

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN RE:</b>	:	<b>Chapter 11</b>
	:	
<b>FOURTH QUARTER PROPERTIES 86, LLC,</b>	:	<b>Case No. 15-10135-whd</b>
	:	
<b>Debtor.</b>	:	
	:	

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**DISCLOSURE STATEMENT  
FOR  
LIQUIDATING PLAN OF REORGANIZATION  
OF  
FOURTH QUARTER PROPERTIES 86, LLC  
DATED AUGUST 28, 2015**



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**NOTICE**

**This Disclosure Statement is the only document authorized by the Court to be used in connection with the solicitation of votes accepting or rejecting Debtor's Liquidating Plan under Chapter 11 of the Bankruptcy Code (as it may be amended). A copy of the Plan is attached to this Disclosure Statement. No representations have been authorized by the Court concerning the Debtor or the Plan, except as set forth in this Disclosure Statement.**

**This Disclosure Statement contains only a summary of the Plan, and is not intended to replace careful and detailed review and analysis of the Plan, but to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the more detailed provisions set forth in the Plan (which is included as Exhibit "A" to this Disclosure Statement). All capitalized terms contained in this Disclosure Statement have the meaning assigned in the accompanying Plan. In the event of a conflict between the Plan and Disclosure Statement, the provisions of the Plan will govern. All holders of claims are encouraged to review the full text of the Plan and to carefully review this entire Disclosure Statement before deciding whether to vote to accept or reject the Plan.**

**This Disclosure Statement summarizes certain provisions of the Plan, statutory provisions, documents related to the Plan, events in Debtor's Chapter 11 case, and financial information. Although Debtor believes that the Plan and related document summaries are**

fair and accurate, such summaries are qualified to the extent that they do not set forth the entire text of such documents or statutory provisions. Factual information contained in this Disclosure Statement has been provided by Debtor, except where otherwise specifically noted. Debtor is unable to warrant or represent that the information contained herein, including the financial information, is without inaccuracy or omission.

The statements contained in this Disclosure Statement are made as of the date hereof, except to the extent an earlier date is specified with respect to any information. The delivery of this Disclosure Statement does not imply that the information contained herein is correct at any time subsequent to the date hereof or thereof.

No individual or entity should construe the contents of this Disclosure Statement as providing any legal, business, financial, or tax advice. Every individual or entity should consult with their own legal, business, financial or tax advisors as to any such matters.

The Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission. The SEC has not reviewed, certified, or passed upon the accuracy or adequacy of this statements contained herein, and it is not required to do so.

As to any contested matters, adversary proceedings, and other claims, actions or threatened actions involving Debtor or its creditors that exist, or may be made or initiated in the future, this Disclosure Statement will not constitute, nor shall it be construed as, an admission of any fact, liability, stipulation, or waiver. Instead, any material in this Disclosure Statement will be treated as a statement made in settlement negotiations, and shall not be admissible in further proceedings.

The approval by the Bankruptcy Court of this Disclosure Statement does not constitute a finding by the Court that the representations contained herein are factual, nor does such approval constitute an endorsement of any of the representations contained in either this Disclosure Statement or in the attached Plan.

The Plan will not be binding on creditors unless it is confirmed by the Bankruptcy Court at the confirmation hearing for Debtor's Plan, which will be held on the date, time, and place specified on the accompanying notice and order.

## **I. INTRODUCTION**

On January 22, 2015 (the "**Petition Date**"), Fourth Quarter Properties 86, LLC (the "**Debtor**") filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. The above-captioned bankruptcy case is sometimes referred to in this Disclosure Statement as the "**Case**." This Disclosure Statement provides information about Debtor, the reasons for filing the Case, key developments during the Case, and an explanation of the Debtor's Liquidating Plan of Reorganization (the "**Plan**").

Debtor submits this Disclosure Statement pursuant to Section 1125 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”), in connection with the solicitation of acceptances of the Plan, a copy of which is attached hereto as **Exhibit A**.

#### **A. The Disclosure Statement**

The purpose of this Disclosure Statement is to set forth information that (i) outlines pertinent history about Debtor and its business, and the reasons that Debtor filed the Case, (ii) summarizes the Plan, and (iii) is intended to assist each holder of any Claim against, or Equity Interest in, Debtor entitled to vote for acceptance or rejection of the Plan to make an informed decision of whether to vote to accept or reject the Plan. No solicitation for votes on the Plan may be made except pursuant to this Disclosure Statement, and no person has been authorized to utilize any other information concerning Debtor or its business for such purpose.

This Disclosure Statement does not purport to be a complete description of the Plan, the financial status of Debtor, the applicable provisions of the Bankruptcy Code, or of other matters that may be deemed significant by Creditors, Interest-holders, or other parties-in-interest. The Disclosure Statement necessarily involves a series of compromises between extensive “raw data” and the legal language in documents or statutes on the one hand and considerations of readability and usefulness on the other. **Schedule 1 to the Plan provides definitions which include substantive and material provisions which apply both to the Plan and to this Disclosure Statement. The definitions should be read in conjunction with this Disclosure Statement.** For further information, you should examine the Plan directly and consult your legal, financial, and tax advisors.

#### **B. Bankruptcy Court Approval of this Disclosure Statement**

After notice and a hearing, the Bankruptcy Court approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable each Holder of a Claim against, or Interest in, Debtor to make an informed judgment as to whether to vote to accept or reject the Plan.

