any of their respective Representatives shall have or incur any  
12 liability to any Holder of a Claim against or Interest in Debtor, or any other party-in-interest, or any  
13 of their Representatives, or any of their successors or assigns, for any act, omission, transaction or  
14 other occurrence in connection with, relating to, or arising out of the Chapter 11 Case, the pursuit of  
15 confirmation of the Plan, or the consummation of the Plan, except and solely to the extent such  
16 liability is based on fraud, gross negligence or willful misconduct. The Releasees shall be entitled  
17 to reasonably rely upon the advice of counsel with respect to any of their duties and responsibilities  
18 under the Plan or in the context of the Chapter 11 Case. No Holder of a Claim against or Interest in  
19 Debtor, or any other party-in-interest, including their respective Representatives, shall have any  
20 right of action against the Releasees or any of their Representatives, for any act, omission,  
21 transaction or other occurrence in connection with, relating to, or arising out of, the Chapter 11  
22 Case, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of  
23 the Plan, except to the extent arising from fraud, gross negligence or willful misconduct. Nothing in  
24 this Section 12.3 shall: (a) be deemed an exculpation by any Releasor of any Releasee or any of its  
25 Representatives for any acts, omissions, transactions, events or other occurrences taking place after  
26 the Effective Date; or (b) affect the rights of the Baxter Assignee, Cashman, Utica and/or Loftin  
27 arising under the Baxter Guarantees, Cashman Settlement Agreement, the Utica Guarantees and the  
28 Loftin Mechanic's Lien, respectively.

1                   •    **Releases.**

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

12                   •    **Termination of Debt Instruments.**

13                   On the Effective Date, all instruments evidencing indebtedness of Debtor held by Holders of  
14 Claims that are Impaired by the Plan or have been paid in full pursuant thereto shall be deemed  
15 canceled as against Debtor and the Reorganized Debtor.

16                   •    **Judgments Void.**

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

20                   •    **Revesting of Assets in Reorganized Debtor.**

21                   Except as otherwise expressly provided herein or in the Confirmation Order, on the  
22 Effective Date, but retroactive to the Confirmation Date, without any further action, the  
23 Reorganized Debtor will be vested with all of the property of the Estate, wherever situated, free and  
24 clear of all Claims, Liens and Old Equity Interests (except for Liens provided or authorized  
25 pursuant to the Plan). Without limiting the generality of the foregoing, on and after the Effective  
26 Date, the Reorganized Debtor shall be vested with all of the property of the Estate, wherever  
27 situated, free and clear of any Claims based on any form of successor liability or similar or related  
28 theory of liability. On and after the Effective Date, (i) the Reorganized Debtor shall be free of any



1 restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business and  
2 may use, acquire or dispose of its assets (including the Properties) free of any restrictions imposed  
3 by the Bankruptcy Code and the Bankruptcy Rules and without supervision or approval by the  
4 Bankruptcy Court, other than the obligations set forth in the Plan, or the Confirmation Order.  
5 Without limiting the generality of the foregoing and except as otherwise expressly provided herein  
6 or in the Confirmation Order, any Causes of Action, will be preserved and retained solely for the  
7 Reorganized Debtor's commencement, prosecution, use and benefit.

8 • **Preservation of Causes of Action.**

9 Pursuant to Bankruptcy Code section 1123(b), Debtor as the Reorganized Debtor shall retain  
10 and reserve the right to enforce all rights to commence and pursue Causes of Action whether arising  
11 before or after the Petition Date, and whether pending as of or Filed after the Effective Date, in any  
12 court or other tribunal. Unless a Cause of Action is expressly waived, relinquished, released,  
13 compromised or settled in the Plan, or any Final Order, the Debtor and the Reorganized Debtor  
14 expressly reserve all Causes of Action for later adjudication and, therefore, no preclusion doctrine,  
15 including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion,  
16 claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to any Causes of  
17 Action upon Confirmation or the Effective Date. No entity may rely on the absence of a specific  
18 reference to any Cause of Action against it in the Plan, any Plan Supplement, or the Disclosure  
19 Statement as an indication that the Debtor or the Reorganized Debtor will not pursue any and all  
20 available Causes of Action against them. The Debtor and the Reorganized Debtor expressly reserve  
21 all rights to prosecute any and all Causes of Action against any Entity, except as otherwise  
22 expressly provided in the Plan.

23 • **Maintenance of Administrative Claim Status Post Discharge.**

24 Notwithstanding any discharge granted to the Debtor, Allowed Administrative Claims shall  
25 maintain their administrative priority status under Bankruptcy Code section 507(a)(2) until paid in  
26 full.

• **No Limitation on Effect of Confirmation.**

Nothing contained in the Plan or the Disclosure Statement will limit, waive or restrict in any way the effect of Confirmation as set forth in Bankruptcy Code section 1141. Confirmation will bind the Debtor, all Creditors, Equity Interest Holders and other parties in interest to the provisions of the Plan, whether or not the Claim or Equity Interest of such Creditor or Equity Interest Holder is Impaired under the Plan and whether or not such Creditor or Equity Interest Holder has accepted the Plan and whether or not a proof of Claim or Equity Interest has been filed or deemed to have been filed under Bankruptcy Code sections 501 or 1111(a), or such Claim or Equity Interest is allowed under Bankruptcy Code section 502.

**ARTICLE VI.**

**CONFIRMATION OF THE PLAN**

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the technical requirements of Chapter 11, including, among other things, that (a) the Plan properly classifies Claims and Equity Interests, (b) the Plan complies with applicable provisions of the Bankruptcy Code, (c) Debtor has complied with applicable provisions of the Bankruptcy Code, (d) Debtor has proposed the Plan in good faith and not by any means forbidden by law, (e) disclosure of “adequate information” has been made as required by Bankruptcy Code section 1125, (f) the Plan has been accepted by the requisite votes of Creditors in Impaired Classes (or the non-accepting Impaired Classes have been successfully crammed-down under Bankruptcy Code section 1129(b)), (g) the Plan is in the “best interests” of all Holders of Claims or Interests in each Impaired Class that has not unanimously accepted the Plan, and (h) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date.

**Section 6.1 Voting Eligibility.**

Under the Bankruptcy Code, only Holders of Claims and Equity Interests in Classes that are “Impaired” (as that term is defined in Bankruptcy Code section 1124) under the Plan are entitled to vote to accept or reject the Plan. Generally speaking, a Class of Claims or Interests is Impaired if the Plan modifies the legal, equitable or contractual rights of Holders of Claims or Equity Interests

1 in the Class (other than by curing defaults and reinstating debt). Under Bankruptcy Code section  
 2 1126(f), Classes of Claims and Equity Interests that are unimpaired are conclusively presumed to  
 3 have accepted the Plan and are not entitled to vote on the Plan. Under Bankruptcy Code section  
 4 1126(g), Classes of Claims and Equity Interests whose Holders will neither receive nor retain any  
 5 property under the Plan are deemed to have rejected the Plan and are not entitled to vote on the  
 6 Plan. An Impaired Class of Claims will have accepted the Plan if (a) the Holders (other than any  
 7 Holder designated under Bankruptcy Code section 1126(e)) of at least two-thirds (2/3) in amount of  
 8 the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders  
 9 (other than any Holder designated under Bankruptcy Code section 1126(e)) of more than one-half  
 10 (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.  
 11 As noted above, the Plan utilizes sixteen (16) Classes of Claims and one (1) Class of Equity  
 12 Interests. Classes 1, 2(f), 2(g), 2(h), and 3 are not Impaired and are not entitled to vote to accept or  
 13 reject the Plan. Classes 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d) and 5 are Impaired and are  
 14 entitled to vote to accept or reject the Plan. Class 6 is conclusively deemed to have rejected the  
 15 Plan under Bankruptcy Code section 1126(g).

16 The Solicitation Procedures approved pursuant to the Solicitation Order (and attached  
 17 thereto as Exhibit "A") establish criteria by which Holders of Claims and Interests in Classes 2(a),  
 18 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d) and 5 will be entitled to vote to accept or reject the Plan  
 19 and in what amount(s).

20 A Ballot to be used to accept or reject the Plan has been enclosed with all copies of this  
 21 Disclosure Statement mailed to Holders of Claims and Interests in Classes 2(a), 2(b), 2(c), 2(d),  
 22 2(e), 4(a), 4(b), 4(c), 4(d) and 5.

23 **Section 6.2 Voting Instructions.**

24 THE PERIOD DURING WHICH BALLOTS WITH RESPECT TO THE PLAN WILL BE  
 25 ACCEPTED BY DEBTOR WILL TERMINATE AT **5:00 P.M. PREVAILING PACIFIC TIME,**  
 26 **ON JANUARY 16, 2019** (THE "VOTING DEADLINE"). EXCEPT TO THE EXTENT DEBTOR  
 27 SO DETERMINES OR AS PERMITTED BY THE BANKRUPTCY COURT, BALLOTS THAT  
 28 ARE RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE ACCEPTED OR USED

1 BY DEBTOR IN CONNECTION WITH DEBTOR'S REQUEST FOR CONFIRMATION OF  
2 THE PLAN (OR ANY PERMITTED MODIFICATION THEREOF).

3 TO BE COUNTED, YOUR BALLOT MUST BE COMPLETELY FILLED IN, SIGNED,  
4 AND TRANSMITTED IN THE MANNER SPECIFIED IN THE BALLOT SO THAT IT IS  
5 RECEIVED BY THE VOTING DEADLINE. PLEASE FOLLOW CAREFULLY ALL  
6 INSTRUCTIONS CONTAINED IN THE BALLOT. ANY BALLOTS RECEIVED WHICH DO  
7 NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE  
8 COUNTED AS ACCEPTING THE PLAN.

9 If you have any questions about the procedure for voting, or if you did not receive a Ballot,  
10 received a damaged Ballot, or have lost your Ballot, or if you would like any additional copies of  
11 this Disclosure Statement, please contact:

12 Fox Rothschild LLP  
13 Attn: Brett A. Axelrod  
14 1980 Festival Plaza Drive, Suite 700  
15 Las Vegas, Nevada 89135  
Telephone: (702) 262-6899  
Email: baxelrod@foxrothschild.com

16 **BALLOTS MUST BE DELIVERED BY FACSIMILE TO (702) 597-5503, BY ELECTRONIC**  
17 **MAIL TO baxelrod@foxrothschild.com, OR BY FIRST CLASS MAIL, OVERNIGHT**  
18 **DELIVERY OR HAND DELIVERY TO THE FOLLOWING ADDRESS:**

19 Fox Rothschild LLP  
20 Attn: Brett A. Axelrod  
21 1980 Festival Plaza Drive, Suite 700  
22 Las Vegas, Nevada 89135

23 In the event that Claims or Equity Interests may be (or have been) transferred among  
24 different parties, Bankruptcy Rule 3018 authorizes the Bankruptcy Court to fix a date (the "Voting  
25 Record Date") upon which the Holder of a particular Claim or Equity Interest as of that Voting  
26 Record Date is identified as the party entitled to vote such Claim or Equity Interest to accept or  
27 reject the Plan. For example, if the Voting Record Date is Wednesday, and Party A (as the current  
28 Holder of Claim 1) transfers Claim 1 to Party B on Thursday, then Party A (and not Party B) is  
entitled to vote Claim 1 to accept or reject the Plan. Conversely, if the Voting Record Date was  
Friday instead, and Party A still transfers Claim 1 to Party B on Thursday, then Party B is entitled to

1 vote Claim 1 to accept or reject the Plan. Consistent with the provisions of Bankruptcy Rule 3018,  
2 the Bankruptcy Court fixed the Voting Record Date as 5:00 P.M., prevailing Pacific Time, on  
3 **June 13, 2018.**

4 **Section 6.3 Confirmation Hearing.**

5 Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a  
6 hearing on Confirmation of the Plan after the Ballots have been cast. Bankruptcy Code section  
7 1128(b) provides that any party in interest may object to Confirmation of the Plan.

8 THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION HEARING  
9 TO COMMENCE ON **JANUARY 30, 2019 AT 1:30 P.M. PREVAILING PACIFIC TIME**  
10 **BEFORE THE HONORABLE AUGUST B. LANDIS, UNITED STATES BANKRUPTCY**  
11 **JUDGE IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF**  
12 **NEVADA, IN COURTROOM 1, FOLEY FEDERAL BUILDING AND U.S. COURTHOUSE,**

13 **300 LAS VEGAS BOULEVARD SOUTH, LAS VEGAS, NEVADA 89101.** THE  
14 CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE  
15 BANKRUPTCY COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN  
16 ANNOUNCEMENT OF THE ADJOURNED DATE MADE AT THE CONFIRMATION  
17 HEARING OR ANY ADJOURNMENT THEREOF.

18 OBJECTIONS TO CONFIRMATION MUST BE FILED AND SERVED ON OR BEFORE  
19 **JANUARY 16, 2019** IN ACCORDANCE WITH THE SOLICITATION ORDER. UNLESS  
20 OBJECTIONS ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE  
21 SOLICITATION ORDER, THEY MAY NOT BE CONSIDERED BY THE BANKRUPTCY  
22 COURT.

23 At the Confirmation Hearing, the Bankruptcy Court will determine, among other things,  
24 whether the following Confirmation requirements specified in Bankruptcy Code section 1129 have  
25 been satisfied:

- 26 a. The Plan complies with the applicable provisions of the Bankruptcy Code.
- 27 b. Debtor has complied with the applicable provisions of the Bankruptcy Code.
- 28 c. The Plan has been proposed in good faith and not by any means proscribed by law.

1 d. Any payment made or promised by Debtor for services or for costs and expenses in,  
2 or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the  
3 Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before  
4 the Confirmation of the Plan is reasonable or, if such payment is to be fixed after Confirmation of  
5 the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.

6 e. Each Holder of an Impaired Claim either has accepted the Plan or will receive or  
7 retain under the Plan on account of such Holder's Claims, property of a value, as of the Distribution  
8 Date, that is not less than the amount that such Holder would receive or retain if Debtor's Estate  
9 was liquidated on such date under chapter 7 of the Bankruptcy Code.

10 f. Each Class of Claims has either accepted the Plan or is not Impaired under the Plan.  
11 As to Classes that are deemed to reject the Plan, see "Cramdown," Section 6.4 below.

12 g. Except to the extent that the Holder of a particular Claim has agreed to a different  
13 treatment of such Claim, the Plan provides that Allowed Administrative Claims, Allowed Priority  
14 Claims and Allowed Priority Tax Claims will be paid in full.

15 h. At least one Class of Claims has accepted the Plan, determined without including  
16 any acceptance of the Plan by any insider holding a Claim in such Class.

17 i. Confirmation of the Plan is not likely to be followed by the need for further financial  
18 reorganization or liquidation of Reorganized Debtor, unless such further reorganization or  
19 liquidation is proposed in the Plan.

20 j. All fees payable under 28 U.S.C. § 1930 as determined by the Court at the  
21 Confirmation Hearing have been paid or the Plan provides for payment of all such fees on the Plan  
22 Effective Date.

23 k. The Plan addresses payment of retiree benefits, if any, in accordance with  
24 Bankruptcy Code section 1114.

25 **Section 6.4 Confirmation Requirements.**

26 • **Classification.**

27 Bankruptcy Code section 1122 sets forth the requirements relating to classification of  
28 claims. Bankruptcy Code section 1122(a) provides that claims or equity interests may be placed in

1 a particular class only if they are substantially similar to the other claims or equity interests in that  
2 class. Debtor believes that all Classes under the Plan satisfy the requirements of Bankruptcy Code  
3 section 1122(a) because none of the Classes under the Plan contain Claims or Equity Interests that  
4 are not substantially similar to each other.

5 • **Acceptance by Impaired Classes.**

6 Fox Rothschild LLP will be responsible for tabulating all validly executed Ballots received  
7 prior to the Voting Deadline for purposes of determining whether each Impaired voting Class has  
8 accepted or rejected the Plan. Bankruptcy Rule 3018(b) prescribes the conditions that must be  
9 satisfied in order to count the ballots cast with respect to a plan prior to the commencement of a  
10 Chapter 11 case. The rule requires that for the ballot of a creditor to count (i) a Chapter 11 plan and  
11 a disclosure statement must be distributed to substantially all creditors of the same class, (ii) the  
12 time prescribed for voting on such a plan must not be unreasonably short, and (iii) the solicitation  
13 must be conducted in compliance with Bankruptcy Code section 1126, which section requires that  
14 the solicitation be conducted in compliance with all applicable nonbankruptcy laws, rules, or  
15 regulations or, if there are no such applicable laws, rules, or regulations, that the disclosure  
16 statement for such plan contains “adequate information.” Under Bankruptcy Code section 1125,  
17 “adequate information” is defined as information of a kind and in sufficient detail to the extent it is  
18 reasonably practicable in light of the nature and history of a company and the condition of such  
19 company’s books and records, that would enable a hypothetical reasonable investor typical of  
20 holders of claims or equity interests of the relevant class to make an informed judgment about the  
21 plan.

22 Debtor submits that all the requirements of Bankruptcy Rule 3018(b) will be satisfied.  
23 Debtor is soliciting votes from the Voting Record Date Holders of Impaired Claims in Classes 2(a),  
24 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d) and 5, pursuant to the Solicitation Order. Holders of  
25 Claims in Class 1, 2(f), 2(g), 2(h), and 3 are not Impaired and not entitled to vote to accept or reject  
26 the Plan. Holders of Impaired Interests in Class 6 are conclusively deemed to have rejected the Plan  
27 pursuant to Bankruptcy Code section 1126(g). Debtor further submits that this Disclosure  
28 Statement contains adequate information within the meaning of Bankruptcy Code section 1125 and

1 that solicitation of votes in connection with the Plan will be in accordance with Bankruptcy Code  
2 section 1126 pursuant to the Solicitation Order.

3 • **Best Interests Test.**

4 Often called the “best interests” test, Bankruptcy Code section 1129(a)(7) requires that the  
5 bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides that each  
6 holder of a claim or interest in an impaired class either (i) has accepted the plan or (ii) will receive  
7 or retain under the plan property of a value that is not less than the amount that the holder would  
8 receive or retain if the debtor’s assets were liquidated under chapter 7 of the Bankruptcy Code.

9 To make this finding, the Bankruptcy Court must, among other things, compare each  
10 rejecting Holder’s distribution under a chapter 7 liquidation with the distribution that such Holder  
11 would receive if the Plan is confirmed and consummated.

12 Allowed Claims in Classes 1, 2(f), 2(g), 2(h), and 3 are not Impaired and therefore deemed  
13 to accept the Plan unanimously (rendering the “best interests” test inapplicable). Allowed Claims in  
14 Classes 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), and 4(d) are Impaired, but will be paid in full  
15 over time with interest. Debtor believes that all Holders of Allowed Class 5 Insider Claims will  
16 vote to accept the Plan. Allowed Interests in Class 6 will be extinguished.

17 Debtor believes that the Plan satisfies the best interests test. Among other things, the  
18 recoveries expected to be available to any non-consenting holders of Impaired Claims under the  
19 Plan will not be less than the recoveries expected to be available in a chapter 7 liquidation because  
20 such Impaired Claims will be paid in full with interest, ranging from prime (currently 5.25%) to  
21 5.75% under the Plan, and the holders of such Claims could not receive more than payment in full  
22 with interest at the legal rate (currently 2.71%) in a chapter 7 liquidation. See the Liquidation  
23 Analysis attached to this Disclosure Statement as **Exhibit “I.”**

24 In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor’s assets for  
25 distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code.  
26 Generally, secured creditors are paid first from the proceeds of sales of the properties securing their  
27 liens. If any assets are remaining in the estates after satisfaction of secured creditors’ claims from  
28 their collateral, administrative expenses are next to receive payment. Unsecured creditors are paid



1 from any remaining sales proceeds, according to their respective priorities. Unsecured creditors  
2 with the same priority share in proportion to the amount of their allowed claims in relationship to  
3 the total amount of allowed claims held by all unsecured creditors with the same priority. Finally,  
4 equity interest holders receive the balance that remains, if any, after all creditors are paid.

5 To the extent that Property is sold to make payments to Creditors under the Plan, it will be  
6 sold in a more informed and orderly fashion than in a liquidation under chapter 7, resulting in  
7 greater sale proceeds and quicker recoveries for creditors. The Reorganized Debtor has extensive  
8 familiarity with the Property and the market for such Property, and the experience necessary to  
9 maximize recoveries.

10 Further, liquidating Debtor's assets under chapter 7 would require the appointment of a  
11 chapter 7 trustee. Such an appointment would delay distributions to holders of Claims because the  
12 chapter 7 trustee and its retained professionals who would need to familiarize themselves with  
13 Debtor's Assets and devise a marketing strategy, both of which Debtor's current retained  
14 professionals have already invested time in doing.

15 Finally, the Plan provides that creditors will receive interest ranging from prime (currently  
16 5.25%) to 5.75% until their Claims have been paid in full. Unsecured creditors would only be  
17 entitled to interest at the legal rate (currently 2.71%) in a chapter 7 liquidation. See Bankruptcy  
18 Code section 726(a)(5).

19 Therefore, as more specifically demonstrated by the liquidation analysis attached hereto as  
20 **Exhibit "I,"** Debtor submits that the Plan satisfies the "best interests" test in Bankruptcy Code  
21 section 1129(a)(7) as to any non-consenting Classes.

22 • **Feasibility of the Plan.**

23 Bankruptcy Code section 1129(a)(11) requires a finding that confirmation of a plan is not  
24 likely to be followed by the liquidation, or the need for further financial reorganization, of the  
25 debtor or any successor-in-interest.

26 As discussed above, the Plan is premised upon the Reorganized Debtor's transfer all of its  
27 Assets (other than the Baxter Collateral and the Surrendered Collateral) to HB Farms, in exchange  
28 for the Exit Financing, membership interests in HB Farms, and HB Farms' assumption of all of the

1 Reorganized Debtor's obligations under the Secured Creditor Notes and the Junior Lien Notes. The  
2 Exit Financing will be converted into membership interests in HB Farms upon the Reorganized  
3 Debtor's contribution of its Assets to HB Farms.

4 Cashton will provide the Exit Financing to Debtor and will be the manager of HB Farms.  
5 HB Farms' primary goal will be to develop a pistachio operation on a portion of its real property,  
6 under Cashton's supervision. In addition, under Cashton's supervision, HB Farms may (i) sell  
7 undeveloped portions of its property to develop working capital, (ii) sell developed portions of its  
8 property to fund further development and land acquisitions, and (iii) construct, own and operate a  
9 nut processing and marketing facility on its property. In the event that HB Farms is unable to  
10 achieve its goals on account of its inability to secure adequate redevelopment and/or crop financing,  
11 then it may market all of its real property holdings for sale (and possible lease-back), in a manner  
12 reasonably designed to monetize its assets and repay its liabilities.

13 Cashton is a California limited liability company, owned 50% by Russell and Anne Harris  
14 and 50% by Douglas Brunner. Russell and Anne Harris, and their son-in-law, Douglas Brunner,  
15 are principals in various related farming entities collectively referred to herein as Harris Family  
16 Enterprises and have the experience and connections in the nut farming business to enable HB  
17 Farms to achieve its goals.

18 Harris Family Enterprises is generally comprised of family-owned companies dedicated to  
19 quality farming and food production. The major operating companies of Harris Family Enterprises  
20 are Harris Family Farms, The Almond Company, The Nursery Company, and The Hulling  
21 Company. Harris Family Farms was officially founded in 1985 in California but has its roots as a  
22 family farming business as early as the great depression. This entity farms more than 17,000 acres  
23 of almonds, wine grapes, raisins, walnuts, nursery trees, and row crops a year. The Almond  
24 Company is responsible for handling and processing the almonds and processes approximately 100  
25 million pounds of almonds for distribution domestically and globally. The Nursery Company is  
26 responsible for researching, planting, nurturing and selling almond trees throughout California. It  
27 sells approximately 3 million trees every year. The Hulling Company was established in 2001 and  
28 is the largest individually owned huller in the world. It processes nearly 100 million pounds of

1 almonds from approximately 125 growers worldwide. Collectively, the Harris Family Enterprises  
2 realized \$340,000,000.00 Gross sales in 2017 and has experienced steady growth since its inception.

3 As set forth above, Cashton will provide the Exit Financing which, together with DIP Loan,  
4 will constitute the Confirmation Funds that Debtor will use to make all Effective Date payments  
5 under the Plan. Cashton has also committed to ensure that HB Farms has sufficient funds to service  
6 the debt set forth in **Exhibit “J”** to this Disclosure Statement. Accordingly, HB Farms will have  
7 the financial capability to satisfy its obligations following the Effective Date of the Plan. Debtor  
8 submits that the Plan is feasible within the meaning of Bankruptcy Code section 1129(a)(11).

9 • **Confirmation Without Acceptance of All Impaired Classes -**  
10 **“Cramdown.”**

11 The Bankruptcy Code contains provisions which could enable the Bankruptcy Court to  
12 confirm the Plan, even though the Plan has not been accepted by all Impaired Classes, provided that  
13 the Plan has been accepted by at least one Impaired Class of Claims. Debtor believes that the Plan  
14 will be able to meet the statutory standards set forth in the Bankruptcy Code.

15 Bankruptcy Code section 1129(b)(1) states:

16 Notwithstanding section 510(a) of this title, if all of the applicable  
17 requirements of subsection (a) of this section other than paragraph (8) are  
18 met with respect to a plan, the court, on request of the proponent of the  
19 plan, shall confirm the plan notwithstanding the requirements of such  
20 paragraph if the plan does not discriminate unfairly, and is fair and  
21 equitable, with respect to each class of claims or interests that is impaired  
22 under, and has not accepted the plan.

23 This section makes clear that a plan must be confirmed notwithstanding the failure of an  
24 impaired class to accept the plan, so long as the plan “does not discriminate unfairly” and it is “fair  
25 and equitable” with respect to each rejecting class.

26 • **No Unfair Discrimination.**

27 A plan does not “discriminate unfairly” if (a) the plan does not treat any rejecting class of  
28 claims or equity interests in a manner that is materially less favorable than the treatment afforded to  
another class with similar legal claims against or equity interests in a debtor, and (b) no class  
receives payments in excess of that which it is legally entitled to receive for its claims or equity  
interests. However, a plan also may satisfy this requirement even if classes of claims or equity

1 interests that are of equal priority are receiving different treatment. The test does not require that  
2 the classes of equal priority receive identical treatment, but instead only that if there is a difference  
3 in treatment that such difference be “fair.”

4 The DIP Lender shall receive, in satisfaction of the DIP Lender Secured Claim, 100% of the  
5 New Equity Interests. All other Secured Claims will be paid in full under the Plan, either under the  
6 terms of the Baxter Settlement, in cash on the Effective Date, by surrender of their respective  
7 collateral on the Effective Date, or by payment over time, with interest, from the proceeds of  
8 Refinancing and/or Property Sales. All non-insider Unsecured Claims either (a) will be paid in full  
9 under the Plan over time, with interest, from the proceeds of Refinancing and/or Property Sales, or  
10 (b) will be paid with Property if not paid in full in Cash by the second anniversary of the Effective  
11 Date. Although Insider Claims will not receive or retain any property under the Plan, the Debtor  
12 believe that all Holders of Insider Claims will vote to accept the Plan. All Old Equity Interests will  
13 be extinguished and their Holders shall not receive or retain any property under the Plan.

14 No Class of Claims or Interests will receive payments or property with an aggregate value  
15 greater than the aggregate value of the Allowed Claims in such Class. Therefore, Debtor submits  
16 that if there are any rejecting Classes of Claims or Interests, the Plan nevertheless satisfies the “no  
17 unfair discrimination” requirement.

18 • **Fair And Equitable Test.**

19 The Bankruptcy Code sets forth three different standards for establishing that a plan is “fair  
20 and equitable” with respect to a rejecting class, depending on whether the class is comprised of  
21 secured or unsecured claims or equity interests. In general, Bankruptcy Code section 1129(b)  
22 permits confirmation notwithstanding non-acceptance by an impaired class if that class and all  
23 classes junior to it are treated in accordance with the “absolute priority” rule, which requires either  
24 that the dissenting class be paid in full, or if it is not, that no junior class receives or retains property  
25 under the plan. In addition, the “fair and equitable” standard has been interpreted to prohibit any  
26 class senior to a rejecting class from receiving under a plan more than 100% of its allowed claims.

27 Classes 1, 2(f), 2(g), 2(h), and 3 are not Impaired, and therefore their treatment must be  
28 deemed to be fair and equitable.

1 The Plan is fair and equitable with respect to Class 2(a) because the DIP Lender is receiving  
2 the New Equity Interests in exchange for its Claim and will vote to accept the Plan.

3 The Plan is fair and equitable with respect to Class 2(b) because the Holder of the Class 2(b)  
4 Secured Claim will receive the treatment it bargained for in the Baxter Settlement.

5 The Plan is fair and equitable with respect to Classes 2(c), 2(d), and 2(e) because each  
6 Holder of a Secured Claim in those Classes will retain its Lien on its respective Collateral and will  
7 receive deferred cash payments of a value, as of the Effective Date of the Plan, equal to the allowed  
8 amount of the such Secured Claim.

9 The Plan is fair and equitable with respect to Classes 2(f), 2(g), and 2(h) because the Debtor  
10 will surrender to each Holder of a Secured Claim in those Classes its respective Collateral in full  
11 satisfaction of such Secured Claim.

12 The Plan is fair and equitable with respect to Classes 4(a), 4(b), 4(c), and 4(d), which will  
13 receive payment in full, because Class 5 will receive less than payment in full and Class 6 will not  
14 receive or retain any property under the Plan.

15 The Plan is fair and equitable with respect to Class 5 because Class 6 will not receive or  
16 retain any property under the Plan, and the Debtor believes that Class 5 will vote to accept the Plan.

17 The Plan is fair and equitable with respect to Class 6 because there are no junior classes.

18 Therefore, Debtor submits that the Plan satisfies the “fair and equitable” requirement with  
19 respect to any rejecting Class(es).

20 **ARTICLE VII.**

21 **CERTAIN RISK FACTORS TO BE CONSIDERED**

22 Although Debtor believes that the Plan is confirmable and feasible, there are some risks that  
23 should be considered.

24 As discussed above, HB Farms intends to develop a pistachio operation and possibly a nut  
25 processing and marketing facility, to procure redevelopment and/or crop financing, and to sell  
26 portions of its property to develop working capital, fund further development and land acquisitions,  
27 and repay its debt. However, these goals are based on numerous assumptions, including industry  
28 performance, general business and economic conditions and other matters, many of which are

1 beyond the control of HB Farms and some or all of which may not materialize. In addition,  
2 unanticipated events and circumstances occurring subsequent to the date that this Disclosure  
3 Statement is approved by the Bankruptcy Court may affect the financial performance of HB Farms’  
4 operations, the value of its assets, and its ability to achieve its goals.

5 **ARTICLE VIII.**

6 **CERTAIN UNITED STATES FEDERAL INCOME TAX**

7 **CONSIDERATIONS OF THE PLAN**

8 **Section 8.1 Introduction.**

9 A summary description of certain material United States federal income tax consequences of  
10 the Plan is provided below. This description is for informational purposes only and, due to a lack of  
11 definitive judicial or administrative authority or interpretation, substantial uncertainties exist with  
12 respect to various tax consequences of the Plan as discussed herein. Only the principal  
13 consequences of the Plan for Holders of Claims who are entitled to vote to accept or reject the Plan  
14 are described below. This summary does not address the United States federal income tax  
15 consequences to the Debtor, or Holders of Claims who are deemed to have rejected the Plan in  
16 accordance with the provisions of section 1126(g) of the Bankruptcy Code, or Holders whose  
17 Claims are entitled to payment in full in cash, or the Holder of the Allowed DIP Lender Secured  
18 Claim, or the Holder of Allowed Old Equity Interests in Debtor. No opinion of counsel has been  
19 sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations  
20 of the Internal Revenue Service (“IRS”) or any other tax authorities have been or will be sought or  
21 obtained with respect to any tax consequences of the Plan, and the discussion below is not binding  
22 upon the IRS or such other authorities. No representations are being made regarding the particular  
23 tax consequences of the confirmation or implementation of the Plan as to any Holder of a Claim.  
24 No assurance can be given that the IRS would not assert, or that a court would not sustain, a  
25 different position from any discussed herein.

26 The discussion of United States federal income tax consequences below is based on the  
27 Internal Revenue Code of 1986, as amended (the “IRC”), the Treasury regulations promulgated  
28 thereunder, judicial authorities, published positions of the IRS, and other applicable authorities, all

1 as in effect on the date hereof and all of which are subject to differing interpretations or to change  
2 (possibly with retroactive effect). Any such change could significantly affect the United States  
3 federal income tax consequences described below.

4 The following discussion does not address foreign, state or local tax consequences of the  
5 Plan, nor does it purport to address the United States federal income tax consequences of the Plan to  
6 special classes of taxpayers (e.g., banks and certain other financial institutions, insurance  
7 companies, tax-exempt organizations, Holders of Claims who are (or who hold their Claims  
8 through) pass-through entities, persons whose functional currency is not the United States dollar,  
9 foreign persons, dealers in securities or foreign currency, and persons holding claims that are a  
10 hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive  
11 sale or conversion transaction). The following discussion assumes that Holders of Claims hold their  
12 Claims as capital assets for United States federal income tax purposes. Furthermore, the following  
13 discussion does not address United States federal taxes other than income taxes.

14 For purposes of the following discussion, a “United States person” is any of the following:

- 15 • an individual who is a citizen or resident of the United States;
- 16 • a corporation created or organized under the laws of the United States or any  
17 state or political subdivision thereof;
- 18 • an estate, the income of which is subject to federal income taxation  
19 regardless of its source; or
- 20 • a trust that (a) is subject to the primary supervision of a United States court  
21 and which has one or more United States fiduciaries who have the authority  
22 to control all substantial decisions of the trust, or (b) has a valid election in  
23 effect under applicable United States Treasury regulations to be treated as a  
24 United States person.

25 As used herein, the term “U.S. Holder” means a Holder of a Claim that is a United States  
26 person, the term “non-U.S. person” means a person other than a United States person and the term  
27 “Non-U.S. Holder” means a Holder of a Claim that is a non-U.S. person.

28

1           Accordingly, the following summary is for informational purposes only and is not a  
 2 substitute for careful tax planning or for advice based upon the particular circumstances  
 3 pertaining to the Debtor or to a Holder of a Claim. Holders of Claims are strongly urged to  
 4 consult their own tax advisors regarding the United States federal, state, local and any foreign  
 5 tax consequences of the transactions described herein or in the Plan.

6 **Section 8.2   Certain United States Federal Income Tax Consequences to Holders of Certain**  
 7 **Allowed Claims.**

8           As indicated in Section 8.1, what follows is a summary of certain United States federal  
 9 income tax consequences of the transactions contemplated by the Plan to Holders of Allowed  
 10 Claims who are entitled to vote to accept or reject the Plan (except for the Holder of the Allowed  
 11 DIP Lender Secured Claim). These consequences (including the character, timing and amount of  
 12 income, gain or loss recognized) will depend upon, among other things: (1) the manner in which a  
 13 Holder acquired a Claim; (2) the length of time the Claim has been held; (3) the Holder's method of  
 14 tax accounting; (4) whether the Holder of a Claim has taken a bad debt deduction with respect to the  
 15 Claim (or any portion of the Claim) in the current or prior years; and (5) (a) whether the Claim was  
 16 acquired at a discount, (b) whether the Holder of a Claim has previously included in income, for tax  
 17 purposes, accrued but unpaid interest with respect to the Claim, (c) whether the Claim constitutes an  
 18 installment obligation for United States federal income tax purposes and (d) whether the Claim  
 19 constitutes a "security" for United States federal income tax purposes. Therefore, Holders of  
 20 Claims should consult their own tax advisors for information that may be relevant to their particular  
 21 situations and circumstances and the particular tax consequences to them of the transactions  
 22 contemplated by the Plan.

23           •       **Class 2(b).**

24           The Holder of the Allowed Baxter Secured Claim (the Baxter Assignee) is disregarded as an  
 25 entity separate from its owner for United States federal income tax purposes. Accordingly, the  
 26 Holder of the Allowed Baxter Secured Claim generally will not have any United States federal  
 27 income tax consequences in connection with the treatment of the Allowed Baxter Secured Claim  
 28 that is contemplated by the Plan.



1 • **Classes 2(c), 2(d) and 2(e).**

2 Pursuant to the Plan, the Holder of the Allowed Baum Secured Claim will receive  
3 the Baum Secured Note, which will be secured by the Baum Collateral. Pursuant to the Baum  
4 Secured Note, the Reorganized Debtor shall pay the Holder of the Allowed Baum Secured Claim  
5 monthly installments of principal, together with interest at the rate of 5.75% per annum, based on a  
6 thirty (30) year amortization schedule, with all remaining principal and interest due on the third  
7 anniversary of the Effective Date. The Holder of the Allowed Baum Secured Claim generally will  
8 realize gain or loss as a result of receiving the Baum Secured Note pursuant to the Plan, in an  
9 amount equal to the difference, if any, between (a) the issue price of the Baum Secured Note (which  
10 generally will be the principal amount of the Baum Secured Note), other than amounts received in  
11 respect of accrued but unpaid interest, and (b) the Holder's adjusted tax basis in the Claim.

12 Pursuant to the Plan, the Holder of the Allowed McKenna Secured Claim will receive the  
13 McKenna Secured Note, which will be secured by the McKenna Collateral. Pursuant to the  
14 McKenna Secured Note, the Reorganized Debtor shall pay the Holder of the Allowed McKenna  
15 Secured Claim monthly installments of principal, together with interest at the rate of 5.75% per  
16 annum, based on a thirty (30) year amortization schedule, with all remaining principal and interest  
17 due on the third anniversary of the Effective Date. The Holder of the Allowed McKenna Secured  
18 Claim generally will realize gain or loss as a result of receiving the McKenna Secured Note  
19 pursuant to the Plan, in an amount equal to the difference, if any, between (a) the issue price of the  
20 McKenna Secured Note (which generally will be the principal amount of the McKenna Secured  
21 Note), other than amounts received in respect of accrued but unpaid interest, and (b) the Holder's  
22 adjusted tax basis in the Claim.

23 Pursuant to the Plan, the Holder of the Allowed Thompson Secured Claim will receive the  
24 Thompson Secured Note, which will be secured by the Thompson Collateral. Pursuant to the  
25 Thompson Secured Note, the Reorganized Debtor shall pay the Holder of the Allowed Thompson  
26 Secured Claim monthly installments of principal, together with interest at the rate of 5.75% per  
27 annum, based on a thirty (30) year amortization schedule, with all remaining principal and interest  
28 due on the third anniversary of the Effective Date. The Holder of the Allowed Thompson Secured

1 Claim generally will realize gain or loss as a result of receiving the Thompson Secured Note  
2 pursuant to the Plan, in an amount equal to the difference, if any, between (a) the issue price of the  
3 Thompson Secured Note (which generally will be the principal amount of the Thompson Secured  
4 Note), other than amounts received in respect of accrued but unpaid interest, and (b) the Holder's  
5 adjusted tax basis in the Claim.

6 • **Classes 2(f), 2(g), and 2(h).**

7 Pursuant to the Plan, the Holder of the Allowed Moreno Secured Claim shall receive the  
8 Moreno Collateral, provided that if the Holder establishes, as more fully provided in the Plan, that  
9 amount of the Allowed Claim exceeds the value of the Moreno Collateral, then such Holder shall  
10 also be entitled to a Class 4(a) Allowed General Unsecured Claim. The Holder of the Allowed  
11 Moreno Secured Claim generally will realize gain or loss as a result of receiving the Moreno  
12 Collateral and the Reorganized Debtor's obligation in respect of any Class 4(a) Allowed Unsecured  
13 Claim, in an amount equal to the difference, if any, between (a) the fair market value of the Moreno  
14 Collateral and, if applicable, the issue price of the Reorganized Debtor's obligation in respect of the  
15 Class 4(a) Allowed General Unsecured Claim (generally determined in accordance with Treasury  
16 regulations section 1.1274-2), other than amounts received in respect of accrued but unpaid interest,  
17 and (b) the Holder's adjusted tax basis in the Claim.

18 Pursuant to the Plan, the Holder of the Allowed Ritchie Secured Claim shall receive the  
19 Ritchie Collateral, provided that if the Holder establishes, as more fully provided in the Plan, that  
20 amount of the Allowed Claim exceeds the value of the Ritchie Collateral, then such Holder shall  
21 also be entitled to a Class 4(a) Allowed General Unsecured Claim. The Holder of the Allowed  
22 Ritchie Secured Claim generally will realize gain or loss as a result of receiving the Ritchie  
23 Collateral and the Reorganized Debtor's obligation in respect of any Class 4(a) Allowed Unsecured  
24 Claim, in an amount equal to the difference, if any, between (a) the fair market value of the Ritchie  
25 Collateral and, if applicable, the issue price of the Reorganized Debtor's obligation in respect of the  
26 Class 4(a) Allowed General Unsecured Claim (generally determined in accordance with Treasury  
27 regulations section 1.1274-2), other than amounts received in respect of accrued but unpaid interest,  
28 and (b) the Holder's adjusted tax basis in the Claim.

1 Pursuant to the Plan, the Holder of the Allowed Lysgaard Secured Claim shall receive the  
2 Lysgaard Collateral, provided that if the Holder establishes, as more fully provided in the Plan, that  
3 amount of the Allowed Claim exceeds the value of the Lysgaard Collateral, then such Holder shall  
4 also be entitled to a Class 4(a) Allowed General Unsecured Claim. The Holder of the Allowed  
5 Lysgaard Secured Claim generally will realize gain or loss as a result of receiving the Lysgaard  
6 Collateral and the Reorganized Debtor's obligation in respect of any Class 4(a) Allowed Unsecured  
7 Claim, in an amount equal to the difference, if any, between (a) the fair market value of the  
8 Lysgaard Collateral and, if applicable, the Reorganized Debtor's obligation in respect of the issue  
9 price of the Class 4(a) Allowed General Unsecured Claim (generally determined in accordance with  
10 Treasury regulations section 1.1274-2), other than amounts received in respect of accrued but  
11 unpaid interest, and (b) the Holder's adjusted tax basis in the Claim.

12 • **Classes 4(a), 4(b), 4(c) and 4(d).**

13 Pursuant to the Plan, each Holders of the Allowed General Unsecured Claims, the Allowed  
14 Loftin Unsecured Claim, the Allowed Cashman Unsecured Claim and the Allowed Utica Unsecured  
15 Claim shall receive, respectively, a Class 4(a) Junior Lien Note, the Class 4(b) Junior Lien Note, the  
16 Class 4(c) Junior Lien Note, and the Class 4(d) Junior Lien Note, each in the amount of their  
17 respective Claims, which shall be secured by a Junior Lien on all Unencumbered Property, bear  
18 Post Effective Date Interest, and be paid, after satisfaction in full of the Allowed Deferred  
19 Administrative Claims, and Pro Rata with each such other Unsecured Claims, from the proceeds of  
20 Refinancing and/or Property Sales; provided, that if any such Note has not been paid in full,  
21 including Post Effective Date Interest, on the second anniversary of the Effective Date, then the  
22 Holder shall, in full satisfaction, settlement release and exchange for any remaining unpaid balance  
23 of such Note, receive Property of a Value, as determined by the Bankruptcy Court as soon as  
24 practicable after the second anniversary of the Effective Date, equal to such unpaid balance. Each  
25 such Holder generally will realize gain or loss in an amount equal to the difference, if any, between  
26 (a) the issue price of the Reorganized Debtor's obligation under the Plan to such Holder (which  
27 generally will be determined in accordance with Treasury regulations section 1.1274-2), other than  
28

1 amounts received in respect of accrued but unpaid interest, and (b) the Holder’s adjusted tax basis in  
2 the Claim.

3 • **Class 5.**

4 Pursuant to the Plan, each Holder of an Allowed Insider Unsecured Claim shall receive, in  
5 exchange for such Claim, its Pro Rata share of the Insider Claim Fund. Each such Holder generally  
6 will realize gain or loss in an amount equal to the difference, if any, between (a) the amount  
7 received, and (b) the Holder’s adjusted tax basis in the Claim.

8 **Section 8.3 General United States Federal Income Tax Considerations for Certain Holders**  
9 **of Allowed Claims.**

10 • **Bad Debt Deduction and Worthless Securities Deduction.**

11 In general, a Holder of an Allowed Claim that is not a security for purposes of Section  
12 165(g) of the IRC who receives in exchange, pursuant to the Plan, an amount of consideration that  
13 is less than the Holder’s tax basis in the Allowed Claim, may be entitled, in the year of receipt (or in  
14 an earlier year), to a bad debt deduction under Section 166(a) of the IRC, or may be entitled to a  
15 loss deduction under Section 165(a) of the IRC in the year of receipt. Any such loss would be  
16 limited to the Holder’s tax basis in the Allowed Claim.

17 A Holder of stock or securities whose Allowed Claim is deemed to be wholly worthless may  
18 be entitled to a worthless securities deduction under Sections 165(g) and 165(a) of the IRC. The  
19 rules governing the timing and amount of such deductions place considerable emphasis on the facts  
20 and circumstances of the Holder, the obligor, and the instrument with respect to which a deduction  
21 is claimed. Any such loss would be limited to the Holder’s tax basis in the equity interest  
22 underlying its claim.

23 • **Market Discount.**

24 If a Holder of an Allowed Claim purchased the underlying security or debt obligation at a  
25 price less than its issue price, the difference would constitute “market discount” for United States  
26 federal income tax purposes. Any gain recognized by a Holder on the exchange of its Allowed  
27 Claim on the Effective Date should be treated as ordinary income to the extent of any market  
28 discount that accrued on the underlying securities or debt obligations while in the hands of the

1 Holder. Any additional accrued but unrecognized market discount should carry over to any  
2 securities or debt obligation received in a tax-free exchange pursuant to the Plan, and should be  
3 allocated among such securities or debt obligation based upon their relative fair market values as of  
4 the Effective Date. Any gain recognized by such Holder on a subsequent disposition of such  
5 securities or debt obligation received under the Plan may be treated as ordinary income to the extent  
6 of the accrued but unrecognized market discount as of the date of the exchange.

7 • **Original Issue Discount.**

8 Holders of the Allowed General Unsecured Claims, the Allowed Loftin Unsecured Claim,  
9 the Allowed Cashman Unsecured Claim, the Allowed Utica Unsecured Claim, and the Allowed  
10 Insider Unsecured Claims may have to report interest income under the original issue discount rules  
11 for United States federal income tax purposes in connection with the Reorganized Debtor's  
12 obligations they receive pursuant to the Plan with respect to their Claims, even in years in which  
13 they don't receive any amounts under such obligations.

14 • **Allocation of Consideration to Interest.**

15 Pursuant to the section 6.11 of the Plan, all distributions in respect of Allowed Claims will  
16 be allocated first to the principal amount of the Allowed Claim (as determined for United States  
17 federal income tax purposes), with any excess allocated to accrued but unpaid interest. However,  
18 there is no assurance that such allocation would be respected by the IRS for United States federal  
19 income tax purposes. In general, to the extent any amount received (whether cash or other  
20 property) by a holder of a debt instrument is received in satisfaction of accrued interest during its  
21 holding period, such amount will be taxable to the holder as interest income (if not previously  
22 included in the holder's gross income under the holder's normal method of accounting).  
23 Conversely, a holder generally recognizes a deductible loss to the extent any accrued interest  
24 claimed was previously included in its gross income and is not paid in full. Each holder of an  
25 Allowed Claim is urged to consult its own tax advisor regarding the allocation of consideration and  
26 the taxation or deductibility of unpaid interest for tax purposes.

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- **Information Reporting and Backup Withholding.**

Certain payments, including payments in respect of accrued interest or original issue discount, are generally subject to information reporting by the payor to the IRS. Moreover, such reportable payments are subject to backup withholding (currently at a rate of 24%) in certain circumstances. Under the backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding at the applicable rate with respect to certain distributions or payments pursuant to the Plan, unless the Holder (a) falls within certain exempt categories (which generally include corporations) or (b) provides a correct U.S. taxpayer identification and certifies under penalties of perjury that the Holder is a United States person, the taxpayer identification number is correct, and the Holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder's U.S. federal income tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS.

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CONSULTATION, ADVICE AND CAREFUL TAX PLANNING WITH AND FROM A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE NOR SHOULD IT BE CONSTRUED AS SUCH. THE POTENTIAL TAX CONSEQUENCES ARE, IN MANY CASES, UNCERTAIN AND WILL VARY DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF A HOLDER OF CLAIM. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR TAX ADVISERS ABOUT THE UNITED STATES FEDERAL, STATE, LOCAL AND APPLICABLE FOREIGN INCOME, AS WELL AS OTHER TAX, CONSEQUENCES OF THE PLAN THAT ARE OR MAY BE RELEVANT TO THEM.**

1 **ARTICLE IX.**

2 **FURTHER INFORMATION**

3 If you have any questions or require further information about the voting procedures for  
4 voting your Claim, or about the packet of material you received, or if you wish to obtain an  
5 additional copy of the Plan, the Disclosure Statement, or any Exhibits to such documents (at your  
6 own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d)), please contact  
7 Fox Rothschild LLP, at:

8 Fox Rothschild LLP  
9 Attn: Brett A. Axelrod  
10 1980 Festival Plaza Drive, Suite 700  
11 Las Vegas, NV 89135  
12 Telephone: (702) 262-6899  
13 Email: baxelrod@foxrothschild.com

14 Additional information about the Chapter 11 Case, including the full docket of all pleadings  
15 filed in the Chapter 11 Case, is available at <http://www.nvb.uscourts.gov>.

16 **ARTICLE X.**

17 **ALTERNATIVE TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

18 Debtor's exclusive Filing and Solicitation Periods expired on March 23, 2017, and May 22,  
19 2017, respectively, affording other parties the opportunity to submit competing plans of  
20 reorganization. See Docket Nos. 167 & 220. If the Plan is not confirmed, any other party in  
21 interest can formulate a different plan of reorganization. Such a plan of reorganization might  
22 involve either a reorganization and continuation of the business of Debtor, the sale of Debtor as a  
23 going concern or an orderly liquidation of Debtor's Estate.

24 With respect to an alternative plan of reorganization, Debtor has examined various other  
25 alternatives in connection with the process involved in the formulation and development of the Plan.  
26 Debtor believes that the Plan, as described herein, enables Holders of Claims to realize the best  
27 recoveries under the present circumstances. In a liquidation of Debtor under chapter 11, the  
28 properties and interests in property likely would be sold in a more orderly fashion and over a more  
extended period of time than in a liquidation under chapter 7, probably resulting in marginally  
greater recoveries. Further, if a trustee were not appointed, since one is not required in a chapter 11

1 case, the expenses for professional fees would most likely be lower than in a chapter 7 case.  
2 However, although preferable to a chapter 7 liquidation, Debtor believes that its liquidation under  
3 chapter 11 is a much less attractive alternative because the recovery realized by Holders of Allowed  
4 Claims under the Plan is likely to be greater than their recovery under a chapter 11 liquidation.

5 Alternatively, if no plan can be confirmed, Debtor’s Chapter 11 Case may be dismissed. In  
6 such event, a race to the courthouse would ensue, with the swiftest creditors receiving satisfaction in  
7 full while the less swift creditors may be left empty-handed, given the illiquid nature of Debtor’s  
8 Assets.

9 DEBTOR BELIEVES THAT CONFIRMATION AND IMPLEMENTATION OF THE  
10 PLAN IS PREFERABLE BECAUSE IT IS EXPECTED TO PROVIDE GREATER  
11 RECOVERIES AND INVOLVE LESS DELAY AND UNCERTAINTY AND LOWER  
12 ADMINISTRATIVE COSTS. ACCORDINGLY, DEBTOR URGES HOLDERS OF CLAIMS  
13 AND INTERESTS IN CLASSES 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d), and 5 TO VOTE  
14 TO ACCEPT THE PLAN BY SO INDICATING ON THEIR BALLOTS AND RETURNING  
15 THEM AS SPECIFIED IN THE NOTICE.

16 **ARTICLE XI.**

17 **RECOMMENDATION AND CONCLUSION**

18 Debtor believes that the Plan provides the best possible recoveries for Creditors that can be  
19 achieved in any reasonable time frame (*but see Risk Factors, Article VII above*) and that possible  
20 alternatives are likely to result in delayed Distributions for all and diminished recoveries for  
21 Holders of Unsecured Claims and Interests. Therefore, Debtor urges all Holders of Claims and  
22 Interests in Classes 2(a), 2(b), 2(c), 2(d), 2(e), 4(a), 4(b), 4(c), 4(d), and 5 to vote to accept the Plan.

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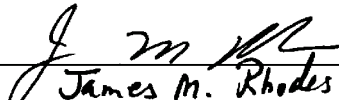
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1 DATED this 10<sup>th</sup> day of December, 2018.

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Avery Land Group, LLC,  
A Nevada limited liability company

By:   
Name: James M. Rhodes  
Title: Manager

Respectfully submitted by:

**FOX ROTHSCHILD LLP**

By: /s/Brett A. Axelrod  
BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
AMANDA A. HUNT, ESQ.  
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**EXHIBIT A**  
**THIRD AMENDED CHAPTER 11 PLAN**  
**OF REORGANIZATION**  
**DATED DECEMBER 10, 2018**

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8 *Counsel for Avery Land Group, LLC*

Electronically Filed December 10, 2018

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re

12 AVERY LAND GROUP, LLC,  
13 a Nevada limited liability company,

14 Debtor.

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

Chapter 11

**THIRD AMENDED CHAPTER 11  
PLAN OF REORGANIZATION  
DATED DECEMBER 10, 2018**

Hearing Date: N/A

Hearing Time: N/A

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17  
18 **ANY OFFER OR SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE**  
19 **ABOVE-REFERENCED PLAN WILL COMPLY WITH ALL APPLICABLE**  
20 **PROVISIONS OF THE BANKRUPTCY CODE ONCE A DISCLOSURE**  
21 **STATEMENT TO ACCOMPANY SUCH PLAN HAS BEEN APPROVED BY THIS**  
22 **COURT. ALL REFERENCES TO THE DISCLOSURE STATEMENT CONTAINED**  
23 **HEREIN ARE TO SUCH DISCLOSURE STATEMENT AND THE EXHIBITS TO BE**  
24 **ATTACHED THERETO THAT WILL CONTAIN MATERIAL INFORMATION**  
25 **ABOUT DEBTOR AND WILL BE SUBMITTED FOR COURT APPROVAL AT THE**  
26 **EARLIEST POSSIBLE OPPORTUNITY.**

27 Avery Land Group, LLC (“Debtor”), debtor and debtor-in-possession in the above-  
28 captioned case (the “Chapter 11 Case”), hereby proposes its *Third Amended Chapter 11 Plan of  
Reorganization Dated as of December 10, 2018* (the “Plan”), pursuant to section 1121(a) of title  
11 of the United States Code (the “Bankruptcy Code”).

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**DISCLAIMER**

Reference is made to the Disclosure Statement accompanying this Plan, including the exhibits appended thereto, for a discussion of Debtor’s history, business, results of operations and properties, and brief summary and detailed analysis of this Plan. All creditors are encouraged to consult the Disclosure Statement and to read this Plan carefully and completely before voting to accept or reject this Plan.

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

**ARTICLE I**

**DEFINITIONS AND RULES OF INTERPRETATION**

**A. Definitions.**

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

1.2 “Administrative Claim” means a Claim for costs and expenses of administration, pursuant to Bankruptcy Code sections 503(b), 507(a)(2) or 507(b), including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of Debtor (such as wages, salaries, or commissions

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

8 1.3 “Administrative Claim Bar Date” means the deadline for filing requests for payment  
9 of Administrative Claims, which shall be thirty (30) days prior to the Effective Date, except with  
10 respect to Professional Fees, which shall be subject to the provisions of Section 2.2 hereof. The  
11 Administrative Claim Bar Date does not apply to the fees and charges assessed against the Estate  
12 pursuant to Section 123 of the Judicial Code and 28 U.S.C. § 1930. Such fees and charges are not  
13 subject to an allowance procedure under 11 U.S.C. § 503(b).

14 1.4 “Allowed” means, with reference to any Claim, Equity Interest or Interest and with  
15 respect to Debtor: (a) any Claim against or Interest in Debtor that has been listed by Debtor in its  
16 Schedules, as such Schedules may be amended by Debtor from time to time in accordance with  
17 Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no  
18 contrary Proof of Claim or Interest has been Filed; (b) any Claim or Interest allowed (i) under this  
19 Plan, (ii) by Final Order, or (iii) as to which the liability of Debtor and the amount thereof are  
20 determined by a final order of a court of competent jurisdiction other than the Bankruptcy Court;  
21 or (c) as to which a Proof of Claim has been timely Filed in a liquidated amount with the Bankruptcy  
22 Court, pursuant to the Bankruptcy Code or any order of the Bankruptcy Court, or has been Filed  
23 with leave of the Bankruptcy Court after notice and a hearing, provided that no objection to the  
24 allowance of such Claim or motion to expunge such Claim has been interposed by any party in  
25 interest before any final date for the filing of such objections or motions set forth in this Plan, the  
26 Confirmation Order or other order of the Bankruptcy Court. For purposes of determining the  
27 amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of  
28 any valid and enforceable Claim that Debtor may hold against the Holder thereof, to the extent such

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1 Claim may be validly offset, recouped, or otherwise reduced under applicable law.

2 1.5 “Assets” means all of the assets, property (including the Property), interests, and  
3 effects, Cash, receivables, real and personal, tangible and intangible, wherever situated, of Debtor,  
4 as they existed on the Effective Date or thereafter, including all of the Debtor’s other non-Cash  
5 property and assets, including all of the Causes of Action.

6 1.6 “Avoidable” means subject to avoidance under Chapter 5 of the Bankruptcy Code.

7 1.7 “Avoidance Actions” means all claims, rights, and causes of action of Debtor’s Estate  
8 under the Bankruptcy Code, including but not limited to those set forth in sections 506(c), 506(d),  
9 510, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553, or their state law analogs, regardless of  
10 whether or not such actions have been commenced prior to the Effective Date.

11 1.8 “Bankruptcy Code” means Title 11 of the United States Code, as amended from time  
12 to time, as applicable to this Chapter 11 Case.

13 1.9 “Bankruptcy Court” means the United States Bankruptcy Court for the District of  
14 Nevada, or such other court as may from time to time have jurisdiction over this Chapter 11 Case.

15 1.10 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as heretofore  
16 or hereafter amended and the general, local and chambers rules and orders of the Bankruptcy Court.

17 1.11 “Bar Date” means January 11, 2017, the date established by the Bankruptcy Court by  
18 which non-governmental Creditors were required to file proofs of claim with respect to pre-petition  
19 Claims, including Claims asserted pursuant to Bankruptcy Code section 503(b)(9), except with  
20 respect to Administrative Claims, Claims arising from the rejection of any executory contracts and  
21 unexpired leases, and Claims that were scheduled by the Debtor as undisputed, non-contingent, and  
22 unliquidated; and March 8, 2017, by which governmental Creditors were required to file proofs of  
23 claim with respect to pre-petition Claims, including but not limited to Priority Tax Claims.

24 1.12 “Baum” means Jonathan Baum.

25 1.13 “Baum Collateral” means all Assets that secure the Baum Secured Claim by means  
26 of a Lien that is not Avoidable.

27 1.14 “Baum Secured Claim” means the Secured Claim Scheduled by Debtor in favor of  
28 Baum.

1 1.15 “Baxter” means the K & L Baxter Family Ltd. Partnership.

2 1.16 “Baxter Assignee” means Baxter Lienholder, LLC, the assignee of the Baxter Claim  
3 pursuant to that certain Claim Purchase Agreement, dated August 1, 2018.

4 1.17 “Baxter Collateral” means all Assets that secure the Baxter Secured Claim by means  
5 of a Lien that is not Avoidable.

6 1.18 “Baxter Liens” means all Liens asserted against the Baxter Collateral to secure the  
7 Baxter Secured Claim.

8 1.19 “Baxter Loan” means that certain Loan Agreement dated as of August 10, 2018,  
9 among the DIP Lender, London Land Holdings, LLC, Baxter Assignee and 5212 Spanish Heights,  
10 LLC, on the one hand, and Casa Lender LLC, on the other hand.

11 1.20 “Baxter Guarantees” means, collectively, those certain Guaranty Agreements dated  
12 September 6, 2013, and September 12, 2014, executed by James M. Rhodes, Harmony Homes,  
13 Inc., and the JMR Irrevocable Investment Trust in favor of Baxter.

14 1.21 “Baxter Secured Claim” means the Secured Claim asserted by Baxter in Proof of  
15 Claim No. 34, and transferred to the Baxter Assignee.

16 1.22 “Baxter Subsidiary” means a single purpose entity that is a wholly owned subsidiary  
17 of Reorganized Debtor, to be formed on the Effective Date.

18 1.23 “Baum Secured Note” means the promissory note, signed by the Reorganized Debtor  
19 and reflecting the obligations of the Reorganized Debtor to Baum under this Plan, substantially in  
20 the form annexed as an exhibit to the Disclosure Statement.

21 1.24 “Business Day” means a day, other than a Saturday, Sunday, or other day on which  
22 commercial banks in Las Vegas, Nevada are authorized or required by law to close.

23 1.25 “Cash” means legal tender of the United States of America, which may be conveyed  
24 by check or wire transfer.

25 1.26 “Cashman” means Cashman Equipment Company

26 1.27 “Cashman Settlement Agreement” means that certain *Settlement Agreement and*  
27 *Release of Claims* dated March 31, 2017, between Cashman and James M. Rhodes.

28

1 1.28 “Cashman Unsecured Claim” means the Claim asserted by Cashman Equipment  
2 Company in Proof of Claim No. 52, that is guaranteed by a non-Debtor.

3 1.29 “Cashman Unsecured Claim Balance” has the meaning ascribed to it in Section 2.3(f)  
4 of this Plan.

5 1.30 “Cashton” means Cashton Land Development, LLC, a California limited liability  
6 company.

7 1.31 “Causes of Action” means any Claim, Avoidance Action, cause of action,  
8 controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage,  
9 judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character  
10 whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or  
11 unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable  
12 directly or derivatively, whether arising before, on or after the Petition Date, in contract or in tort,  
13 in law or in equity, or pursuant to any other theory of law.

14 1.32 “Chapter 11 Case” means the chapter 11 case filed by Debtor as set forth in the  
15 caption to this Plan.

16 1.33 “Claim” has the meaning set forth in Bankruptcy Code section 101(5).

17 1.34 “Claims Register” means the official register of Claims and Interests maintained by  
18 Debtor.

19 1.35 “Class” means a class of Holders of Claims or Interests as described in Article II of  
20 the Plan.

21 1.36 “Class 4(a) Junior Lien Note” means a promissory note, signed by the Reorganized  
22 Debtor and reflecting the obligations of the Reorganized Debtor to each Holder of a Class 4(a)  
23 General Unsecured Claim under this Plan, substantially in the form annexed as an exhibit to the  
24 Disclosure Statement.

25 1.37 “Class 4(b) Junior Lien Note” means the promissory note, signed by the Reorganized  
26 Debtor and reflecting the obligations of the Reorganized Debtor to the Holder of the Class 4(b)  
27 Loftin Unsecured Claim under this Plan, substantially in the form annexed as an exhibit to the  
28 Disclosure Statement.



1 1.38 “Class 4(c) Junior Lien Note” means the promissory note, signed by the Reorganized  
2 Debtor and reflecting the obligations of the Reorganized Debtor to the Holder of the Class 4(c)  
3 Cashman Unsecured Claim under this Plan, substantially in the form annexed as an exhibit to the  
4 Disclosure Statement.

5 1.39 “Class 4(d) Junior Lien Note” means the promissory note, signed by the Reorganized  
6 Debtor and reflecting the obligations of the Reorganized Debtor to the Holder of the Class 4(d)  
7 Utica Unsecured Claim under this Plan, substantially in the form annexed as an exhibit to the  
8 Disclosure Statement.

9 1.40 “Confirmation” means the entry by the Bankruptcy Court of the Confirmation Order.

10 1.41 “Confirmation Date” means the date upon which the clerk of the Bankruptcy Court  
11 enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of  
12 Bankruptcy Rules 5003 and 9021.

13 1.42 “Confirmation Funds” means the Insider Claim Fund and the Post Effective Date Fee  
14 Fund, together with (a) all funds required to be disbursed, or deposited and held for later  
15 disbursement upon allowance or other Bankruptcy Court authorization, on or as of the Effective  
16 Date (i) to Holders of Allowed Professional Fee Claims, other Allowed Administrative Claims,  
17 Allowed Priority Claims, and Allowed Priority Tax Claims to be paid in Cash on the Effective  
18 Date; (ii) to the U.S. Trustee for US Trustee Fees due as of the Effective Date; and (iii) for any  
19 other Distributions and payment of costs and expenses in connection with consummating the Plan.

20 1.43 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider  
21 confirmation of the Plan pursuant to Bankruptcy Code section 1129, as such hearing may be  
22 adjourned or continued from time to time.

23 1.44 “Confirmation Order” means the order entered by the Bankruptcy Court confirming  
24 the Plan in accordance with the Bankruptcy Code, which shall be in form and substance reasonably  
25 acceptable to Debtor.

26 1.45 “Creditor” means a Holder of a Claim.

27 1.46 “Debtor” means Avery Land Group, LLC, a Nevada limited liability company.  
28

1 1.47 “Debtor in Possession” means the Debtor, as debtor in possession in the Chapter 11  
2 Case, pursuant to Bankruptcy Code sections 1107 and 1108.

3 1.48 “Deferred Administrative Claim” has the meaning ascribed to it in Section 2.2(a)(2)  
4 of this Plan.

5 1.49 “DIP Drawdown” has the meaning ascribed to it in Section 5.1(b) of this Plan.

6 1.50 “DIP Lender” means Gypsum Resources I, LLC.

7 1.51 “DIP Lender Secured Claim” means, collectively, all Claims of the DIP Lender under  
8 the DIP Loan.

9 1.52 “DIP Loan” means the advance of funds by the DIP Lender under the Debtor-In-  
10 Possession Revolving Credit Agreement, approved by the Court in its *Order Pursuant to 11 U.S.C.*  
11 *105, 364, Fed. R. Bankr. P. Rule 4001(C) and L.R. 4001(B) and (C): (I) Authorizing Debtor to*  
12 *Obtain Post-Petition Financing; (II) Granting Related Relief* [Docket No. 139]

13 1.53 “Disallowed Claim” means any Claim or portion thereof that has been disallowed by  
14 a Final Order of the Bankruptcy Court.

15 1.54 “Disclosure Statement” means the solicitation and disclosure statement for this Plan,  
16 including all exhibits and schedules thereto.

17 1.55 “Disputed Claim” means: (a) any Claim or portion of a Claim (including any  
18 Administrative Claim, Priority Claim or Secured Claim) listed in the Schedules as disputed,  
19 contingent or unliquidated; or (b) any Claim, as to which an objection to the allowance thereof has  
20 been filed with the Bankruptcy Court within any time limitation fixed by the Bankruptcy Code, the  
21 Bankruptcy Rules, this Plan or an order of the Bankruptcy Court, which objection has not been  
22 settled, withdrawn, or determined, in whole or in part, by a Final Order.

23 1.56 “Distribution” means any distribution made by the Distribution Agent pursuant to the  
24 terms of this Plan.

25 1.57 “Distribution Agent” means Debtor, Reorganized Debtor, or the Person or Entity  
26 chosen by Debtor to make or facilitate Distributions pursuant to this Plan.

27 1.58 “Distribution Record Date” means the Confirmation Date unless the Bankruptcy  
28 Court establishes a different date for the Distribution Record Date in the Confirmation Order.

1 1.59 “Disputed Claims Reserve” means the Distribution Agent’s segregated reserve  
2 account for disputed claims, as defined in Section 8.6 of this Plan.

3 1.60 “Effective Date” means fourteen (14) days after the Court enters the Confirmation  
4 Order.

5 1.61 “Entity” has the meaning as set forth in Bankruptcy Code section 101(15).

6 1.62 “Estate” means the estate of Debtor that was created by the commencement of the  
7 Chapter 11 Case pursuant to Bankruptcy Code section 541, and shall be deemed to include any and  
8 all privileges and incorporeal hereditaments of Debtor and any and all interests in property, whether  
9 real, personal or mixed, rights, Causes of Action, avoidance powers or extensions of time that  
10 Debtor or the estate shall have had effective as of the Petition Date or thereafter, whether by virtue  
11 of Bankruptcy Code sections 544, 545, 546, 547, 548, 549 or 550 or otherwise.

12 1.63 “Equity Interest” has the same meaning as “Interest.”

13 1.64 “Exit Financing” means a loan in the amount of \$1,350,000 to be made to the  
14 Reorganized Debtor by Cashton, which shall be secured by a senior Lien on all Unencumbered  
15 Property, bear interest at six percent (6%) per annum and be due eighteen (18) months after the  
16 Effective Date; *provided, however*, that the Exit Financing (principal and accrued interest) shall be  
17 converted to equity in HB Farms upon the fulfillment of certain conditions described in the  
18 Disclosure Statement.

19 1.65 “File” means to file with the Bankruptcy Court in the Chapter 11 Case.

20 1.66 “Final Decree” means an order of the Bankruptcy Court closing the Chapter 11 Case  
21 pursuant to Bankruptcy Code section 350.

22 1.67 “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 1.68 “General Unsecured Claim Balances” has the meaning ascribed to it in Section 2.3(d)  
9 of this Plan.

10 1.69 “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 Claims, and that are not subject to subordination by agreement  
13 or otherwise.

14 1.70 “HB Farms” means Harris Brunner Farms, LLC, a California limited liability  
15 company, whose members are Cashton and certain Rhodes Affiliates, including the Reorganized  
16 Debtor.

17 1.71 “HB Farms Property” means all Property except the Baxter Collateral.

18 1.72 “Holder” means any Person or Entity that is the owner of a Claim or Interest in the  
19 Chapter 11 Case.

20 1.73 “Impaired” means with respect to any Class of Claims or Interests, a Class of Claims  
21 or Interests that is impaired within the meaning of Bankruptcy Code section 1124.

22 1.74 “Insider Claims” means all Claims held by insiders against Debtor, including Claims  
23 resulting from rejection of executory contracts and unexpired leases, other than the DIP Lender  
24 Secured Claim.

25 1.75 “Insider Claim Fund” means \$40,000 in Cash, funded by a draw down of the DIP  
26 Loan on the Effective Date.

27 1.76 “Interest” means any: (i) any equity or other ownership interest in any Person or  
28 Entity, including, but not limited to, all issued and outstanding or reserved for issuance, common

1 stock, preferred stock, membership interests, warrants, options, or other ownership rights or rights  
2 to purchase or receive additional shares of stock or membership interests in any Person or Entity,  
3 and/or any other instrument or document to the extent that it directly or indirectly evidences, creates  
4 or reserves any equity or ownership interest in any Person or Entity giving rise to any Claim or  
5 Interest, (ii) equity security, including all membership interests together with any warrants, options,  
6 or contractual rights to purchase or acquire such equity securities at any time and all rights arising  
7 with respect thereto, and (iii) partnership, limited liability company or similar interest.

8 1.77 “Interest Holder” means the Holder of an Interest.

9 1.78 “Junior Lien” means a Lien junior to the Lien of the Exit Financing.

10 1.79 “Key Transaction Documents” means, the Plan, the Disclosure Statement, the  
11 Ballots, and any and all Plan implementation documents filed with the Plan Supplement.

12 1.80 “Lien” has the meaning set forth in Bankruptcy Code section 101(37).

13 1.81 “Loftin” means Loftin Equipment Co., Inc.

14 1.82 “Loftin Mechanic’s Lien” means that certain mechanic’s lien filed against property  
15 owned by Kingman Farms Ventures, LLC.

16 1.83 “Loftin Unsecured Claim” means the Claim asserted by Loftin in Proof of Claim No.  
17 42, that may be secured by a lien against non-Debtor property and is a Disputed Claim.

18 1.84 “Loftin Unsecured Claim Balance” has the meaning ascribed to it in Section 2.3(e)  
19 of this Plan.

20 1.85 “Lysgaard” means Robert A. Lysgaard and Meria Lysgaard.

21 1.86 “Lysgaard Collateral” means all Assets that secure the Lysgaard Secured Claim by  
22 means of a Lien that is not Avoidable.

23 1.87 “Lysgaard Secured Claim” means the Secured Claim Scheduled by Debtor in favor  
24 of Lysgaard.

25 1.88 “McKenna” means Stephen R. McKenna.

26 1.89 “McKenna Collateral” means all Assets that secure the McKenna Secured Claim by  
27 means of a Lien that is not Avoidable.

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1 1.90 “McKenna Secured Claim” means the Secured Claim Scheduled by Debtor in favor  
2 of McKenna.

3 1.91 “McKenna Secured Note” means the promissory note, signed by the Reorganized  
4 Debtor and reflecting the obligations of the Reorganized Debtor to McKenna under this Plan,  
5 substantially in the form annexed as an exhibit to the Disclosure Statement.

6 1.92 “Mohave County Treasurer” means the treasurer for Mohave County, Arizona.

7 1.93 “Moreno” means Barbara Moreno, James Robert Ellis and Marilyn Torbet.

8 1.94 “Moreno Collateral” means all Assets that secure the Moreno Secured Claim by  
9 means of a Lien that is not Avoidable.

10 1.95 “Moreno Secured Claim” means the Secured Claim Scheduled by Debtor in favor of  
11 Moreno.

12 1.96 “New Equity Interests” means Interests in the Reorganized Debtor to be authorized  
13 and issued to the DIP Lender on the Effective Date pursuant to this Plan.

14 1.97 “Notice of Confirmation” means that certain notice, pursuant to Bankruptcy  
15 Rule 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has  
16 confirmed this Plan.

17 1.98 “Old Equity Interests” means Interests in the Debtor.

18 1.99 “Objection Deadline” means the deadline for Filing objections to this Plan set by the  
19 Bankruptcy Court.

20 1.100 “Operative Document” means any contract, instrument, release, settlement  
21 agreement or other agreement or document, if any, that is reasonably necessary to effectuate and  
22 implement the transactions provided for in this Plan, including the Key Transaction Documents.

23 1.101 “Order” means an order or judgment entered by the Bankruptcy Court.

24 1.102 “Person” means any individual, corporation, partnership, limited liability company,  
25 joint venture, association, trust or organization, or other “person” as defined in Bankruptcy Code  
26 section 101(41), as well as any governmental agency, governmental unit or political subdivision.

27 1.103 “Petition Date” means September 9, 2016.

28

1 1.104 “Plan” means this chapter 11 plan, including all documents referenced herein and all  
2 exhibits, supplements, appendices and schedules hereto or thereto, either in its present form or as  
3 the same may be altered, amended or modified from time to time pursuant to the Bankruptcy Code  
4 or Final Order.

5 1.105 “Plan Supplement” means a compilation of documents supplementing and giving  
6 effect to the terms to this Plan, which shall be filed no later than the Plan Supplement Filing Date.  
7 The Plan Supplement shall include: (i) any of the Operative Documents not attached to the  
8 Disclosure Statement, and (ii) any information required for confirmation of this Plan pursuant to  
9 the terms of the Bankruptcy Code, including lists of individuals referenced in Bankruptcy Code  
10 section 1129(a)(5)(A)(i) & 1129(a)(5)(B).

11 1.106 “Plan Supplement Filing Date” means 14 days prior to the Confirmation Hearing.  
12 Debtor reserves the right to submit amended or revised versions of the Plan Supplement up to the  
13 Confirmation Date.

14 1.107 “Post Effective Date Fees” means the reasonable fees and expenses of Debtor’s  
15 and/or the Reorganized Debtor’s Professionals incurred by Debtor and/or the Reorganized Debtor  
16 after the Effective Date, including those fees and expenses incurred for legal, financial advisory,  
17 accounting and other services rendered in connection with the implementation, consummation and  
18 performance of the Plan and which are necessary to complete the administration of, conclude and  
19 close the Chapter 11 Case.

20 1.108 “Post Effective Date Fee Fund” means a sum of Thirty Thousand Dollars (\$30,000)  
21 to be paid to the Distribution Agent on the Effective Date from the DIP Drawdown, which shall be  
22 part of the Confirmation Funds and used by the Distribution Agent to pay any Post Effective Date  
23 Fees.

24 1.109 “Post Effective Date Interest” means per annum non-compounded interest, accruing  
25 after the Effective Date, at the fixed rate of the prime rate reported by the Board of Governors of  
26 the Federal Reserve on the Effective Date.

27 1.110 “Priority Claim” means a Claim entitled to priority under Bankruptcy Code sections  
28 507(a)(2) through (7).

1 1.111 “Priority Tax Claims” means any Claim that is entitled to priority under section 502(i)  
2 or Bankruptcy Code section 507(a)(8). Priority Tax Claims do not include *ad valorem* tax Claims  
3 if such Claims under applicable state law are Secured by a Lien on Debtor’s Assets.

4 1.112 “Professional” means an Person or Entity: (a) employed pursuant to a Bankruptcy  
5 Court order in accordance with Bankruptcy Code sections 327 or 1103 and to be compensated for  
6 services rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327, 328,  
7 329, 330, or 331; or (b) awarded compensation and reimbursement by the Bankruptcy Court,  
8 pursuant to Bankruptcy Code section 503(b)(4).

9 1.113 “Professional Fees” means all reasonable fees and expenses incurred by Professionals  
10 and allowed by the Bankruptcy Court.

11 1.114 “Professional Fee Claim” means any Claim for compensation or reimbursement of  
12 fees and expenses as may be requested by a Professional to the extent such Professional is required  
13 to apply to the Bankruptcy Court for payment of such Claim pursuant to Bankruptcy Code sections  
14 326, 328, 330 or 331 and the terms of this Plan.

15 1.115 “Proof of Claim” means a proof of claim filed against Debtor in the Chapter 11 Case.

16 1.116 “Property” means, collectively, all real estate owned by the Debtor and listed on the  
17 Debtor’s Schedules, as amended or modified.

18 1.117 “Property Sales” means all sales of Unencumbered Property by HB Farms.

19 1.118 “Proponent” means Debtor as proponent of this Plan.

20 1.119 “Pro Rata” means, with respect to an amount of Cash or other consideration to be  
21 paid or distributed on a particular date to a Holder of an Allowed Claim, that such Distribution shall  
22 be made in accordance with the ratio, as of such date, of the amount such Allowed Claim is to the  
23 aggregate of the amounts of Claims in the Class to which such Allowed Claim belongs.

24 1.120 “Refinancing” means a new loan, whose proceeds are used to satisfy existing  
25 indebtedness.

26 1.121 “Released Liabilities” means, with respect to a given Releasor, all claims,  
27 obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities  
28 based on any act, omission, transaction, event or other occurrence (other than rights to enforce the

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1 terms of this Plan or any related document or agreement), whether known or unknown, foreseen or  
2 unforeseen, then existing or thereafter arising, in law, equity or otherwise that arose prior to the  
3 Effective Date and relate to the Debtor, this Plan, the Chapter 11 Case, which could have been  
4 asserted by such Releasor (or on behalf of Debtor or their Estate) against any Releasee or any of its  
5 Representatives.

6 1.122 “Releasees” means the Debtor, the DIP Lender, the Reorganized Debtor and any  
7 current shareholders, subsidiaries, partners, members or affiliates of the aforementioned Persons  
8 and any of their respective Representatives.

9 1.123 “Releasors” means the Debtor, the DIP Lender, the Reorganized Debtor and any  
10 current shareholders, subsidiaries, partners, members or affiliates of the aforementioned Persons  
11 and any of their Representatives. For the avoidance of doubt, Releasors do not include any creditors  
12 except those specifically mentioned in the preceding sentence.

13 1.124 “Reorganized Debtor” means, on or after the Effective Date, Avery Land Group,  
14 LLC, as a reorganized debtor.

15 1.125 “Representatives” means, with respect to a given Person or Entity, its past and current  
16 directors, officers, shareholders, members, partners, employees, agents, attorneys, professionals,  
17 advisors, trustees, consultants, accountants, contractors and other representatives.

18 1.126 “Ritchie” means John Ritchie.

19 1.127 “Ritchie Collateral” means all Assets that secure the Ritchie Secured Claim by means  
20 of a Lien that is not Avoidable.

21 1.128 “Ritchie Secured Claim” means the Secured Claim Scheduled by Debtor in favor of  
22 Ritchie.

23 1.129 “Schedule of Disputed Claims” means the non-exhaustive list of Claims whose  
24 amounts are disputed, which is attached as an exhibit to the Disclosure Statement.

25 1.130 “Scheduled” means, with respect to a Claim, listed by Debtor in the Schedules as  
26 non-disputed, non-contingent, and liquidated.

27 1.131 “Schedules” means the schedules of Assets and liabilities, the list of Holders of  
28 Interests and the statements of financial affairs Filed by Debtor under Bankruptcy Code section 521

1 and Bankruptcy Rule 1007, and all amendments and modifications thereto through the  
2 Confirmation Date.

3 1.132 “Secured” means when referring to a Claim: (a) secured by a Lien on property in  
4 which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to  
5 applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to  
6 section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the  
7 Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as  
8 determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to this Plan  
9 as a secured Claim.

10 1.133 “Shortfall” has the meaning ascribed to it in Section 5.1(d) of this Plan.

11 1.134 “Surrendered Collateral” means the Moreno Collateral, the Lysgaard Collateral and  
12 the Ritchie Collateral to be surrendered to the Holders of the Moreno, Lysgaard and Ritchie  
13 Allowed Claims pursuant to Section 2.3(b) of this Plan.

14 1.135 “Thompson” means William Ray Thompson.

15 1.136 “Thompson Collateral” means all Assets that secure the Thompson Secured Claim  
16 by means of a Lien that is not Avoidable.

17 1.137 “Thompson Secured Claim” means the Secured Claim Scheduled by Debtor in favor  
18 of Thompson.

19 1.138 “Thompson Secured Note” means the promissory note, signed by the Reorganized  
20 Debtor and reflecting the obligations of the Reorganized Debtor to Thompson under this Plan,  
21 substantially in the form annexed as an exhibit to the Disclosure Statement.

22 1.139 “Unencumbered Property” means all Property other than the Baxter Collateral, the  
23 Baum Collateral, the Lysgaard Collateral, the McKenna Collateral, the Moreno Collateral, the  
24 Ritchie Collateral, and the Thompson Collateral.

25 1.140 “Unclassified Claims” means Administrative Claims and Priority Tax Claims.

26 1.141 “US Trustee Fees” means fees payable pursuant to 28 U.S.C. § 1930.

27 1.142 “Utica” means Utica Leaseco, LLC, a Florida limited liability company.

28

1 1.143 “Utica Guarantees” means, collectively, those certain Master Lease Guarantees, each  
2 dated March 6, 2015, and executed separately by James M. Rhodes and Truckee Springs Holdings,  
3 Inc., in favor of Utica.

4 1.144 “Utica Unsecured Claim” means the Claim asserted by Utica in Amended Proof of  
5 Claim No. 31.

6 1.145 “Utica Unsecured Claim Balance” has the meaning ascribed to it in Section 2.3(g) of  
7 this Plan.

8 1.146 “Value” means, for any Asset, its value as determined by either (a) the Bankruptcy  
9 Court, or (b) an agreement between the Debtor or Reorganized Debtor, on the one hand, and a  
10 Creditor that asserts a Lien against and/or will receive such Asset under this Plan, on the other.

11 **B. Rules of Interpretation.**

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

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

14 **ARTICLE II**

15 **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

16 2.1 Introduction.

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

21 (b) A Claim or Interest is placed in a particular Class only to the extent that the  
22 Claim or Interest falls within the description of that Class and is classified in other Classes to the  
23 extent that any portion of the Claim or Interest falls within the description of such other Classes.  
24 A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions  
25 pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class  
26 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.

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

2.3 Classified Claims and Interests

(a) Class 1: Priority Claims

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

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

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

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(b) Class 2: Secured Claims

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

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

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

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

(ii) Class 2(b): Baxter Secured Claim

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

*Treatment:* On the Effective Date, the Holder of the Allowed Baxter Secured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Baxter Secured Claim, receive the following treatment: (1) the Reorganized Debtor shall form the Baxter Subsidiary and shall transfer the Baxter Collateral to the Baxter Subsidiary; (2) the Baxter Subsidiary shall become a borrower under the Baxter Loan; and (3) the Baxter Assignee shall release the Baxter Liens and cease to be a borrower under the Baxter Loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Treatment:* On the Effective Date, the Debtor shall surrender the Moreno Collateral to the Holder of the Allowed Moreno Secured Claim in full satisfaction, settlement, release and exchange for the Allowed Moreno Secured Claim; *provided, however,* that if the Holder of the Allowed Moreno Secured Claim believes that the amount of its Claim exceeds the value of the



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

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

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

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

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

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

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

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

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

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

19 (c) Class 3: Secured Property Tax Claims

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

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

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

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(d) Class 4: Unsecured Claims

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

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

*Treatment:* Each Holder of a Class 4(a) Allowed General Unsecured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed General Unsecured Claim, receive a Class 4(a) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property, bear Post Effective Date Interest and be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(b) Loftin Unsecured Claim, the Allowed Class 4(c) Cashman Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; *provided, however,* that if all Class 4(a) Junior Lien Notes have not been paid in full, including post-Effective Date Interest, on the second anniversary of the Effective Date, then the Holders shall, in full satisfaction, settlement, release and exchange for any remaining unpaid balances of such Class 4(a) Junior Lien Notes (the "General Unsecured Claim Balances"), receive Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second anniversary of the Effective Date, equal to each Holder's General Unsecured Claim Balance.

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

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

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

*Treatment:* The Holder of the Class 4(b) Allowed Loftin Unsecured Claim shall, in full satisfaction, settlement, release and exchange for such Allowed Loftin Unsecured Claim, receive the Class 4(b) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien on all Unencumbered Property, bear Post Effective Date Interest and be paid, after satisfaction in full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(a) General Unsecured Claims, the Allowed Class 4(c) Cashman Unsecured Claim and the Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; *provided, however,* that if the Class 4(b) Junior Lien Note has not been paid in

1 full, including Post Effective Date Interest, on the second anniversary of the Effective Date, then  
2 the Holder shall, in full satisfaction, settlement, release and exchange for any remaining unpaid  
3 balance of such Class 4(b) Junior Lien Note (the “Loftin Unsecured Claim Balance”), receive  
4 Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second  
5 anniversary of the Effective Date, equal to the Loftin Unsecured Claim Balance.

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

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

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

10 *Treatment:* The Holder of the Class 4(c) Allowed Cashman Unsecured Claim shall,  
11 in full satisfaction, settlement, release and exchange for such Allowed Cashman Unsecured Claim,  
12 receive the Class 4(c) Junior Lien Note in the amount of its Claim, which shall be secured by a  
13 Junior Lien on all Unencumbered Property, bear Post Effective Date Interest, and be paid, after  
14 satisfaction in full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed  
15 Class 4(a) General Unsecured Claims, the Allowed Class 4(b) Loftin Unsecured Claim and the  
16 Allowed Class 4(d) Utica Unsecured Claim, from the proceeds of Refinancing and/or Property  
17 Sales; *provided, however,* that if the Class 4(c) Junior Lien Note has not been paid been paid in  
18 full, including Post Effective Date Interest, on the second anniversary of the Effective Date, then  
19 the Holder shall, in full satisfaction, settlement, release and exchange for any remaining unpaid  
20 balance of such Class 4(c) Junior Lien Note (the “Cashman Unsecured Claim Balance”), receive  
21 Property of a Value, as determined by the Bankruptcy Court as soon as practicable after the second  
22 anniversary of the Effective Date, equal to the Cashman Unsecured Claim Balance.

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

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

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

27 *Treatment:* The Holder of the Class 4(d) Allowed Utica Unsecured Claim shall, in  
28 full satisfaction, settlement, release and exchange for such Allowed Utica Unsecured Claim, receive

1 the Class 4(d) Junior Lien Note in the amount of its Claim, which shall be secured by a Junior Lien  
2 on all Unencumbered Property, bear Post Effective Date Interest, and be paid, after satisfaction in  
3 full of the Allowed Deferred Administrative Claims, and Pro Rata with the Allowed Class 4(a)  
4 General Unsecured Claims, the Allowed Class 4(b) Loftin Unsecured Claim and the Allowed Class  
5 4(c) Cashman Unsecured Claim, from the proceeds of Refinancing and/or Property Sales; *provided,*  
6 *however,* that if the Class 4(d) Junior Lien Note has not been paid in full, including Post  
7 Effective Date Interest, on the second anniversary of the Effective Date, then the Holder shall, in  
8 full satisfaction, settlement, release and exchange for any remaining unpaid balance of such Class  
9 4(d) Junior Lien Note (the “Utica Unsecured Claim Balance”), receive Property of a Value, as  
10 determined by the Bankruptcy Court as soon as practicable after the second anniversary of the  
11 Effective Date, equal to the Utica Unsecured Claim Balance.

12 *Impairment and Voting:* Class 4(d) is Impaired. Therefore, the Holder of the Class  
13 4(d) Allowed Utica Unsecured Claim is entitled to vote to accept or reject this Plan.

14 (e) Class 5: Insider Claims

15 *Claims in Class.* Class 5 consists of Allowed Insider Claims.

16 *Treatment:* Each Holder of a Class 5 Allowed Insider Claim shall, in full  
17 satisfaction, settlement, release and exchange for such Allowed Insider Claim, receive its Pro Rata  
18 share of the Insider Claim Fund.

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

21 (f) Class 6: Old Equity Interests.

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

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

24 *Impairment and Voting:* Class 6 is Impaired. Because the Holders of Class 6  
25 Allowed Old Equity Interests will not receive or retain any property under the Plan on account of  
26 such Interests, they are conclusively deemed to have rejected the Plan under Bankruptcy Code  
27 section 1126(g).  
28

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

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) and 5 are impaired and entitled to vote to reject or accept this Plan. Class 6 is also impaired, but is conclusively deemed to have rejected the Plan under Bankruptcy Code section 1126(g).

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

**ARTICLE III**

**ACCEPTANCE OR REJECTION OF THIS PLAN**

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

3.2 Summary of Classes Voting on this Plan. Only the votes of Holders of Claims in 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 Plan.

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

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

ARTICLE IV

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

4.1 Rejection of All Executory Contracts and Unexpired Leases.

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

(b) Any non-insider Creditor whose Claim arises from the rejection of an executory contract or unexpired lease with Debtor shall have the rights of a Holder of a General Unsecured Claim and shall receive the treatment provided to Holders of Class 4(a) General Unsecured Claims as set forth in this Plan. Any insider Creditor whose Claim arises from the rejection of an executory contract or unexpired lease with Debtor shall have the rights of a Holder of an Insider Claim and shall receive the treatment provided to Holders of Class 5 Insider Claims as set forth in this Plan.

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

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

ARTICLE V

**PLAN IMPLEMENTATION**

5.1 Plan Implementation.

(a) This Plan shall be implemented in all respects in a manner that is consistent with the terms and conditions of the Operative Documents, and the requirements of section 1123(a)

1 and other applicable provisions of the Bankruptcy Code.

2 (b) On the Effective Date: (1) the Reorganized Debtor shall form the Baxter  
3 Subsidiary and shall transfer the Baxter Collateral to the Baxter Subsidiary; (2) the Baxter  
4 Subsidiary shall become a borrower under the Baxter Loan; and (3) the Baxter Assignee shall  
5 release the Baxter Liens and cease to be a borrower under the Baxter Loan.

6 (c) On the Effective Date, the Reorganized Debtor shall transfer all of its Assets  
7 other than the Baxter Collateral and the Surrendered Collateral to HB Farms. In exchange:  
8 (i) Cashton shall provide the Exit Financing; (ii) the Reorganized Debtor shall receive membership  
9 interests in HB Farms; and (iii) HB Farms shall assume all of the Reorganized Debtor's obligations  
10 under the Baum Secured Note, the McKenna Secured Note, the Thompson Secured Note, the Class  
11 4(a) Junior Lien Notes, the Class 4(b) Junior Lien Note, the Class 4(c) Junior Lien Note, and the  
12 Class 4(d) Junior Lien Note.

13 (d) The Exit Financing and the DIP Loan shall be used to provide all  
14 Confirmation Funds for Distribution pursuant to this Plan. On the Effective Date, Debtor shall  
15 draw down the full amount of the Exit Financing and shall turn the Exit Financing over to the  
16 Distribution Agent for Distribution pursuant to this Plan. Debtor shall also draw down the DIP  
17 Loan in the amount of the Insider Claim Fund. To the extent that the Exit Financing, together with  
18 the Insider Claim Fund, is less than the Confirmation Funds (the "Shortfall"), the Reorganized  
19 Debtor shall draw down again on the DIP Loan in the amount of the Shortfall (the "DIP  
20 Drawdown") and shall turn the DIP Drawdown over to the Distribution Agent for Distribution  
21 pursuant to this Plan.

22 (e) In the event that any Claim in Class 4(a), Class 4(b), Class 4(c), or Class 4(d)  
23 Claim has not been paid in full as provided in Article II above on the second anniversary of the  
24 Effective Date, the Bankruptcy Court will determine, as soon as practicable after the second  
25 anniversary of the Effective Date, the Value of the parcel(s) of Property proposed to be given by  
26 HB Farms to the creditor in satisfaction of the unpaid balance of such Claim.

27 5.2 Cancellation of Old Equity Interests. On the Effective Date, all Old Equity Interests  
28 shall be extinguished, canceled, terminated and of no force and effect.



1           5.3 Issuance of New Equity Interests. On the Effective Date, 100% of the Reorganized  
2 Debtor New Equity Interests shall be issued to the DIP Lender in satisfaction of the DIP Lender  
3 Secured Claim, as provided in this Plan.

4           5.4 Corporate Actions.

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

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

14           5.5 Good Faith and Non Avoidability. The Confirmation Order shall, among other  
15 things, provide that: (i) Debtor, the DIP Lender, Cashton and HB Farms have acted in good faith;  
16 and (ii) the New Equity Interests received by the DIP Lender shall not be subject to avoidance,  
17 turnover or disgorgement in any subsequent insolvency proceeding by any Person or Entity.

18           5.6 Management. Following the Effective Date, Reorganized Debtor shall be managed  
19 as provided in the Reorganized Debtor Operating Agreement. It is anticipated that Reorganized  
20 Debtor will be managed by James M. Rhodes.

21           5.7 Exemption from Certain Transfer Taxes and Further Transactions. Pursuant to  
22 Bankruptcy Code section 1146(a), the issuance or exchange of any security, or the making or  
23 delivery of any instrument of transfer under, in furtherance, or in connection with this Plan,  
24 including, but not limited to, any deeds, bills of sale, assignments or other instruments of transfer  
25 (including those with respect to the Properties), shall not be subject to any stamp tax, real estate  
26 transfer tax or similar tax.

27           5.8 Final Decree. Notwithstanding otherwise applicable law, the Chapter 11 Case shall  
28 be closed and a Final Decree entered as soon as possible after the occurrence of the Effective Date.

1 5.9 Effectuating Documents, Further Transactions. On and after the Effective Date, the  
2 Reorganized Debtor is authorized to and may issue, execute, deliver, file, or record such contracts,  
3 securities, instruments, releases, and other agreements or documents and take such actions as may  
4 be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions  
5 of this Plan in the name of and on behalf of Debtor, as applicable, without the need for any  
6 approvals, authorizations, or consents except for those expressly required pursuant to this Plan.

7 5.10 Post Effective Date Fees and Expenses.

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

11 (b) In the event, and to the extent, that there are not sufficient funds in the Post  
12 Effective Date Fee Fund from which to pay any of the Post Effective Date Fees, the Distribution  
13 Agent shall, without the necessity of any approval by the Bankruptcy Court, pay any Post Effective  
14 Date Fees from Cash on hand.

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

22 **ARTICLE VI**

23 **PROVISIONS CONCERNING PLAN DISTRIBUTIONS**

24 6.1 Distributions on Account of Claims Allowed as of the Effective Date. Distributions  
25 under this Plan on account of Claims Allowed on or before the Effective Date shall be made on the  
26 Effective Date, or on the first date thereafter as is reasonably practicable.  
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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, otherwise payment on such checks may at the Reorganized Debtor’s sole discretion be stopped and the funds shall escheat to the Reorganized Debtor.

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1           6.6 Delivery of Distributions.

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

10           (b) Distribution Agent. The Distribution Agent shall make all Distributions  
11 required under this Plan.

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

1           6.7 Returned Distributions. In the case of Distributions to the Holders of Allowed Claims  
2 that are returned to the Distribution Agent due to an incorrect or incomplete address, the  
3 Distribution Agent shall retain any such returned Distribution in a segregated account established  
4 by the Distribution Agent to keep track of any returned Distributions. Unless the Holder of the  
5 Allowed Claim relating to any such returned Distribution contacts the Reorganized Debtor (or its  
6 designee) within three (3) months from the date on which such Distribution was returned and  
7 provides the Reorganized Debtor (or its designee) with acceptable proof of identity and an accurate  
8 address, such Holder shall forfeit all rights thereto, and to any and all future Distributions or rights  
9 under this Plan. In such event, the Claim for which such Distribution was issued shall be treated  
10 as a Disallowed Claim.

11           6.8 Disputed Distributions. In the event of any dispute between or among Holders of  
12 Claims as to the right to any Holder of a Claim to receive or retain any Distribution to be made to  
13 such Holder under this Plan, the Distribution Agent, in lieu of making such Distribution to such  
14 Holder, may make it instead into an escrow account for payment as ordered by the Bankruptcy  
15 Court or as the interested parties to such dispute may otherwise agree among themselves. Any such  
16 Holder who fails to raise such dispute by filing an appropriate request for relief with the Bankruptcy  
17 Court prior to the issuance of such disputed Distribution by the Distribution Agent shall be deemed  
18 to have forever waived any right to dispute such Distribution or to enjoin, impair or otherwise  
19 restrict the use of any such Distribution.

20           6.9 Setoffs. The Distribution Agent may, but shall not be required to, set-off against any  
21 Distributions to be made pursuant to this Plan to a Holder of an Allowed Claim, Claims of any  
22 nature whatsoever that Debtor may have, or may have had, against such Holder that have not been  
23 previously released, but neither the failure to do so, nor the allowance of any Claim held by such  
24 Holder shall constitute a waiver or release by the Reorganized Debtor of any such Claim Debtor  
25 may have, or may have had, against such Holder.

26           6.10 Withholding Taxes. The Reorganized Debtor shall be entitled to deduct any  
27 applicable federal or state withholding taxes from any payments made with respect to Allowed  
28 Claims, as appropriate, and shall otherwise comply with Bankruptcy Code section 346.

6.11 Allocation of Distributions. Distributions on account of Allowed Claims shall, for tax purposes, be treated as allocated first to principal, and thereafter to interest only to the extent that the entire principal amount has been recovered, if applicable.

**ARTICLE VII**

**PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

7.1 Objection to and Resolution of Claims. Except as to applications for allowance of compensation and reimbursement of expenses under Bankruptcy Code sections 330, 331 and/or 503, the Reorganized Debtor shall, on and after the Effective Date, have the exclusive right to make and file objections to Claims. On and after the Effective Date, the Reorganized Debtor shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to any Claims and compromise, settle or otherwise resolve Disputed Claims without approval of the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, the Debtor and, on and after the Effective Date, the Reorganized Debtor, shall file all objections to Claims that are the subject of proofs of Claim or requests for payment filed with the Bankruptcy Court (other than applications for allowances of compensation and reimbursement of expenses with respect to Professional Fee Claims) and serve such objections upon the Holder of the Claim as to which the objection is made as soon as is practicable, but in no event later than one (1) year after the Effective Date or such later date as may be approved by the Bankruptcy Court.

7.2 Payments. Payments and Distributions to each Holder of a Disputed Claim that ultimately becomes an Allowed Claim shall be made in accordance with the provision of this Plan with respect to the Class of Creditors to which the respective Holder of an Allowed Claim belongs. Without limiting the generality of the foregoing, Debtor shall not be required to object to any Claim irrespective of whether such Claim is Allowed or Disputed, whether in whole or in part.

7.3 Contingent Claims. Until such time as a contingent Claim or a contingent portion of an Allowed Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to Distributions under the Plan. The Holder of a contingent Claim will only be entitled to a Distribution under the Plan when and if such contingent Claim becomes an Allowed Claim.

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

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

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

**ARTICLE VIII**

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

8.1 Withdrawal of Plan; Rights if Plan Not Confirmed or Effective Date Does Not Occur. Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If Debtor revokes or withdraws this Plan, or if Confirmation

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of this Plan or the Effective Date does not ultimately occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims), rejection of executory contracts or unexpired leases effected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests by or against the Debtor or any Person or Entity; (b) prejudice in any manner the rights of Debtor or any other Person or Entity in any further proceedings involving the Debtor; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by Debtor or any other Person or Entity.

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

8.3 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date unless the Bankruptcy Court shall order otherwise.

**ARTICLE IX**

**CONDITIONS TO EFFECTIVE DATE**

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

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

3 (b) Cashton shall provide the Exit Financing to Debtor.

4 (c) Debtor shall make the DIP Drawdown which, together with the Exit  
5 Financing, shall equal the amount of the Confirmation Funds;

6 (d) Debtor shall turn over the Confirmation Funds to the Distribution Agent for  
7 Distribution in accordance with this Plan;

8 (e) The Confirmation Order shall authorize the rejection of all executory  
9 contracts and unexpired leases; and

10 (f) Any outstanding US Trustee Fees shall have been paid in full.

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

18 **ARTICLE X**

19 **RETENTION OF JURISDICTION**

20 10.1 Retention of Jurisdiction. Except to the extent otherwise expressly set forth herein,  
21 the Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case following the Confirmation  
22 Date for the following purposes, it being expressly intended that such retention of jurisdiction shall  
23 in all cases hereafter set forth, extend to any actions or proceedings commenced prior or subsequent  
24 to the Confirmation Date and/or the Effective Date whether by Debtor, the Distribution Agent, or  
25 the parties specified herein:

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

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

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

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

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

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

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

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

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

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

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

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

26 (m) To enter any order, including injunctions, necessary to enforce the title, rights  
27 and powers of Debtor, the Reorganized Debtor or the rights of any Person or Entity hereunder and  
28 to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the

1 Bankruptcy Court may deem necessary or appropriate;

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

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

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

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

11 (r) Without limiting the generality of any of the foregoing, to hear and determine  
12 matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 345,  
13 505, and 1146.

14 10.2 Consent. Unless a timely objection is filed to this Plan and approved as part of the  
15 Confirmation Order, to the extent the Court has retained jurisdiction over any matter described in  
16 Section 11.1 above, all parties who have participated in this Bankruptcy Case, including, without  
17 limitation, any party who has filed a Proof of Claim, whether or not such Proof of Claim has been  
18 withdrawn, shall be deemed to have consented to the Bankruptcy Court's jurisdiction of any matter  
19 retained pursuant to this Plan.

20 10.3 Jurisdiction Unaffected. The occurrence of the Effective Date and/or the entry of a  
21 Final Decree shall not divest the Bankruptcy Court of any jurisdiction otherwise retained under this  
22 Article X or the Confirmation Order.

23 10.4 Failure of Bankruptcy Court To Exercise Jurisdiction. If the Bankruptcy Court  
24 abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction  
25 over any matter arising under, arising in or related to the Bankruptcy Case, including any of the  
26 matters set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any  
27 other court of competent jurisdiction with respect to such matter.  
28

ARTICLE XI

EFFECT OF CONFIRMATION OF PLAN

11.1 Discharge.

(a) IN CONJUNCTION WITH BANKRUPTCY CODE SECTION 1141, EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, THE RIGHTS AFFORDED HEREIN AND THE TREATMENT OF ALL CLAIMS AND EQUITY INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION, DISCHARGE AND RELEASE OF CLAIMS AND EQUITY INTERESTS OF ANY NATURE WHATSOEVER AGAINST THE DEBTOR, AND OF THE ASSETS OR PROPERTY OF THE ESTATE, INCLUDING ANY INTEREST ACCRUED ON SUCH CLAIMS FROM AND AFTER THE PETITION DATE.

(b) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS PROVIDED IN THE CONFIRMATION ORDER, CONFIRMATION DISCHARGES THE DEBTOR FROM ALL CLAIMS, OR OTHER DEBTS THAT AROSE BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN SECTIONS 502(G), 502(H) OR 502(I) OF THE BANKRUPTCY CODE, WHETHER OR NOT: (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR 1111(A); (Y) A CLAIM BASED ON SUCH DEBT IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502 OF THE BANKRUPTCY CODE; OR (Z) THE HOLDER OF A CLAIM BASED ON SUCH DEBT HAS ACCEPTED THE PLAN.

(c) EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, (I) ON THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTOR WHICH AROSE BEFORE THE EFFECTIVE DATE SHALL BE SATISFIED, DISCHARGED AND RELEASED IN FULL, (II) ON THE EFFECTIVE DATE, THE RIGHTS AND INTERESTS OF ALL HOLDERS OF OLD EQUITY INTERESTS SHALL BE TERMINATED, CANCELED AND OF NO FORCE AND EFFECT, AND (III) ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTOR, THE REORGANIZED DEBTOR, THE DISTRIBUTION AGENT, THEIR SUCCESSORS, OR ANY OF THEIR ASSETS OR PROPERTIES, ANY OTHER OR FURTHER

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1 CLAIMS OR EQUITY INTERESTS BASED UPON ANY ACT OR OMISSION,  
2 TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED  
3 BEFORE THE EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND SPECIFIED IN  
4 BANKRUPTCY CODE SECTIONS 502(G), 502(H), OR 502(I), IRRESPECTIVE OF  
5 WHETHER (X) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS BEEN FILED, OR  
6 DEEMED TO HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501 OR  
7 1111(a), (Y) SUCH CLAIM IS ALLOWED UNDER BANKRUPTCY CODE SECTION 502, OR  
8 (Z) THE HOLDER OF THE CLAIM HAS ACCEPTED THE PLAN.

9 11.2 Binding Effect of Plan/Injunction.

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

18 (b) UPON THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES SHALL  
19 BE PERMANENTLY ENJOINED BY THE PLAN FROM (I) COMMENCING OR  
20 CONTINUING ANY ACTION, EMPLOYING ANY PROCESS, ASSERTING OR  
21 UNDERTAKING AN ACT TO COLLECT, RECOVER, OR OFFSET, DIRECTLY OR  
22 INDIRECTLY, ANY CLAIM, RIGHTS, CAUSES OF ACTION, LIABILITIES, OR INTERESTS  
23 IN OR AGAINST ANY PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE  
24 PLAN, OR TRANSFERRED TO THE REORGANIZED DEBTOR, BASED UPON ANY ACT,  
25 OMISSION, TRANSACTION, OR OTHER ACTIVITY THAT OCCURRED BEFORE THE  
26 EFFECTIVE DATE, (II) CREATING, PERFECTING OR ENFORCING ANY LIEN OR  
27 ENCUMBRANCE AGAINST ANY PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED  
28 UNDER THE PLAN OTHER THAN AS PERMITTED UNDER THE PLAN, AND (III)

1 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ASSERTING ANY  
2 CLAIMS AGAINST THE REORGANIZED DEBTOR BASED ON SUCCESSOR LIABILITY  
3 OR SIMILAR OR RELATED THEORY, EXCEPT TO THE EXTENT A PERSON OR ENTITY  
4 HOLDS AN ALLOWED CLAIM UNDER THE PLAN AND IS ENTITLED TO A  
5 DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN ACCORDANCE WITH ITS TERMS,  
6 AND TO ENFORCE ITS RIGHTS TO DISTRIBUTION UNDER THE PLAN.

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

13 11.3 Exculpation. None of the Releasees nor any of their respective Representatives shall  
14 have or incur any liability to any Holder of a Claim against or Interest in Debtor, or any other party-  
15 in-interest, or any of their Representatives, or any of their successors or assigns, for any act,  
16 omission, transaction or other occurrence in connection with, relating to, or arising out of the  
17 Chapter 11 Case, the pursuit of confirmation of this Plan, or the consummation of this Plan, except  
18 and solely to the extent such liability is based on fraud, gross negligence or willful misconduct.  
19 The Releasees shall be entitled to reasonably rely upon the advice of counsel with respect to any of  
20 their duties and responsibilities under this Plan or in the context of the Chapter 11 Case. No Holder  
21 of a Claim against or Interest in Debtor, or any other party-in-interest, including their respective  
22 Representatives, shall have any right of action against the Releasees or any of their Representatives,  
23 for any act, omission, transaction or other occurrence in connection with, relating to, or arising out  
24 of, the Chapter 11 Case, the pursuit of confirmation of this Plan, the consummation of this Plan or  
25 the administration of this Plan, except to the extent arising from fraud, gross negligence or willful  
26 misconduct. Nothing in this Section 12.3 shall: (a) be deemed an exculpation by any Releasor of  
27 any Releasee or any of its Representatives for any acts, omissions, transactions, events or other  
28 occurrences taking place after the Effective Date; or (b) affect the rights of the Baxter Assignee,

1 Cashman, Utica and/or Loftin arising under the Baxter Guarantees, Cashman Settlement  
2 Agreement, the Utica Guarantees and the Loftin Mechanic’s Lien, respectively.

3 11.4 Releases. As of the Effective Date, for good and valuable consideration, the  
4 adequacy of which is hereby confirmed, each Releasor will be deemed to release, waive and forever  
5 discharge all Released Liabilities against each Releasee and each Releasee’s respective  
6 Representatives; *provided, however,* that, the releases provided in this Section 11.4 shall not  
7 constitute a release of any liability based on willful misconduct, gross negligence or fraud;  
8 *provided, further,* that nothing herein shall be deemed to constitute a release by any Releasor of  
9 any Releasee or any of its Representatives for any acts, omissions, transactions, events or other  
10 occurrences taking place after the Effective Date, and *provided, further,* that any party who is  
11 rightly included in the definition of Releasee that challenges the Plan or its implementation shall  
12 no longer be classified as a Releasee.

13 11.5 Injunctions.

14 (a) Injunction Against Releasors. All of the Releasors, along with any of their  
15 successors or assigns, are permanently enjoined, from and after the Effective Date, from  
16 (i) commencing or continuing in any manner any action or other proceeding of any kind against the  
17 Releasees or any of their respective Representatives in respect of any Released Liabilities,  
18 (ii) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award,  
19 decree or order against the Releasees or any of their respective Representatives in respect of any  
20 Released Liabilities, (iii) creating, perfecting, or enforcing any encumbrance of any kind against  
21 the Releasees or any of their respective Representatives in respect of any Released Liabilities, or  
22 (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due  
23 from the Releasees or any of their respective Representatives or against the property or interests in  
24 property of the Releasees or any of their respective Representatives, in respect of any Released  
25 Liabilities; *provided, however,* that nothing contained herein shall preclude such Releasors from  
26 exercising their rights pursuant to and consistent with the terms hereof and the contracts,  
27 instruments, releases and other agreements and documents delivered under or in connection with  
28 this Plan; and *provided, further,* that nothing contained herein shall be deemed to enjoin any

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1 Releasor from taking any action against any Releasee or any of its Representatives based on the  
2 release exceptions contained in Section 12.4 of this Plan.

3 (b) Injunction Protecting Exculpation of Releasees. All Holders of Claims  
4 against or Interests in Debtor and any other parties-in-interest, along with any of their  
5 Representatives and any of their successors or assigns, are permanently enjoined, from and after  
6 the Effective Date, from (i) commencing or continuing in any manner any action or other  
7 proceeding of any kind against Releasees or any of their respective Representatives in respect of  
8 any potential liability for which exculpation is granted pursuant to Section 11.3 of this Plan, (ii)  
9 enforcing, attaching, collecting or recovering by any manner or means of any judgment, award,  
10 decree or order against Releasees or any of their respective Representatives in respect of any  
11 potential liability for which exculpation is granted pursuant to Section 11.3 of this Plan, (iii)  
12 creating, perfecting, or enforcing any encumbrance of any kind against Releasees or any of their  
13 respective Representatives in respect of any potential liability for which exculpation is granted  
14 pursuant to Section 11.3 of this Plan, or (iv) asserting any right of setoff, subrogation or recoupment  
15 of any kind against any Releasee or any of their respective Representatives or against the property  
16 or interests in property any Releasee or any of their respective Representatives, in respect of any  
17 potential liability for which exculpation is granted pursuant to Section 11.3 of this Plan; *provided,*  
18 *however,* that nothing contained herein shall preclude any Holder or other party-in-interest from  
19 exercising its rights pursuant to and consistent with the terms of this Plan and the Operative  
20 Documents delivered under or in connection with this Plan; and, *provided further,* that nothing  
21 contained herein shall preclude the Baxter Assignee, Cashman, Utica and/or Loftin from exercising  
22 their rights arising under the Baxter Guarantees, the Cashman Settlement Agreement, the Utica  
23 Guarantees and the Loftin Mechanic's Lien, respectively.

24 (c) Injunction Against Interference With Plan. Upon the Effective Date, all  
25 Holders of Claims against or Interests in Debtor and their respective Representatives and any of  
26 their successors or assigns shall be enjoined from taking any actions to interfere with the  
27 implementation or consummation of the Plan.  
28



1           11.6 Termination of Debt Instruments. On the Effective Date, all instruments evidencing  
2 indebtedness of Debtor held by Holders of Claims that are Impaired by this Plan or have been paid  
3 in full pursuant thereto shall be deemed canceled as against Debtor and the Reorganized Debtor.

4           11.7 Judgments Void. Any judgment obtained before or after the Effective Date in any  
5 court other than the Bankruptcy Court shall be null and void as a determination of liability of the  
6 Debtor or the Reorganized Debtor with respect to any debt treated by the Plan.

7           11.8 Revesting of Assets in Reorganized Debtor. Except as otherwise expressly provided  
8 herein or in the Confirmation Order, on the Effective Date, but retroactive to the Confirmation  
9 Date, without any further action, the Reorganized Debtor will be vested with all of the property of  
10 the Estate, wherever situated, free and clear of all Claims, Liens and Old Equity Interests (except  
11 for Liens provided or authorized pursuant to this Plan). Without limiting the generality of the  
12 foregoing, on and after the Effective Date, the Reorganized Debtor shall be vested with all of the  
13 property of the Estate, wherever situated, free and clear of any Claims based on any form of  
14 successor liability or similar or related theory of liability. On and after the Effective Date, (i) the  
15 Reorganized Debtor shall be free of any restrictions imposed by the Bankruptcy Code or  
16 Bankruptcy Court, may operate its business and may use, acquire or dispose of its assets (including  
17 the Properties) free of any restrictions imposed by the Bankruptcy Code and the Bankruptcy Rules  
18 and without supervision or approval by the Bankruptcy Court, other than the obligations set forth  
19 in this Plan, or the Confirmation Order. Without limiting the generality of the foregoing and except  
20 as otherwise expressly provided herein or in the Confirmation Order, any Causes of Action, will be  
21 preserved and retained solely for the Reorganized Debtor's commencement, prosecution, use and  
22 benefit.

23           11.9 Preservation of Causes of Action. Pursuant to Bankruptcy Code section 1123(b),  
24 Debtor as the Reorganized Debtor shall retain and reserve the right to enforce all rights to  
25 commence and pursue Causes of Action whether arising before or after the Petition Date, and  
26 whether pending as of or Filed after the Effective Date, in any court or other tribunal. Unless a  
27 Cause of Action is expressly waived, relinquished, released, compromised or settled in the Plan, or  
28 any Final Order, the Debtor and the Reorganized Debtor expressly reserve all Causes of Action for

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

9 11.10 Maintenance of Administrative Claim Status Post Discharge. Notwithstanding any  
10 discharge granted to the Debtor, Allowed Administrative Claims shall maintain their administrative  
11 priority status under Bankruptcy Code section 507(a)(2) until paid in full.

12 11.11 No Limitation on Effect of Confirmation. Nothing contained in the Plan or the  
13 Disclosure Statement will limit, waive or restrict in any way the effect of Confirmation as set forth  
14 in Bankruptcy Code section 1141. Confirmation will bind the Debtor, all Creditors, Equity Interest  
15 Holders and other parties in interest to the provisions of the Plan, whether or not the Claim or Equity  
16 Interest of such Creditor or Equity Interest Holder is Impaired under the Plan and whether or not  
17 such Creditor or Equity Interest Holder has accepted the Plan and whether or not a proof of Claim  
18 or Equity Interest has been filed or deemed to have been filed under Bankruptcy Code sections 501  
19 or 1111(a), or such Claim or Equity Interest is allowed under Bankruptcy Code section 502.

20 **ARTICLE XII**

21 **MISCELLANEOUS PROVISIONS**

22 12.1 Modification of this Plan.

23 (a) Debtor may alter, amend or modify the Plan at any time before the entry of  
24 the Confirmation Order, provided that the Plan, as altered, amended or modified, satisfies the  
25 conditions of Bankruptcy Code sections 1122 and 1123, and Debtor shall have complied with  
26 Bankruptcy Code section 1125. However, the Bankruptcy Court may require a new disclosure  
27 statement and/or re-voting on the Plan if Debtor modifies the Plan before Confirmation.  
28

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

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

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

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

20 12.2 Notices. Except as otherwise set forth in Section 12.3 below, all notices, requests,  
21 elections or demands in connection with this Plan, including any change of address of any Holder  
22 of a Claim for the purposes of receiving any Distributions under this Plan, shall be in writing and  
23 shall be delivered personally or by facsimile, electronic mail or overnight courier (confirmed by  
24 first class mail or express mail) or mailed by first class mail. Such notice shall be deemed to have  
25 been given when received or, if mailed by first class mail, seven (7) days after the date of mailing,  
26 or if express mailed, the next Business Day following the date of mailing and addressed to the  
27 Debtor and the Reorganized Debtor as follows:  
28

**Debtor / Reorganized Debtor:**

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

**with copies to:**

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

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

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

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

(b) Post-Confirmation Date Service List - Additional Persons Entitled to Notice. Except as set forth in Section 12.2 hereof, from and after the date the Confirmation Order becomes 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 Persons and Entities listed in Section 12.2 above.

1           12.4 Headings. The headings used in this Plan are inserted for convenience only and  
2 neither constitute a portion of this Plan nor in any manner affect the provisions of this Plan.

3           12.5 Exhibits. All exhibits and documents included in the Plan Supplement are  
4 incorporated into and are a part of this Plan, as if set forth in full in this Plan. Except as otherwise  
5 provided in this Plan, such exhibits and documents included in the Plan Supplement shall be Filed  
6 with the Bankruptcy Court on or before the Plan Supplement Filing Date. After the exhibits and  
7 documents are Filed, copies of such exhibits and documents shall have been available upon written  
8 request to Debtor's counsel at the address above or by downloading such exhibits and documents  
9 from the Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the extent any exhibit or  
10 document is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy  
11 Court, the non-exhibit or non-document portion of this Plan shall control.

12           12.6 Nonseverability of Plan Provisions. If, prior to Confirmation, any term or provision  
13 of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy  
14 Court shall have the power, at the request of Debtor and subject to the consent of any party  
15 adversely affected thereby, to alter and interpret such term or provision to make it valid or  
16 enforceable to the maximum extent practicable, consistent with the original purpose of the term or  
17 provision held to be invalid, void, or unenforceable, and such term or provision shall then be  
18 applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation,  
19 the remainder of the terms and provisions of this Plan will remain in full force and effect and will  
20 in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The  
21 Confirmation Order shall constitute a judicial determination and shall provide that each term and  
22 provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing,  
23 is: (a) valid and enforceable pursuant to its terms; (b) integral to this Plan and may not be deleted  
24 or modified without the consent of Debtor and any other Person or Entity affected by such  
25 provision; and (c) nonseverable and mutually dependent.

26           12.7 Waiver or Estoppel. Each Holder of a Claim or an Interest shall be deemed to have  
27 waived any right to assert any argument, including the right to argue that its Claim or Interest should  
28 be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an

1 agreement made with Debtor, its counsel, or any other Entity, if such agreement was not disclosed  
2 in this Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the  
3 Confirmation Date.

4 12.8 Conflicts. To the extent that any provision of the Disclosure Statement, the Plan  
5 Supplement (other than any amendments to the Plan or any New Secured Loan Documents), or any  
6 other order (other than the Confirmation Order) referenced in this Plan (or any exhibits, schedules,  
7 appendices, supplements or amendments to any of the foregoing), conflict with or are in any  
8 inconsistent with any provision of this Plan, this Plan shall govern and control, unless expressly set  
9 forth herein.

10 12.9 Computation of Time. In computing any period of time prescribed or allowed by this  
11 Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

12 12.10 Governing Law. Except to the extent that the Bankruptcy Code or any other Federal  
13 law is applicable, the rights and obligations arising under this Plan shall be governed by, and  
14 construed and enforced in accordance with, the laws of the State of Nevada.

15 12.11 Successors and Assigns. The rights and obligations of any Person or Entity named  
16 or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and  
17 assigns of such Person or Entity.

18 12.12 Good Faith. Confirmation of the Plan will constitute a finding that the Plan has been  
19 proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

20 12.13 Post Confirmation Conversion or Dismissal. A creditor or party in interest may bring  
21 a motion to convert or dismiss the Chapter 11 Cases under Bankruptcy Code section 1112(b), after  
22 the Plan is confirmed, if there is a default in performance of the Plan or if cause exists under  
23 Bankruptcy Code section 1112(b). If the Bankruptcy Court orders the case converted to chapter 7  
24 after the Plan is confirmed, then all property that had been property of the Estate, and that has not  
25 been disbursed or distributed pursuant to the Plan, will revert in the chapter 7 estate, and the  
26 automatic stay will be re-imposed upon the re-vested property only to the extent that relief from  
27 stay was not previously granted by the Bankruptcy Court during this Chapter 11 Case. In addition,  
28 any Allowed Administrative Claims which are not paid on the Effective Date shall continue to be

1 entitled to administrative priority, under Bankruptcy Code section 507(a)(1) in any such subsequent  
2 Chapter 7 case to which this case is converted.

3 12.14 Post Confirmation Quarterly Fees. US Trustee Fees continue to be payable to the  
4 Office of the United States Trustee post-confirmation until such time as the case is converted,  
5 dismissed, or closed pursuant to Final Decree.

6 12.15 Entire Agreement. The Plan, as described herein, the Disclosure Statement and  
7 exhibits thereto, and the Plan Supplement set forth the entire agreement and understanding of the  
8 parties hereto relating to the subject matter hereof and supersede all prior discussions and  
9 documents. No party hereto shall be bound by any terms, conditions, definitions, warrants,  
10 understandings or representations with respect to the subject matter hereof, other than as in  
11 expressly provided for herein or as may hereafter be agreed by the parties in writing.

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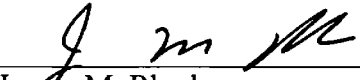
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DATED this 10<sup>th</sup> day of December, 2018.

Avery Land Group, LLC,  
a Nevada limited liability company

By:   
Name: James M. Rhodes  
Title: Manager

Respectfully submitted by:

**FOX ROTHSCHILD LLP**

By: /s/Brett A. Axelrod  
BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
1980 Festival Plaza Drive, Suite 700  
Las Vegas, NV 89135  
*Counsel for Avery Land Group, LLC*

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



**EXHIBIT B**

**BAUM SECURED NOTE**

**BAUM SECURED NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay.** FOR VALUE RECEIVED, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of **Jonathan Baum**, and his successors or assigns (hereinafter collectively referred to as “**Holder**”), at his mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this Baum Secured Note (the “**Note**”).

2. **Interest.** Commencing on the Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the rate of 5.75% per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date.** Commencing on the Effective Date of the Plan (February \_\_, 2019), the unpaid principal balance shall be paid in monthly installments of principal, together with interest at the Interest Rate, based on a thirty (30) year amortization schedule, with all remaining principal and interest due on the third anniversary of the Effective Date of the Plan (February \_\_, 2022). Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment.** Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments.** All payments shall be applied first to the payment of any costs, fees, late charges or other charges due under this Note; second to accrued but unpaid interest at the rate then in effect under the terms hereof; and third to the principal balance. All payments hereunder which are due on a Saturday, Sunday or holiday shall be deemed to be payable on the next business day.

6. **Default.** The failure by Maker to make any payment of principal, or any other sum or charge, when due in accordance with the terms and conditions of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to make any payment of principal or any other sum or charge due under this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.

Maker, and Maker has failed or refused to make payment within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Deed of Trust with Assignment of Rents of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel No. 215-26-001.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt

requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment**. This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification**. This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies**. All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability**. If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager

**EXHIBIT C**

**McKENNA SECURED NOTE**

**McKENNA SECURED NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay.** FOR VALUE RECEIVED, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of **Stephen R. McKenna**, and his successors or assigns (hereinafter collectively referred to as “**Holder**”), at his mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this McKenna Secured Note (the “**Note**”).

2. **Interest.** Commencing on Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the rate of 5.75% per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date.** Commencing Effective Date of the Plan (February \_\_, 2019), the unpaid principal balance shall be paid in monthly installments of principal, together with interest at the Interest Rate, based on a thirty (30) year amortization schedule, with all remaining principal and interest due on the third anniversary of the Effective Date of the Plan (February \_\_, 2022). Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment.** Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments.** All payments shall be applied first to the payment of any costs, fees, late charges or other charges due under this Note; second to accrued but unpaid interest at the rate then in effect under the terms hereof; and third to the principal balance. All payments hereunder which are due on a Saturday, Sunday or holiday shall be deemed to be payable on the next business day.

6. **Default.** The failure by Maker to make any payment of principal, or any other sum or charge, when due in accordance with the terms and conditions of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to make any payment of principal or any other sum or charge due under this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.

Maker, and Maker has failed or refused to make payment within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Deed of Trust with Assignment of Rents of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel No. 335-01-015.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt

requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment**. This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification**. This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies**. All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability**. If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager



**EXHIBIT D**

**THOMPSON SECURED NOTE**

**THOMPSON SECURED NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay.** FOR VALUE RECEIVED, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of **William Ray Thompson**, and his successors or assigns (hereinafter collectively referred to as “**Holder**”), at his mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this Thompson Secured Note (the “**Note**”).

2. **Interest.** Commencing on the Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the rate of 5.75% per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date.** Commencing the Effective Date of the Plan (February \_\_, 2019), the unpaid principal balance shall be paid in monthly installments of principal, together with interest at the Interest Rate, based on a thirty (30) year amortization schedule, with all remaining principal and interest due on the third anniversary of the Effective Date of the Plan (February \_\_, 2022). Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment.** Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments.** All payments shall be applied first to the payment of any costs, fees, late charges or other charges due under this Note; second to accrued but unpaid interest at the rate then in effect under the terms hereof; and third to the principal balance. All payments hereunder which are due on a Saturday, Sunday or holiday shall be deemed to be payable on the next business day.

6. **Default.** The failure by Maker to make any payment of principal, or any other sum or charge, when due in accordance with the terms and conditions of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to make any payment of principal or any other sum or charge due under this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.

Maker, and Maker has failed or refused to make payment within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Deed of Trust with Assignment of Rents of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel No. 341-01-072.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt

requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment**. This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification**. This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies**. All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability**. If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager

**EXHIBIT E**

**CLASS 4(a) JUNIOR LIEN NOTE**

**CLASS 4(a) JUNIOR LIEN NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay. FOR VALUE RECEIVED**, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of [**creditor name**], and its successors or assigns (hereinafter collectively referred to as “**Holder**”), at its mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this Class 4(a) Junior Lien Note (the “**Note**”).

2. **Interest**. Commencing on the Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the prime rate reported by the Board of Governors of the Federal Reserve as of the Effective Date of the Plan, per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date**. Commencing on the Effective Date of the Plan (February \_\_, 2019), the unpaid principal, together with interest at the Interest Rate, shall be paid in such amounts and at such times as may be determined by Maker; *provided, however*, that any such payments shall be made Pro Rata with payments on all other Class 4(a) Junior Lien Notes, the Class 4(b) Junior Lien Note, the Class 4 (c) Junior Lien Note, and the Class 4(d) Junior Lien Note. In the event that the Loan Amount and any accrued interest thereon have not been paid in full by the second anniversary of the Effective Date of the Plan (February \_\_, 2021) (the “**Maturity Date**”), Holder shall receive a portion of the Property (as defined in Section 7 herein) equal to the outstanding balance of the Loan Amount and the interest accrued thereon, as determined by the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”). The Bankruptcy Court shall have the sole right to determine the value and portion of the Property to be allocated to Holder in order to satisfy the outstanding balance of the Loan Amount and the interest accrued thereon. Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment**. Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments**. All payments shall be applied first to accrued but unpaid interest, and second to the principal balance.

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.

6. **Default.** The failure by Maker to perform according to the terms of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to perform according to any term of this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to Maker, and Maker has failed or refused to perform within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Junior Deed of Trust with Assignment of Rents<sup>2</sup> of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel Nos. 341-05-061; 335-03-001; 341-01-092; 341-01-094; 341-05-060; 341-05-058; 341-05-039; 341-01-089; 341-01-087; 341-01-091; 335-12-002; 341-05-037; 341-05-067; 328-01-024 (collectively, the “**Property**”). If an Event of Default occurs and Holder institutes any action or suit to enforce any of the terms of the Deed of Trust or this Note, Holder shall only be entitled to a portion of the proceeds derived from such action or suit sufficient to satisfy the outstanding balance of the Loan Amount and any interest accrued thereon, or any other amount authorized under Arizona law. In the event that the Loan Amount and any interest accrued thereon have not been paid in full by the Maturity Date, Holder shall receive a portion of the Property as set forth in Section 3.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the

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<sup>2</sup> The lien securing this Note will be junior to the lien securing the Exit Financing, as such term is defined in the Plan.

obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification.** This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies.** All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability.** If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.



Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager

**EXHIBIT F**

**CLASS 4(b) JUNIOR LIEN NOTE**

**CLASS 4(b) JUNIOR LIEN NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay. FOR VALUE RECEIVED**, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of **Loftin Equipment Company, Inc.**, an Arizona corporation, and its successors or assigns (hereinafter collectively referred to as “**Holder**”), at its mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this Class 4(b) Junior Lien Note (the “**Note**”).

2. **Interest**. Commencing on the Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the prime rate reported by the Board of Governors of the Federal Reserve as of the Effective Date of the Plan, per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date**. Commencing on the Effective Date of the Plan (February \_\_, 2019), the unpaid principal, together with interest at the Interest Rate, shall be paid in such amounts and at such times as may be determined by Maker; *provided, however*, that any such payments shall be made Pro Rata with payments on the Class 4(a) Junior Lien Notes, the Class 4 (c) Junior Lien Note, and the Class 4(d) Junior Lien Note. In the event that the Loan Amount and any accrued interest thereon have not been paid in full by the second anniversary of the Effective Date of the Plan (February \_\_, 2021) (the “**Maturity Date**”), Holder shall receive a portion of the Property (as defined in Section 7 herein) equal to the outstanding balance of the Loan Amount and the interest accrued thereon, as determined by the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”). The Bankruptcy Court shall have the sole right to determine the value and portion of the Property to be allocated to Holder in order to satisfy the outstanding balance of the Loan Amount and the interest accrued thereon. Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment**. Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments**. All payments shall be applied first to accrued but unpaid interest, and second to the principal balance.

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.

6. **Default.** The failure by Maker to perform according to the terms of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to perform according to any term of this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to Maker, and Maker has failed or refused to perform within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Junior Deed of Trust with Assignment of Rents<sup>2</sup> of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel Nos. 341-05-061; 335-03-001; 341-01-092; 341-01-094; 341-05-060; 341-05-058; 341-05-039; 341-01-089; 341-01-087; 341-01-091; 335-12-002; 341-05-037; 341-05-067; 328-01-024 (collectively, the “**Property**”). If an Event of Default occurs and Holder institutes any action or suit to enforce any of the terms of the Deed of Trust or this Note, Holder shall only be entitled to a portion of the proceeds derived from such action or suit sufficient to satisfy the outstanding balance of the Loan Amount and any interest accrued thereon, or any other amount authorized under Arizona law. In the event that the Loan Amount and any interest accrued thereon have not been paid in full by the Maturity Date, Holder shall receive a portion of the Property as set forth in Section 3.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the

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<sup>2</sup> The lien securing this Note will be junior to the lien securing the Exit Financing, as such term is defined in the Plan.

obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification.** This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies.** All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability.** If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager

**EXHIBIT G**

**CLASS 4(c) JUNIOR LIEN NOTE**

**CLASS 4(c) JUNIOR LIEN NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay. FOR VALUE RECEIVED**, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of **Cashton Land Development, LLC**, a California limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Holder**”), at its mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this Class 4(c) Junior Lien Note (the “**Note**”).

2. **Interest**. Commencing on the Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the prime rate reported by the Board of Governors of the Federal Reserve as of the Effective Date of the Plan, per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date**. Commencing on the Effective Date of the Plan (February \_\_, 2019), the unpaid principal, together with interest at the Interest Rate, shall be paid in such amounts and at such times as may be determined by Maker; *provided, however*, that any such payments shall be made Pro Rata with payments on the Class 4(a) Junior Lien Notes, the Class 4 (b) Junior Lien Note, and the Class 4(d) Junior Lien Note. In the event that the Loan Amount and any accrued interest thereon have not been paid in full by the second anniversary of the Effective Date of the Plan (February \_\_, 2021) (the “**Maturity Date**”), Holder shall receive a portion of the Property (as defined in Section 7 herein) equal to the outstanding balance of the Loan Amount and the interest accrued thereon, as determined by the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”). The Bankruptcy Court shall have the sole right to determine the value and portion of the Property to be allocated to Holder in order to satisfy the outstanding balance of the Loan Amount and the interest accrued thereon. Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment**. Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments**. All payments shall be applied first to accrued but unpaid interest, and second to the principal balance.

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.



6. **Default.** The failure by Maker to perform according to the terms of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to perform according to any term of this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to Maker, and Maker has failed or refused to perform within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Junior Deed of Trust with Assignment of Rents<sup>2</sup> of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel Nos. 341-05-061; 335-03-001; 341-01-092; 341-01-094; 341-05-060; 341-05-058; 341-05-039; 341-01-089; 341-01-087; 341-01-091; 335-12-002; 341-05-037; 341-05-067; 328-01-024 (collectively, the “**Property**”). If an Event of Default occurs and Holder institutes any action or suit to enforce any of the terms of the Deed of Trust or this Note, Holder shall only be entitled to a portion of the proceeds derived from such action or suit sufficient to satisfy the outstanding balance of the Loan Amount and any interest accrued thereon, or any other amount authorized under Arizona law. In the event that the Loan Amount and any interest accrued thereon have not been paid in full by the Maturity Date, Holder shall receive a portion of the Property as set forth in Section 3.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the

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<sup>2</sup> The lien securing this Note will be junior to the lien securing the Exit Financing, as such term is defined in the Plan.

obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification.** This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies.** All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability.** If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager

**EXHIBIT H**

**CLASS 4(d) JUNIOR LIEN NOTE**

**CLASS 4(d) JUNIOR LIEN NOTE<sup>1</sup>**

Principal Amount: \$ \_\_\_\_\_, 2019

1. **Promise to Pay.** FOR VALUE RECEIVED, the reorganized **Avery Land Group, LLC**, a Nevada limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Maker**”), at the mailing address of 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, NV 89148, hereby promises to pay to the order of **Utica Leaseco, LLC**, a Florida limited liability company, and its successors or assigns (hereinafter collectively referred to as “**Holder**”), at its mailing address of \_\_\_\_\_, or such other address as Holder may designate from time to time, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the “**Loan Amount**”), together with any interest thereon at the Interest Rate (as hereinafter defined), in accordance with the terms and conditions set forth in this Class 4(d) Junior Lien Note (the “**Note**”).

2. **Interest.** Commencing on the Effective Date of the Plan (February \_\_, 2019), the Loan Amount shall accrue interest on the unpaid principal balance of this Note at the prime rate reported by the Board of Governors of the Federal Reserve as of the Effective Date of the Plan, per annum, non-compounded (the “**Interest Rate**”).

3. **Payment and Maturity Date.** Commencing on the Effective Date of the Plan (February \_\_, 2019), the unpaid principal, together with interest at the Interest Rate, shall be paid in such amounts and at such times as may be determined by Maker; *provided, however*, that any such payments shall be made Pro Rata with payments on the Class 4(a) Junior Lien Notes, the Class 4 (b) Junior Lien Note, and the Class 4(c) Junior Lien Note. In the event that the Loan Amount and any accrued interest thereon have not been paid in full by the second anniversary of the Effective Date of the Plan (February \_\_, 2021) (the “**Maturity Date**”), Holder shall receive a portion of the Property (as defined in Section 7 herein) equal to the outstanding balance of the Loan Amount and the interest accrued thereon, as determined by the United States Bankruptcy Court for the District of Nevada (the “**Bankruptcy Court**”). The Bankruptcy Court shall have the sole right to determine the value and portion of the Property to be allocated to Holder in order to satisfy the outstanding balance of the Loan Amount and the interest accrued thereon. Maker shall have the right to prepay this Note, in whole or in part, at any time during the entire term hereto, without the prior consent of Holder, and without penalty or premium.

4. **Place of Payment.** Payment shall be made by Maker to Holder at the address of Holder set forth in Section 1 above or at such other address as may be designated from time to time by Holder by written notice to Maker.

5. **Application of Payments.** All payments shall be applied first to accrued but unpaid interest, and second to the principal balance.

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<sup>1</sup> Capitalized terms not defined herein have the meanings assigned to them in the *Third Amended Chapter 11 Plan of Reorganization Dated December 10, 2018* (the “**Plan**”), filed by Avery Land Group, LLC, in Chapter 11 Case No. BK-S-14995-abl, pending before the United States Bankruptcy Court for the District of Nevada.

6. **Default.** The failure by Maker to perform according to the terms of this Note shall constitute an “Event of Default” under this Note; *provided, however*, that any failure by Maker to perform according to any term of this Note shall not constitute an “Event of Default” unless Holder shall have first provided written notice thereof to Maker, and Maker has failed or refused to perform within thirty (30) calendar days after receipt of written notice from Holder.

7. **Security.** Maker hereby acknowledges that this Note is secured by a Junior Deed of Trust with Assignment of Rents<sup>2</sup> of even date herewith (the “**Deed of Trust**”) on that certain real property located in Mohave County, Arizona and more commonly known as Assessor’s Parcel Nos. 341-05-061; 335-03-001; 341-01-092; 341-01-094; 341-05-060; 341-05-058; 341-05-039; 341-01-089; 341-01-087; 341-01-091; 335-12-002; 341-05-037; 341-05-067; 328-01-024 (collectively, the “**Property**”). If an Event of Default occurs and Holder institutes any action or suit to enforce any of the terms of the Deed of Trust or this Note, Holder shall only be entitled to a portion of the proceeds derived from such action or suit sufficient to satisfy the outstanding balance of the Loan Amount and any interest accrued thereon, or any other amount authorized under Arizona law. In the event that the Loan Amount and any interest accrued thereon have not been paid in full by the Maturity Date, Holder shall receive a portion of the Property as set forth in Section 3.

8. **Waivers and Consents.** Maker waives presentment, dishonor, protest, demand, diligence, notice of protest, notice of demand, notice of dishonor, notice of nonpayment, and any other notice of any kind otherwise required by law in connection with the delivery, acceptance, performance, default, enforcement or collection of this Note and expressly agrees that this Note, or any payment hereunder, may be extended or subordinated (by forbearance or otherwise) at any time, without in any way affecting the liability of the Maker.

9. **Governing Law; Venue.** To the extent not preempted by federal law, this Note shall be governed by the laws of the State of Arizona, without reference to its conflict of laws provisions. The parties further agree that the venue for any action arising out of, related to, or in connection with this Note shall be state or federal courts in Mohave County, Arizona, as applicable, and the parties hereto agree to the jurisdiction and venue of the courts of said state to the exclusion of any other courts which otherwise may have had jurisdiction. This Note may be introduced in any proceeding to establish the rights of any party under this Note.

10. **Time.** Time is of the essence of this Note and each of the provisions hereof.

11. **Interest Limitation.** All agreements between Maker and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance, loaning or detention of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof at any time given the amount paid or agreed to be paid shall exceed the maximum permissible under applicable law, then, the

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<sup>2</sup> The lien securing this Note will be junior to the lien securing the Exit Financing, as such term is defined in the Plan.

obligation to be fulfilled shall automatically be reduced to the limit permitted by applicable law, and if from any circumstance Holder should ever receive as interest an amount which would exceed the highest lawful rate of interest, such amount which would be in excess of such highest lawful rate of interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Maker and Holder and shall be binding upon and available to any subsequent holder of this Note.

12. **Captions.** The captions to the sections of this Note are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

13. **Notices.** All notices or communication required or committed to be given hereunder to Maker or Holder shall be in writing and personally delivered, sent by facsimile, sent by electronic mail, sent by overnight delivery, or sent by certified U.S. Mail, return receipt requested, to Maker or Holder at the addresses set forth in Section 1. Notices shall be effective as follows:

- a) If personally delivered, as soon as it is delivered;
- b) If by electronic mail, on the date and time as indicated on such electronic correspondence;
- c) If by overnight delivery, the day after delivery thereof to a reputable overnight courier service, delivery charges prepaid; or
- d) If mailed by U.S. Mail, at midnight on the third (3rd) business day after deposit in the mail, postage prepaid.

14. **Assignment.** This Note inures to and binds the heirs, legal representatives, successors, and assigns of Maker and Holder.

15. **Modification.** This Note may not be amended or modified, nor will any waiver of any provision hereof be effective, except by an instrument in writing signed by the party against whom enforcement of any amendment, modification, or waiver is sought.

16. **Cumulative Remedies.** All of Holder's remedies in connection with this Note or under applicable law shall be cumulative, and Holder's exercise of any one (1) or more of those remedies shall not constitute an election of remedies.

17. **Severability.** If any provision of this Note, or the application of it to any party or circumstance is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Note, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Note being severable in any such instance.

Maker has executed this Note as of the date first above written.

**MAKER:**

**AVERY LAND GROUP, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: James M. Rhodes  
Its: Manager



**EXHIBIT I**  
**DEBTOR'S LIQUIDATION ANALYSIS**

## Liquidation Analysis

Assumed as of December 1, 2018

### Assets Available to Creditors

Value of Existing Avery Land - 3,808 acres*	\$	-
Value of Land Contributed - 8,282 acres	\$	24,846,000
Less: Discount 40%	\$	(9,938,400)
Less: Cost of sales 3%	\$	(447,228)
	\$	<b>14,460,372</b>

**Estimated Net Assets After Secured Claims\* \$ 14,460,372**

### Administrative and Priority Claims

Priority Claims	\$	1,415
US Trustees Fees	\$	13,264
Fox	\$	1,200,000
Bach	\$	14,315
Wong	\$	25,000
Interest Rate Expert	\$	25,000
Property Taxes	\$	31,651
	\$	<b>1,310,645</b>

**Estimated Net Assets After Admin and Priority Claims \$ 13,149,727**

### Unsecured Claims

Claims	\$	3,503,969
Accrued Interest (34 months @ 2.71%)	\$	269,046
	\$	<b>3,773,016</b>

**Estimated Net Assets After Unsecured Claims \$ 9,376,711**

Estimated Net Recovery Uns. Claims	\$	3,773,016
Excess Assets over Recovery	\$	9,376,711

### Administrative Chapter 7 Fees

Trustee Legal Counsel	\$	50,000
Financial Advisors/Accountants	\$	50,000
Estimated Trustee Fees	\$	143,175
	\$	<b>243,175</b>

**TOTAL: \$ 9,133,536**

*\*This assumes that the chapter 7 trustee will surrender the collateral (net aggregate value \$20,558,052) securing the following claims to their holders, in full satisfaction of all amounts owing, pursuant to 11 U.S.C. § 725: Baxter Lienholder, LLC, Jonathan Baum, Stephen R. McKenna, William Ray Thompson, Barbara Mareno, James Ellis, Marilyn Torbet, John Ritchie, Robert A. and Meria Lysgaard (the "Secured Claims"). If the chapter 7 trustee sells the collateral and satisfies the Secured Claims from the proceeds instead, the amounts set forth herein may differ.*

**EXHIBIT J**  
**PLAN DEBT SERVICE**

*Avery Land Group, LLC*

FINANCIAL MODEL													
	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	2019
Secured Creditors (1)													
Jonathan Baum	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 67.25	\$ 806.94
Stephen R. McKenna	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 88.92	\$ 1,067.10
William Ray Thompson	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 131.19	\$ 1,574.25
	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 287.36	\$ 3,448.29
Unsecured Creditors (2)													
Annual Property Taxes	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 4,761.19	\$ 57,134.33
Total Debt Service and Property Taxes	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 5,048.55	\$ 60,582.62

*NOTE 1: Baxter Note settled per terms of settlement agreement. Baum, McKenna and Thompson due total principal of \$49,241 financed at 5.75% interest rate, payable over 3 years. Includes annual property taxes.*

*NOTE 2: Payments on Unsecured Claims will be made if/when there is cash flow available to do so. If not paid in full in 2 years, all remaining Unsecured Claims will be satisfied with real property of a value equal to such Claims.*





**EXHIBIT K**

**REORGANIZED DEBTOR'S OPERATING AGREEMENT**

**SECOND AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
AVERY LAND GROUP, LLC  
A NEVADA LIMITED LIABILITY COMPANY**

This Second Amended and Restated Operating Agreement of **AVERY LAND GROUP, LLC** (hereinafter referred to as “Company”), a Nevada limited liability company, is entered into and is effective as of the “Effective Date” (as defined herein), by and among the Company and the entities executing this Agreement as the Members.

**RECITALS**

**WHEREAS**, the Company was originally formed pursuant to and in accordance with the Nevada Limited Liability Company Act, codified as NRS Chapter 86 (“Act”) on August 6, 2013; and,

**WHEREAS**, the Company entered into the Operating Agreement on August 7, 2013; and,

**WHEREAS**, the Company entered into First Amended and Restated Operating Agreement on April 21, 2014; and,

**WHEREAS**, the Company merged with Kingman Farms, LLC on September 8, 2016, thereby assuming all of the debts and equity of Kingman Farms, LLC;

**WHEREAS**, the Company filed a Chapter 11 Bankruptcy Petition on September 9, 2016, seeking to reorganize its business; and,

**WHEREAS**, Gypsum Resources I, LLC (“Gypsum”), is willing to accept One Hundred Percent (100%) of the Membership Interest in full satisfaction of the Company’s obligation to repay funds advanced to the Company by Gypsum under the Debtor-In-Possession Revolving Credit Agreement (“DIP Loan”); and

**WHEREAS**, the parties desire to amend and restate the terms and conditions of the Operating Agreement to memorialize their agreement;

**NOW THEREFORE**, the Company hereby amends and restates the Operating Agreement as follows:

**1. DEFINITIONS**

Unless otherwise defined in this Agreement, the terms and conditions used in this Agreement have the meanings set forth in the Act, or as set forth below.



“**Additional Member**” means a member other than the initial member or a substitute member who has acquired a membership interest in the Company.

“**Agreement**” means this Operating Agreement, as originally executed and as it may be amended from time to time.

“**Articles of Organization**” means the Articles of Organization for the Company as may be filed with the Nevada Secretary of State for the purpose of forming the Company, pursuant to the Act, as amended.

“**Assignee**” means the transferee of a Membership Interest who has not been admitted as a substituted member.

“**Bankrupt Member**” means a Member who (a) has become the subject for an order for relief under the United States Bankruptcy Code, or (b) has initiated, either in an original proceeding or by way of answer in any state, insolvency receivership proceedings, an action for liquidation arrangements, composition, readjustment, dissolution or similar relief.

“**Capital Account**” as of any date means the capital contribution to the Company by a Member, adjusted as of that date pursuant to this Agreement. Each Member shall have a “Capital Account,” which shall be maintained in accordance with Code Regulation §1.704-1(b).

“**Capital Contribution**” means any Member’s contribution to the capital of the Company in cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to render services. “**Initial Capital Contribution**” means the initial contribution to the capital of the Company pursuant to this Operating Agreement.

“**Capital Interest**” means the proportion that the Member’s positive capital account bears to the aggregate positive capital accounts of all Members whose capital accounts have positive balances, as may be adjusted from time to time.

“**Code**” means the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any superseding federal revenue statute.

“**Company**” refers to **Avery Land Group, LLC**, a Nevada limited liability company, and any successor limited liability company.

“**Company Property**” means any Property owned by the Company.

“**Default Interest Rate**” means the higher of the legal rate or the then prime rate quoted in *The Wall Street Journal* plus two percent (2%).

“**Deficit Capital Account**” means with respect to any Member, the deficit balance, if any, in that Member’s Capital Account as of the end of the taxable year, after making the following adjustments:

- (1) Credit to the Capital Account any amount that the Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition to it pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account any changes during the year in partnership minimum gain (as determined in accordance with Treasury Regulations Section 1.704-2(d) and in the minimum gain attributable to any partner's nonrecourse debt (as determined under Treasury Regulations Section 1.704-2(i)(3)); and
- (2) Debit to the Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Deficit Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

**“Distributable Cash”** means all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on the Company's indebtedness and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; and (iii) Reserves.

**“Disposition”** (**“Dispose”**) means any sale, assignment, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).

**“Dissociation”** means any action that causes a person to cease to be a Member as described in Article 13 hereof.

**“Dissolution Event”** means an event that results in the dissolution of the Company under Article 14, unless the Members agree to the contrary.

**“Distribution”** means any cash and other property paid by the Company to a Member in his, her or its capacity as a Member.

**“Effective Date”** means the date upon which the Company obtains an Order approving its Plan of Reorganization from the Bankruptcy Court.

**“Entity”** means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association, or any foreign trust or foreign business organization.

**“Fiscal Year”** means the fiscal year of the Company, which will be the year ending December 31<sup>st</sup>.

**“Gifting Member”** means any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

**“Majority Interest”** means one or more interests of the Members which, taken together, exceed fifty percent (50%) of the aggregate of all Capital Interests.

**“Manager”** means James M. Rhodes, or any other persons or entity that succeeds it in that capacity pursuant to any annual or special meeting. References to the Manager in the singular or as him, her, it, itself, or other like references will also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

**“Member”** means each of the parties who executes a counterpart of this Operating Agreement as a Member, and each of the parties who may subsequently become Members in accordance with Article 12. To the extent a Manager has acquired a Membership interest in the Company, he or she will have all the rights of a Member with respect to that Membership interest, and the term “Member” as used here includes a Manager to the extent he or she has purchased the Membership Interest in the Company.

**“Membership Interest”** means each Member’s percentage interest in the Company, as reflected on Exhibit A attached hereto, and adjusted as provided in this Agreement, and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement and the Act.

**“Net Losses”** means the losses and deductions of the Company, determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company, and as reported separately or in the aggregate, as appropriate, on the Company’s tax return filed for federal income tax purposes.

**“Net Profits”** means the Company’s income and gains, determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company, and as reported separately or in the aggregate, as appropriate, on the Company’s tax return filed for federal income tax purposes.

**“Person”** means any association, corporation, stock company, estate, general partnership (including any Registered Limited Liability Partnership or Foreign Limited Liability Partnership), limited association, limited liability company (including a professional service limited liability company), foreign limited liability company, joint venture, limited partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or other individual in its own or any representative capacity. In addition, the term means the heirs, executors, administrators, legal representatives, successors and assigns of that “Person” where the context so requires.

**“Proceeding”** means any judicial or administrative trial, hearing or other activity, civil, criminal or investigative, the result of which may be that a court, arbitrator or governmental agency may enter a judgment, order, decree or other determination that, if not repealed and reversed, would

be binding on the Company, a Member or other Person subject to the jurisdiction of that court, arbitrator or governmental agency.

**“Property”** means any Property, real or personal, tangible or intangible, including money and any legal or equitable interest in Property, but excluding services and promises to perform future services.

**“Reserves”** means, with respect to any fiscal period, funds set aside or amounts allocated during that period to Reserves that must be maintained in an amount deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service, or other costs or expenses incident to the ownership or operation of the Company’s business.

**“Resignation”** means the act by which a Manager ceases to be a Manager.

**“Selling Member”** means any Member who desires to or does sell, assign, pledge, hypothecate or otherwise transfers for a consideration all or any portion of the Member’s Membership Interest.

**“Taxable Year”** means the taxable year of the Company as determined pursuant to Section 706 of the Code.

**“Taxing Jurisdiction”** means any state, local or foreign government that collects tax, interest or penalties, however designated, and any Member’s share of the income or gain attributable to the Company.

**“Transferring Member”** collectively means a Selling Member and a Gifting Member.

**“Treasury Regulations”** means all proposed, temporary and final regulations promulgated under the Code as from time to time in effect.

**“Unreturned Capital”** means with respect to each Member, at any given time, the excess of (a) the Capital Contributions made by such Member to the Company, over (b) all distributions made to such Member pursuant to Section 9 hereof.

## **2. ORGANIZATION**

### **2.1 Formation**

The Company was organized as a Nevada limited liability company on August 6, 2013, by preparing, executing and filing with the Nevada Secretary of State the Articles of Organization pursuant to the Act.

### **2.2 Agreement**

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Members executing this

Agreement agree to the terms and conditions of this Agreement as it may be from time to time amended according to its terms. The Members expressly intend that this Agreement be the sole source of agreement of the parties, and except to the extent that a provision of this Agreement expressly incorporates federal income tax rules by reference to the Code or Regulations, or is expressly prohibited or ineffective under the Act, even when inconsistent with or different from the provisions of the Act or any other law or rule. To that extent that any Agreement provision is prohibited or ineffective under the Act, the Agreement is considered amended to the smallest degree possible in order to make the Agreement effective under the Act. If the Act is subsequently amended or interpreted in such a way to make any formerly invalid provision of the Agreement valid, the provision will be considered to be valid from the effective date of the interpretation or amendment.

### **2.3 Name**

The name of the Company is **Avery Land Group, LLC**, and all business of the Company will be conducted under that name or any other name, but in any case, only to the extent permitted by applicable law. Notwithstanding the foregoing, the Company may elect to change its formal name or use a dba (doing business as) at anytime following the Effective Date to promote marketing and financing, in accordance with the Act.

### **2.4 Effective Date**

This Agreement is effective as of the date the Company obtains an Order approving its Plan of Reorganization from the Bankruptcy Court.

### **2.5 Principal Place of Business**

The Company's principal place of business initially will be 8912 Spanish Ridge Avenue, Suite 200, Las Vegas, Arizona 89148. The Company may establish any other places of business as the Managers deem advisable.

### **2.6 Resident Agent**

The Company shall have a Resident Agent. The initial Resident Agent is the Company. The Resident Agent may be changed from time to time by filing with the Nevada Secretary of State.

### **2.7 Term**

The Company's term is perpetual from the date of filing of the Articles of Organization with the Nevada Secretary of State, unless the Company is dissolved and its affairs wound up in accordance with the Act or this Agreement.

### **3. BUSINESS OF COMPANY**

#### **3.1 Nature of Business**

The Company's purpose and business shall be:

- (a) To accomplish any lawful business whatsoever, or that will at any time appear conducive to or expedient for the protection or benefit of the Company and its assets.
- (b) To exercise all other powers necessary to or reasonably connected with the Company's business that may be legally exercised by limited liability companies under the Act; and
- (c) To engage in all activities necessary, customary, or convenient, or incident to any of the foregoing.

#### **3.2 Other Business Activities**

The Company exists only for the purposes specified in Section 3.1 above and may not conduct any other business without the unanimous consent of the Members owning a majority in interest. The authority granted to the Managers to bind the Company is limited to the actions necessary or convenient to this business.

### **4. MEMBERS**

#### **4.1 Names and Addresses**

The names and addresses of the Initial Members are set forth in Exhibit A to this Agreement.

#### **4.2 Additional Members**

In the event that a Person is subsequently admitted as an Additional Member in accordance with Section 12.2, that Person's name, address and Capital Contribution must be added to Exhibit A.

#### **4.3 Permissible Forms of Contributions and Member Interests**

Members shall receive an interest in the Company in exchange for contributions to the Company of consideration in such form as is permitted by the Act. The capital of the Company consists of capital contributed by the Members in exchange for their interests in the Company, in the proportion and/or amounts set forth on Exhibit A, attached hereto. Each Member shall have a "Membership Interest" in the income, gain, credits, capital, losses and depreciation and distributions of the Company equal to each such Member's Percentage Interest. The Percentage Interests of the Members in the Company, representing their respective rights to share in profits and losses and distributions from the Company (but not reflecting a present interest in the capital of the Company), shall be equal to that percentage which represents their proportionate share of the total agreed value of contributions to the Company, as adjusted from time to time pursuant to Section 4.7. Each Member's Percentage Interest shall be set forth in Exhibit A attached.

#### **4.4 Return of Capital**

The capital contributions of the Members shall be returned to them, if at all, upon sale of the Company assets or upon dissolution and winding up of the Company; provided, however, that each Member shall only be entitled to distributions of the Company's assets upon liquidation of the Company's equal to each Member's Percentage Interest and there is no guarantee that the Company shall have assets in an amount sufficient upon the Company's dissolution to return all or any portion of a Member's capital contribution. No Member has any right at any time to demand the return of all or any portion of the Member's capital contribution and a Member shall only be entitled to a pro-rata distribution, based upon a Member's Percentage Interest, of whatever assets the Company may have after the payment of all of the Company's liabilities upon the dissolution and liquidation of the Company. No Member shall have the right to demand the return of such Member's capital contribution, providing that nothing contained herein shall prevent the Manager from making such distributions to Members in accordance with their respective Percentage Interests or on a preferred basis as may be provided herein, as the Manager may from time to time determine. No interest shall be paid or credited with respect to any capital contributed by the Members.

#### **4.5 Advances by Members**

A Member may advance funds to the Company at such times and in such amounts as may be determined by the Managers for the purpose of paying the costs and operating expenses of the Company. Such costs and operating expenses shall include, but are not necessarily limited to, any operating expenses of the Company or the balance of the purchase price of any assets being purchased or the costs of any improvements or additions to such assets. At the time of making each advance, the Members shall determine to treat the advance either as a loan or as a capital contribution, subject to the requirements below in this Section. If the Members determine to treat the advance as a loan, the advance shall become a loan obligation of the Company to the Member making the advance. The loan obligation shall be repaid to the Member, together with interest at a rate determined by the Members. Such repayment shall be made out of the gross receipts of the Company at such time as adequate gross receipts have been derived from the operation of the Company to permit such repayment without impairing the operations or solvency of the Company and without violating the restrictions of the Act on distributions to Members. Any such unpaid loans shall become due and payable upon dissolution of the Company where the business of the Company is not continued by the Members.

If the Members determine to treat an advance as a capital contribution, such determination must be unanimous among the Members, in which event the capital contributions of all Members (and their interests in profits and losses) shall be adjusted as provided in Section 4.7. No advance that is made disproportionately to the respective Percentage Interests of the Members in the Company shall be treated as a capital contribution, unless the Members unanimously agree to such treatment and to the manner in which the Percentage Interests of each Member are to be adjusted by virtue of such disproportionate capital contribution.

#### **4.6 Additional Capital Contributions**

If the Managers shall so determine, additional capital contributions may be solicited from time to time from existing Members of the Company or outside sources. Prior to the solicitation of such additional capital from outside sources, the existing Members of the Company shall be given the right of first refusal to make such additional contributions. Such right of first refusal shall be triggered by written notice to each Member of the Company (unless waived by such Member) of (i) the need for additional capital and the use to which such capital will be devoted; and (ii) the amount of additional capital which is sought. The existing Members of the Company shall then have 15 days from the date on which they received the foregoing notice to inform the Company of their desire to contribute all or part of such additional capital. Following the receipt of additional capital contributions as contemplated by this Section, each Member's Percentage Interest shall be adjusted in accordance with Section 4.7 hereof.

#### **4.7 Adjustment of Percentage Interests**

If additional contributions are made or deemed to have been made in proportions other than according to the immediately prior existing Percentage Interests of the Members, the relative Percentage Interests of the Members shall be adjusted so that the Percentage Interest of each Member shall equal the percentage which is equal to the balance of such Member's capital account following the contributions of such additional capital divided by the sum of all the Members' capital accounts following the contributions of such additional capital.

#### **4.8 Pledging of Member Interests**

Where a Member pledges or grants a security interest in all or any portion of its Member Interest in the Company, any such pledge or granting of security interest shall not be recognized by the Company until the Company (by way of notice to the Manager) has received written notice of such pledge or security interest. Once such notice is received by the Company, such pledge or security interest shall be noted on the records of the Company until the Company is notified otherwise of the termination of the same. Any creditor of a Member (or any assignee of any such creditor of a Member) realizing on its collateral in the form of a Member Interest in the Company shall under no circumstances become a Substitute Member of the Company unless admitted to the Company as a Substitute Member by the Manager pursuant to this Agreement.

#### **4.9 No Certificates of Ownership**

The interests of the Members in the Company shall not be represented by certificates unless otherwise agreed among the Members and the Managers.

### **5. MEMBER RIGHTS AND DUTIES**

#### **5.1 Management Rights**

All Members (other than Assignees) who have not dissociated are entitled to vote on any matter substituted to a vote of the Members. Notwithstanding the foregoing, the following actions



require the vote or consent of a majority of the Members:

- (a) Any amendment to this Agreement.
- (b) The admission of an Assignee as a Member.
- (c) The Company's continuation after a Dissolution Event.
- (d) Commence lawsuits and other proceedings.
- (e) Enter into any agreement, instrument or other writing that is not in the ordinary course of business or sells, transfers, pledges, hypothecates or secures or similar transaction that involves substantially all of the assets of the Company.
- (f) Retain accountants, attorneys or other agents.
- (g) If approved by the Members holding a Majority of Membership Interests, the Managers and each of those Members have the right to make a filing under the Federal Bankruptcy Code.
- (h) Take any other lawful action that the Managers consider necessary, convenient or advisable in connection with any Company business.

## **5.2 Majority**

Whenever any matter is required or allowed to be approved by a Majority of the Members or a Majority of the Remaining Members under the Act or this Agreement, the matter will be considered approved or consented to on the receipt of the affirmative approval or consent, either in writing or at a meeting of the Members, of Members having Capital Accounts in excess of one-half of the Capital Accounts of all the Members entitled to vote on a particular matter. Assignees and, in the case of approvals to withdrawal where consent of the remaining Members is required, disassociating Members will not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Member who has disposed of that Member's entire Membership Interest to an Assignee, but has not been removed as provided in Section 11.6(b), the Capital Account of that Assignee will be considered in determining a Majority and that Member's vote or consent will be determined by that Capital Account.

## **5.3 Limitation of Liability**

Members are not liable for any debts, obligations or liabilities of the Company or each other, whether arising in tort, contract or otherwise, solely by reason of being a Member. However, each Member remains personally liable for payment of his, her or its Capital Contribution as set forth in the Act or as otherwise provided in this Agreement.

#### **5.4 Indemnification**

The Company will indemnify the Members, Managers and agents for all costs, losses, liabilities and damages paid or accrued by the Member, Manager or agent in connection with the Company's business, to the fullest extent provided or allowed by the laws of Delaware, except in the event of an intentional breach of a fiduciary duty or obligation of a Manager.

#### **5.5 Books and Records**

In accordance with Section 9.9, the Managers will maintain and preserve during the Company's term and for the following seven (7) years, all accounts, books, minutes of Member meetings, and all other relevant Company documents. On reasonable request, each Member has the right, during ordinary business hours and at the Company's principal place of business, to inspect and copy Company documents at the requesting Member's expense.

#### **5.6 Sale of All Assets**

The Members have the right, by the vote or written consent of the Members holding at least a majority of the membership interests of all Capital Interests, to approve the sale, lease, exchange or other disposition of all or substantially all of the Company's assets which is to occur as part of a single transaction or plan.

#### **5.7 Priority and Return of Capital**

No Member has priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses or a Distribution; provided, however, that this Section does not apply to loans or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

#### **5.8 Liability to Company**

A Member who rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or subsequently provided by the Act. A Member who receives a Distribution made by the Company in violation of this Agreement, or made when the Company's liabilities exceed its assets (after giving effect to the Distribution) is liable to the Company for the amount of the Distribution for a period of three (3) years after the Distribution.

#### **5.9 Financial Adjustments**

No Members admitted after the date of this Agreement are entitled to any retroactive allocations of losses, income or expense deductions incurred by the Company. The Manager may, at the Manager's discretion, at the time a Member is admitted, close the Company's books and records (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to that Member for that portion of the Fiscal Year in which that Member was admitted in accordance with the Code.

## **5.10 Representations and Warranties**

Each Member, and in the case of an organization, the person(s) executing this Agreement on the organization's behalf, represents and warrants to the Company and each other Member and Manager that (a) if that Member is an organization, it is duly organized, validly existing, and in good standing under the law of its state of organization, and has full organizational power to execute and agree to this Agreement and to perform its obligations under this Agreement; (b) the Member is acquiring its interest in the Company for the Member's own account as an investment and without intent to distribute the interest; and (c) the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from those requirements.

## **5.11 Conflicts of Interest**

(a) A Member is entitled to enter into transactions that may be considered competitive with, or into a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the Company may enter. Notwithstanding the foregoing, Members must account to the Company and hold as trustee for any property, profit or benefit derived by the Member, without the consent of the other Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company Property, including information developed exclusively for the Company and opportunities expressly offered to the Company.

(b) A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a non-Member, subject to other applicable law. No transaction with the Company will be voidable solely because a Member has a direct or indirect interest in the transaction if either (i) the transaction is fair to the Company, or (ii) disinterested Members, knowing the material facts of the transaction and the Member's interest, authorize, approve or ratify the transaction.

## **6. MANAGER RIGHTS AND DUTIES**

### **6.1 Management**

The Company's daily business and affairs will be managed by its Manager. The Manager will direct, manage and control the Company's business to the best of their ability. The Manager shall have the authority and discretion to manage and control all of the Company's business, affairs, accounts and properties, and to make decisions regarding those matters, and/or to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Operating Agreement or the Act.

## **6.2 Number, Tenure and Qualifications**

The Company will have one (1) Manager. The Manager shall be James M. Rhodes. The number of Managers of the Company may be amended from time to time by the vote or written consent of Members holding a majority of the Membership Interests. Each Manager holds office until the next annual meeting of Members, or until a successor has been elected and qualified. Managers are elected by the vote or written consent of the Members holding at least a majority of all Membership Interests and need not be residents of the State of Nevada or Members of the Company.

## **6.3 Binding Authority**

Unless authorized to do so by a majority of the Members, no attorney-in-fact, employee or other agent of the Company has any power or authority to bind the Company in any way, to pledge its credit or render it pecuniarily liable for any purpose. This sentence does not apply to the Manager acting in the ordinary course of business so long as such pledge or credit request does not involve the use of substantially all of the Company assets. A Manager may delegate his power or authority to bind the Company (by way of power of attorney) provided that such power is of limited duration, (one month or less) involves a subject that is in the ordinary course of business and does not involve any item that arises under section 5.1 unless that power of attorney has been authorized in accordance with the previous sentences.

In addition to the foregoing described ability to delegate authority by way of power of attorney, the Manager may designate one or more Persons to be officers of the Company (“Officers”), and any Officers so designated shall have such title, authorities, duties, and salaries as the manager may delegate to them. Any Officer may be removed as such, either with or without cause, by the Manager.

## **6.4 Liability for Certain Acts**

Each Manager must perform his or her duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties as Manager does not have any liability by reason of being or having been a Manager of the Company. The Manager does not, in any way, guarantee the return of the Members’ Capital Contributions or a profit for the Members from the Company operations. The Manager is not liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage was the result of fraud, deceit, willful misconduct, or a wrongful taking by the Manager.

## **6.5 No Exclusive Duty to the Company**

The Managers are not required to manage the Company as their sole and exclusive function, and they may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member has any right pursuant to this

Agreement to share or participate in other business interests or activities of the Managers or in the income or proceeds derived from them. The Managers incur no liability to the Company or any Member as a result of engaging in any other business interests or activities.

## **6.6 Indemnification**

The Company must indemnify and hold harmless the Managers from and against all claims and demands to the maximum extent permitted under the Act.

## **6.7 Resignation**

Any Manager may resign at any time by giving written notice to the Company, with a copy to each Member. The resignation of any Manager takes effect on receipt of notice by the Company or at any later time specified in the notice. Unless otherwise specified in the notice, the acceptance of the resignation is not necessary to make it effective. The resignation of the Manager who is also a Member does not affect the Manager's rights as a Member and does not constitute a withdrawal of the Member.

## **6.8 Removal**

Any Manager may be removed or replaced with or without cause by the vote of Members who hold at least a majority of the Membership Interests pursuant to any annual or special meeting. The removal of a Manager who is also a Member will not affect the Manager's rights as a Member and will not constitute a withdrawal of the Member.

## **6.9 Vacancies**

Any vacancy occurring for any reason in the number of Managers may be filled by the vote or written consent of at least a majority of the Membership Interests. A Manager elected to fill a vacancy is elected for the unexpired term of the Manager's predecessor in office and holds office until the expiration of the term and until the Manager's successor has been elected and qualified. A Manager chosen to fill a position resulting from an increase in the number of Managers holds office until the next annual meeting of Members and until a successor has been elected and qualified.

## **6.10 Salaries and Fees**

No Manager will be reimbursed for management expenses (not including direct or indirect construction expenses) incurred in managing the Company. The salaries and other compensation of the Managers may be fixed from time to time by the unanimous vote of the Membership interests. No Manager is prevented from receiving such a salary or other compensation because the Manager is also a Member.

## **7. MEMBER MEETINGS**

### **7.1 Annual Meeting**

The annual meeting of the Members will be held on January 15<sup>th</sup>, or at such other time as determined by the Managers, for the purpose of the transaction of any business that may come before the meeting.

### **7.2 Special Meetings**

Special Meetings of the Members, for any purpose or purposes, may be called by any Manager or any Member or group of Members holding collectively not less than fifty percent (50%) of the Membership interests.

### **7.3 Place**

Meetings of the Members may be held at any place, within or outside the State of Nevada, for any Member meeting designated in any notice of the meeting. If no designation is made, the place of any meeting will be the Company's chief executive office.

### **7.4 Notice of Meetings**

Written notice stating the place, day and hour of the meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting, stating the purpose or purposes for which the meeting is called, must be delivered no fewer than ten (10) nor more than twenty (20) days before the date of the meeting.

### **7.5 Record Date**

For the purpose of determining the Members entitled to notice of or to vote at any meeting of the Members or any adjournment of the meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, is the record date for making a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this section, the determination applies to any adjournment of the meeting.

### **7.6 Quorum**

Members holding not less than a majority of all Membership Interests, representing in person or by proxy, constitute a quorum at any meeting of the Members. In the absence of a quorum at any Member meeting, a majority of the Membership Interests so represented may adjourn the meeting from time to time for a period not to exceed twenty (20) days without further notice. However, if the adjournment is more than twenty (20) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting must be given to each Member of record entitled to vote at the meeting. At an adjourned meeting at which a

quorum must be present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Membership Interests whose absence results in less than a quorum being present.

### **7.7 Manner of Acting**

If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority of Membership Interests is the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by this Agreement.

### **7.8 Proxies**

At all Member meetings, a Member may vote in person or by proxy executed in writing by the Member or a duly authorized attorney-in-fact. The proxy must be filed with the Managers before or at the time of the meeting. No proxy will be valid after two (2) months from the date of its execution, unless otherwise provided in the proxy.

### **7.9 Member Action Without a Meeting**

(a) Whenever the Members are required or permitted to take any action by vote or consent, action may be taken without a meeting, without prior notice and without a vote, if written consent or consents, setting forth the action taken, are signed by the Members who hold the Membership Interests, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote at the meeting were present and voted, and are delivered to the office of the Company, its principal place of business, or a Manager, employee or agent of the Company.

(b) Every written consent must bear the date of signature of each Member who signs the consent, and no written consent is effective to take the action referred to in it unless, within fifteen (15) days of the earliest dated consent delivered in the manner required by this section to the Company, written consents signed by a sufficient number of Members to take the action are delivered to the office of the Company, its principal place of business, or a Manager, employee or agent of the Company having custody of the Company records.

(c) Delivery of consents to such office or principal place of business of Manager, employee or agent, must be by hand, including messenger or other courier, or by certified or registered mail, return receipt requested.

(d) Prompt notice of the taking of the action without a meeting by less than unanimous written consent must be given to each Member who has not consented in writing but who would have been entitled to vote on the action had the action been taken at a meeting.

### **7.10 Manager Actions**

The Manager may document major decisions and actions by written consent and resolutions. All such written consents and resolutions shall be included in the Company's minutes.

### **7.11 Waiver of Notice**

Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the meeting's conclusion the lack of notice of that meeting, constitutes a waiver of notice by him or her.

### **7.12 Voting Agreements**

An agreement between two (2) or more Members, if in writing and signed by them, may provide that in exercising any voting rights, the Membership Interests held by them will be voted as provided in the agreement or as they may agree, or as determined in accordance with a procedure agreed on by them.

## **8. CONTRIBUTIONS AND CAPITAL CONTRIBUTIONS**

### **8.1 Capital Contributions**

Each Member must contribute his or her share of land or capital as the Initial Capital Contribution as shown on Exhibit A.

### **8.2 Additional Contributions**

Except as set forth in Section 8.1 above, no Member is required to make any Capital Contributions. To the extent unanimously approved by the Members, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Members determine that those additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business (including without limitation, expansion or diversification). In such event, the Members may (but are not obligated) to participate in those additional Capital Contributions on a pro rata basis in accordance with their Membership Interests.

### **8.3 Capital Accounts**

A Capital Account will be established and maintained for each Member. Each Member's Capital Account will be increased by the value of each Capital Contribution made by the Member, allocations to the Member of the Net Profits and any other allocations to the Member of income pursuant to the Code. Each Member's Capital Account will be decreased by the value of each distribution made to the Member by the Company, allocations to the Member of Net Losses, and other allocations to the Member pursuant to the Code.



#### **8.4 Transfers**

On a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the Member transferring his, her or its Membership Interests will become the Capital Account of the Person to which or whom the Membership Interest is sold or transferred in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

#### **8.5 Modifications**

The manner in which Capital Accounts are to be maintained pursuant to this section is intended to comply with the requirements of Section 704(b) of the Code. If, in the opinion of the Majority of Members, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Section 704(b) of the Code, then the method in which Capital Accounts are maintained will be so modified; provided, however, that any change in the manner of maintaining Capital Accounts will not materially alter the economic agreement between or among the Members.

#### **8.6 Deficit Capital Account**

Except as otherwise required in the Act or this Agreement, no Member has any liability to restore all or any portion of a deficit balance in a Capital Account.

#### **8.7 Withdrawal or Reduction of Capital Contribution**

A Member will not receive from the Company any portion of his or her Capital Contribution until all indebtedness and liabilities of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid or there remains property of the Company, based on a vote of the Majority of Members, sufficient to pay them. No distributions will be made from the Capital Contributions of a Member without the consent of Members owning a majority of Membership Interests in the Company. A Member, irrespective of the nature of the Capital Contribution of that Member, has only the right to demand and receive cash in return for the Capital Contribution.

### **9. ALLOCATIONS AND DISTRIBUTIONS**

#### **9.1 Allocations of Profits and Losses**

The Net Profits and Net Losses of the Company for each Fiscal Year will be allocated and distributed to the Members in accordance with their Membership Percentage Interests.

#### **9.2 Distributions**

(a) Except for a Distribution on Dissolution in accordance with Section 14.2(c) or a sale of Company real property assets, the Managers may, from time to time, upon direction from a Majority of Members, make Distributions to the Members.

(b) All Distributions will be made to each Member in accordance with their Capital Contribution or their Membership Percentage Interests, and except for any loans due to a Member, fees due to a Member in Section 9.3.

(c) Upon return of each Member's Initial Capital Contribution, any Distribution shall follow the Net Profits and Losses set forth in section 9.1 above.

### **9.3 Offset**

The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to the Member.

### **9.4 Limitation on Distributions**

No Distribution will be declared and paid unless, after such Distribution is made, the assets of the Company are in excess of all liabilities of the Company.

### **9.5 Interest on and Return of Capital Contributions**

No Member is entitled to interest on his or her Capital Contribution, or to a return of his, her or its Capital Contribution, except as specifically set forth in this Agreement.

### **9.6 Accounting Principals**

The profits and losses of the Company will be determined in accordance with accounting principles applied on a consistent basis using the accrual method of accounting. It is intended that the Company will elect those accounting methods which provide the greatest tax benefits.

### **9.7 Accounting Period**

The accounting period of the Company will be the calendar year.

### **9.8 Loans to Company**

Nothing in this Operating Agreement prevents any Member from making secured or unsecured loans to the Company by agreement with the Company.

### **9.9 Records, Audits and Reports**

At the expense of the Company, the Manager will maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company will keep at its principal place of business the following records:

(a) A current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present.

- (b) A copy of the Articles of Organization for the Company and all amendments to it, together with executed copies of any powers of attorney pursuant to which any amendment has been executed.
- (c) Copies of the Company's federal, state and local income tax returns and reports, if any, for the four (4) most recent years.
- (d) Copies of the Company's currently effective written Operating Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three (3) most recent years.
- (e) Minutes of every annual, special, and court-ordered meeting.
- (f) Any written consents obtained from Members for actions taken by Members without a meeting.
- (g) Any written consents obtained from Managers documenting major business decisions and actions.

## **10. TAXES**

### **10.1 Tax Returns**

The Managers must cause to be prepared and filed all necessary federal and state income tax returns for the Company. Copies of such returns or pertinent information from them will be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. Each Member must furnish to the Managers all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

### **10.2 Tax Elections**

Company will make the following elections on the appropriate tax returns:

- (a) To adopt the calendar year as the Fiscal Year;
- (b) To adopt the accrual method of accounting and keep the Company's books and records on the income tax method;
- (c) If a Distribution as described in Section 734 of the Code occurs, or if a transfer of a Membership Interest described in Section 743 of the Code occurs, on the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Section 754 of the Code;

(d) To elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under Section 195 of the Code ratably over a period of sixty (60) months as permitted by Section 709(b) of the Code; and

(e) Any other election that the Managers deem appropriate and in the best interests of the Members. Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of the Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement will be interpreted to authorize any such election.

(f) By law, while the Company is a limited liability company with a single Member its income and losses shall automatically, without election, be passed through to the single Member for tax purposes.

### **10.3 Tax Matters Partner**

The Managers must designate one Manager to be the “tax matters partner” of the Company pursuant to Section 6231(a)(7) of the Code and if there is no designation, then the Manager shall be the tax matters partner. Any Manager who is designated “tax matters partner” must take any action as may be necessary to cause each other Member to become a “notice partner” within the meaning of Section 6223 of the Code.

## **11. DISPOSITION OF INTERESTS**

### **11.1 General**

Except as otherwise specifically provided in this Agreement, a Member does not have the right to:

(a) Sell, assign, pledge, hypothecate, transfer, exchange, or otherwise transfer for consideration (collectively, “sell”).

(b) Gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of its Membership Interest.

### **11.2 Gift of Membership Interest**

A Transferring Member may gift all or any portion of its Membership Interest (without regard to Sections 11.3(a-c)), provided that the donee or other successor-in-interest (collectively, “donee”) complies with Section 11.4, and further provided that the donee is either the Gifting Member’s spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a Gifting Member’s Membership Interest to one or more donees who are under eighteen (18) years of age, one or more trusts must be established to hold the gifted interest(s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least eighteen (18) years.

### **11.3 Sale of Membership Interest**

(a) If a Selling Member desires to sell all or any portion of its Membership Interest to another person, the Selling Member must obtain from such purchaser a bona fide written offer to purchase the interest, stating the terms and conditions on which the purchase is to be made. The Selling Member must give written Notice to the remaining Members of its intention to transfer the interest, with a copy of the bona fide written offer to purchase the interest.

(b) Each of the remaining Members, on a basis pro rata to their Capital Interests or on a basis pro rata to the Capital Interests of those remaining Members exercising their right of first refusal, has the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member on the same terms and conditions as stated in the bona fide written offer to purchase by giving Notice to the Selling Member of their intention to do so within thirty (30) days after receiving written notice from the Selling Member. The failure of the remaining Members to so notify the Selling Member of their desire to exercise this right of first refusal with respect to all of the interest desired to be sold within thirty (30) days results in the termination of the right of first refusal, and the Selling Member is entitled to consummate the sale of its interest in the Company, or the portion of its interest, if any, with respect to which the right of first refusal has not been exercised, to the third party purchaser.

(c) In the event the remaining Members (or any or more of the remaining Members) give written notice to the Selling Member of their desire to exercise this right of first refusal and to purchase all of the Selling Member's interest in the Company which the Selling Member desires to sell on the same terms and conditions as are stated in the bona fide written offer to purchase, the remaining Members have the right to designate the time, date and place of closing, provided that the date of closing will be the later of the date set forth for closing in the bona fide offer or within ninety (90) days after receipt of written notification from the Selling Member of the third party offer to purchase.

### **11.4 Conditions of Transfer**

In the event of either the purchase of the Selling Member's interest in the Company by a third party purchaser or a gift of an interest in the Company, and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or gift and (subject to Section 11.6 below) substitution of a new member as against the Company or otherwise, the Managers may require the Selling Member or Gifting Member and/or the proposed purchaser, donee or successor-in-interest to execute, acknowledge and deliver to the remaining Members, the instruments of transfer, assignment and assumption and other certificates, representations and documents, and to perform all other acts which the Managers deem necessary or desirable to:

(a) Constitute the purchaser, donee or successor-in-interest as a Member;

(b) Confirm that the person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has agreed to be subject to and bound by all of the terms, obligations and conditions of the Operating Agreement, as may have been further amended;

- (c) Preserve the Company after the completion of the sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business;
- (d) Maintain the status of the Company as a partnership for federal tax purposes; and
- (e) Assure compliance with any applicable state and federal laws, including securities laws and regulations.

### **11.5 Effective Date**

Any sale or gift of a Membership Interest or admission of a Member in compliance with this Article 11 is deemed effective as of the last day of the calendar month in which the remaining Members' consent to it was given or, if no such consent was required pursuant to Section 11.2, then on the date that the donee or successor interest complies with the provisions of Section 11.4. The Selling Member agrees, on request of the Managers, to execute certificates or other documents and perform other acts as reasonably requested by the Managers from time to time in connection with the sale, transfer, assignment or substitution. The Selling Member indemnifies the Company and the remaining Members against any and all loss, damage or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article 11.

### **11.6 Transferee Not Member in Absence of Unanimous Consent**

- (a) Notwithstanding anything contained in this Agreement to the contrary (including, without limitation, Section 11.3), if all of the remaining Members do not approve by unanimous consent of the proposed sale or gift of the Transferring Member's Membership Interest to a transferee or donee who is not a Member immediately prior to the sale or gift, then the proposed transferee or donee has no right to participate in the management of the business and affairs of the Company or to become a Member. No transfer of a Member's interest in the Company (including any transfer which has not been approved by unanimous written consent of the Members) will be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of transfer) has been provided to the Company and the non-transferring Member(s).
- (b) Contemporaneously with any sale or gift of a Transferring Member's Interest in the Company which does not at the same time transfer the balance of the rights associated with the Interest transferred by one Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), the Company must purchase from the Transferring Member, and the Transferring Member shall sell to the Company, for a purchase price of One Thousand Dollars (\$1,000.00), all remaining rights and interests retained by the Transferring Member which immediately prior to such sale or gift were associated with the transferred Interest.

## **12. ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS**

### **12.1 Admission of New Members or Assignees**

From the date of formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote may become a Member in the Company, subject to the terms and conditions of this Operating Agreement, either by the Company's issuance of Membership Interests for such consideration that the Members may determine by their unanimous votes, or as an Assignee of a Member's Membership Interest or a portion of it.

### **12.2 No Retroactive Allocations**

No new Members are entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Manager or Managers may, at his, her or their option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated under it.

## **13. DISSOCIATION OF MEMBER**

### **13.1 Dissociation**

A Person ceases to be a Member on the happening of any of the following events (a "Withdrawal Event"):

- (a) The withdrawal of a Member with the consent of a Majority of the remaining Members;
- (b) A Member becoming a Bankrupt Member;
- (c) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;
- (d) In the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (e) In the case of a Member that is a separate Organization other than a corporation, the dissolution and commencement of winding up of the separate Organization;
- (f) In the case of a Member that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation, or the revocation of its charter;
- (g) In the case of a Member which is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company;

### **13.2 Rights of Dissociating Member**

In the event any Member disassociates prior to the expiration of a stated term of existence as set forth in the Articles of Organization, or in Section 2.7 above:

(a) If the dissociation causes a dissolution and winding up of the Company under Article 14, the Member is entitled to participate in the winding up of the Company to the same extent as any other Member, except that Distributions to which the Member would have been entitled will be reduced by the damages sustained by the Company as a result of the Dissolution and winding up;

(b) If the dissociation does not cause a dissolution and winding up of the Company under Article 14, the Member is entitled to an amount equal to the value of the Member's Membership Interests in the Company, to be paid within six (6) months of the date of dissociation. Notwithstanding the foregoing, if the dissociation is other than as a result of the death or incompetence of the Member, the Managers may pay the value of the Member's Membership Interests in the Company out over a period not to exceed five (5) years, provided that the dissociating Member is entitled to participate as an Assignee in the Company until the value of such interest (plus interest at the Default Interest Rate) is paid in full. The value of the Member's Membership Interest includes the amount of any Distributions to which the Member is entitled under the Agreement and the fair value of the Member's Membership Interest as of the date of dissociation, based upon the Member's right to share in distributions from the Company, reduced by any damages sustained by the Company as a result of the Member's dissociation.

(c) If the dissociation is a consensual withdrawal pursuant to Section 13.1(b), then the disposition of the Member's interest is to be provided in the terms of the consent to withdraw.

## **14. DISSOLUTION AND WINDING UP**

### **14.1 Dissolution**

The Company is dissolved and its affairs must be wound up upon the first to occur of the following Dissolution Events:

(a) The latest date on which the Company is to dissolve as set forth in Section 2.7 or one (1) year following the close of escrow on the last lot, whichever is earlier to occur.

(b) The vote or written consent of all Members.

(c) The dissociation of any Member or any other event that terminates the continued membership of any Member, unless within thirty (30) days after such event, the Company is continued by the vote or written consent of a Majority Interest of all of the remaining Members, and there are at least two (2) remaining Members. Each of the Members agrees that within thirty (30) days after the occurrence of a Withdrawal Event (and provided that there are then at least two (2) remaining Members of the Company), they will promptly consent, in writing, to continue the business of the Company. The consents must be mailed or hand delivered to the principal



place of business of the Company set forth in Section 2.3 of this Operating Agreement (or to another address designated by the Managers) no later than five (5) days after each Withdrawal Event or transfer by a Member of its Membership Interest. The sole remedy for breach of a Member's obligation under this section is money damages (and not specific performance).

## **14.2 Winding Up**

On dissolution of the Company, the Managers may, in the name of and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities, and distribute to the Members any remaining assets of the Company, all without affecting the liability of the Members. On winding up of the Company, the assets are to be distributed as follows:

- (b) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under the Act;
- (c) To Members and former Members in satisfaction of liabilities for Distributions under the Act;
- (d) Next, to those Members having an Unpaid Preferred Return, pro rata in accordance with their respective Unpaid Preferred Return, until the Unpaid Preferred Return of the members, if any, is reduced to zero; and
- (e) To Members, first for the return of their Capital Contributions, to the extent not previously returned, and second, respecting their Membership Interests, in the proportions in which the Members share in Distributions in accordance with this Agreement.

## **14.3 Articles of Dissolution**

Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, the Manager must file articles of dissolution with the Nevada Secretary of State pursuant to the Act.

## **14.4 Deficit Capital Account**

On a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Member has no obligation to make any Capital Contribution, and the negative balance of any Capital Account will not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

#### **14.5 Nonrecourse to Other Members**

Except as provided by applicable law or as expressly provided in this Agreement, on dissolution, each Member will receive a return of his, her or its Capital Contribution solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return any Capital Contribution of any Member, the Member will have no recourse against any other Member.

#### **14.6 Termination**

On completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company is deemed terminated.

### **15. GENERAL PROVISIONS**

#### **15.1 Notices**

Any notice, demand or other communication required or permitted to be given pursuant to this Agreement is sufficiently given for all purposes if it is in writing and (a) delivered personally to the party or to an executive officer of the party to whom the notice, demand or other communication is directed, or (b) sent by messenger, or by overnight courier, or by registered or certified mail, postage prepaid, addressed to the Member, Manager or the Company at his, her or its address set forth in this Agreement, or such address as the Member, Manager or Company gives notice of. Except as otherwise provided in this Agreement, any notice is deemed given, on delivery, except if sent by registered or certified mail, then five (5) business days after the date on which it was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this section.

#### **15.2 Entire Agreement and Amendments**

This Agreement contains the entire agreement among the Members with respect to the subject matter of this Agreement, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Members with respect to them, whether or not relied or acted on. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Members, whether or not relied or acted on, and no usage of trade, whether or not relied or acted on, amends this Agreement or impairs or otherwise affects any Member's obligations pursuant to this Agreement or any rights and remedies of a Member pursuant to this Agreement. No amendment to this Agreement is effective unless made in a writing duly executed by fifty-one percent (51%) of Members and specifically referring to each provision of this Agreement being amended.

#### **15.3 No Partnership Intended for Nontax Purposes**

The Members have formed the Company under the Act, and expressly do not intend to form a partnership under the Act or any other partnership laws. The Members do not intend to be

partners to one another, or partners as to any third party. To the extent any Member, by work or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation is liable to any other Member who incurs personal liability by reason of such wrongful representation.

#### **15.4 Rights of Creditors and Third Parties Under Agreement**

This Agreement is entered into between the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party has any rights under the Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

#### **15.5 Execution of Additional Instruments**

Each Member agrees to execute other and further statements of interests and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

#### **15.6 Telephone Conferences**

The Members and/or Managers may participate in a meeting of Members or a meeting of Managers, as the case may be, by means of conference telephone or similar communications equipment in which all Persons participating in the meeting can hear each other, and participation in a meeting constitutes presence of the Person at the meeting.

#### **15.7 Construction**

Whenever the singular number is used in this Agreement, and when required by the context, the same includes the plural and vice versa, and the masculine gender includes the feminine and neuter genders and vice versa.

#### **15.8 Waiver**

No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement constitutes a waiver of such right or remedy. No waiver by a Member of any right or remedy under this Agreement is effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

#### **15.9 Severability**

Whenever possible, each provision of this Agreement is to be interpreted to be effective and valid under applicable law. However, if any provision of this Agreement is prohibited by or invalid under such law, it is deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it is prohibited or invalid only to the extent

of such prohibition or invalidity without the remainder of the Agreement or any other provision being prohibited or invalid.

**15.10 Binding**

This Agreement is binding on and inures to the benefit of all Members, and each of the successors and assignees of the Members, except that rights or obligations of a Member under this Agreement may be assigned by the Member to another Person without first obtaining the written consent of all other Members.

**15.11 Counterparts**

This Agreement may be executed in counterparts, each of which is deemed an original and all of which constitutes one and the same instrument.

**15.12 Governing Law**

This Agreement is governed by, and interpreted and construed in accordance with, the laws of the State of Nevada, without regard to principles of conflict of laws. In the event any litigation or dispute shall arise hereon, such litigation or dispute shall be only resolved in the courts of Clark County, Nevada.

IN WITNESS WHEREOF, the individuals and entities signing this Agreement below conclusively evidence their agreement to the terms and conditions of this Agreement by so signing this Agreement.

**MEMBER:**

**MANAGER:**

**GYPSUM RESOURCES I, LLC**  
a Nevada limited liability company  
By: Truckee Springs Holdings, Inc.  
Its: Manager

**JAMES M. RHODES**

By: \_\_\_\_\_  
James M. Rhodes, President

By: \_\_\_\_\_  
Name: James M. Rhodes  
Title: Manager

**EXHIBIT A**

**AVERY LAND GROUP, LLC  
a Nevada limited liability company**

<u>Member Name and Address</u>	<u>Percentage Interest</u>	<u>Capital Contribution*</u>
Gypsum Resources I, LLC .....	100% .....	Satisfaction of DIP Loan