### **II. VOTING PROCEDURES AND REQUIREMENTS**

#### **A. Eligibility to Vote**

The Debtor is soliciting acceptances of the Plan from each Class of Creditors identified in the Plan as an impaired class that is not deemed to have rejected the Plan. “Unclassified Claims,” identified below, are unimpaired, and are therefore deemed to have accepted the Plan. Such parties will not vote. Each Class of Creditors or Interest Holders that will not receive any distribution under the Plan is deemed under Section 1126(g) of the Bankruptcy Code to have rejected the Plan. The Debtor will not solicit acceptances from those Creditors or Interest Holders.

Specifically, only the holders of Allowed Claims in those classes specified below and further specified in the Plan (the “**Voting Classes**”) are eligible to vote to accept or reject the Plan.

This Disclosure Statement and the accompanying Plan are being sent to all holders of Unclassified Claims, Creditors, and Interest Holders, whether or not entitled to vote. Under Section 1141 of the Bankruptcy Code, the Plan, if approved (“**Confirmed**”) by the Bankruptcy Court, will bind all parties, whether or not such parties are entitled to vote for or against the Plan.

## **B. Ballots and Voting Deadlines**

### **1. Ballots**

Holders of Claims entitled to vote on the Plan will receive a Ballot accompanying this Disclosure Statement. All votes to accept or reject the Plan must be cast by using the Ballot enclosed with this Disclosure Statement (or manually executed copies thereof). No other votes will be counted.

Please fill out the Ballot and return it to the Bankruptcy Court as the Court instructs.

**Do not return any invoices, securities, notes, or proofs of claim with your Ballot.**

If delivery is by mail, enough time should be allowed to ensure timely delivery to and actual receipt by the Bankruptcy Court by the Voting Deadline specified in the accompanying Order and Notice.

**As provided in the attached order of the Bankruptcy Court approving the form and content of this Disclosure Statement, in order to be counted, ballots must be completed, signed, and actually received in proper form by the Bankruptcy Court on or before the date set in the attached order (the “Voting Deadline”), or such later date to which this solicitation is extended by the Court. Ballots received after this time may not be counted unless the Court so orders. If you have any questions about procedures for voting, or if you did not receive a ballot, received a damaged ballot, have lost your ballot, or have any questions about the Plan or Disclosure Statement, please call counsel for Debtor as set forth on the cover page of this document.**

Debtor in its sole discretion may waive objection to Ballots filed after the Voting Deadline, or related to Disputed Claims (e.g., those listed in Debtor’s Schedules as disputed, unliquidated, or contingent, or for which a Proof of Claim has been filed and to which Debtor has objected). Otherwise such ballots will not be counted unless ordered otherwise by the Bankruptcy Court.

If a Ballot is signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity, such persons should indicate such capacity when signing.

### **2. Revocation of Ballots**

Ballots to accept or reject the Plan may be revoked or changed only with the approval of the Bankruptcy Court.



### **3. Voting Multiple Claims**

Persons holding Claims in more than one Class must vote in each Class.

### **4. Incomplete Ballots**

Any Ballot received which is unsigned, or does not indicate either an acceptance or a rejection of the Plan, will not be counted. Incomplete ballots may be amended by the holder of the Claim on account of which the Ballot is cast to cure the deficiency, provided the amendment is filed before the beginning of the hearing on confirmation of the Plan.

### **C. Confirmation Hearing**

Pursuant to the accompanying Order, a Confirmation Hearing will be held at a date, time, and place listed in such Order before the Honorable W. Homer Drake United States Bankruptcy Judge. The Confirmation Hearing may be adjourned from time to time by additional notice prior the hearing, or by announcement in Bankruptcy Court on the scheduled date of the hearing. At the Confirmation Hearing, the Bankruptcy Court will (i) determine whether the requisite votes have been obtained from the Voting Classes, (ii) hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of, and (iii) determine whether to confirm the Plan. All objections, if any, to confirmation of the Plan must be filed with the Bankruptcy Court and served pursuant to the accompanying Order.

Objections to Confirmation of the Plan may be filed by any Creditor or party in interest, regardless of whether such Creditor or party in interest is entitled to vote on the Plan.

### **D. Recommendations**

**The Debtor believes that the Plan provides the most efficient approach to maximizing the value of the Debtor's assets for the benefit of the Debtor's creditors and equity interest holders. Therefore, Debtor urges creditors to vote to accept the Plan.**

## **III. DEBTOR AND ITS BUSINESS**

### **A. Debtor**

#### **1. Debtor**

*"In the Old West days of Wyoming a rancher could stand on his front porch and look out onto the open spaces and big mountains as far as the eye could see. Standing under big blue skies, far from big-city crowd and big-city problems, a man could have a sense of possibility limited only by his dreams." - Unknown Author*

There are very few places like that still around, and one of them is the Little Jennie Ranch owned and operated by Fourth Quarter Properties, 86, LLC (the "**Ranch**"). The Ranch was

created when several homesteads along Dell Creek were combined, and now comprises of 3,011 acres just north of the tiny community of Bondurant, Wyoming. The Ranch is a working cattle ranch and seeped in a rich history and has been in operation since the 1950s and considered by many to be the crown jewel of working cattle ranches in Wyoming. Black Angus cattle thrive on the property, which with its meadowlands and grazing leases can provide sufficient forage for 1,100 to 1,400 head.

The Ranch offers classic northwest Wyoming mountain scenery as it is surrounded by the Teton National Forest and the snowcapped Gros Ventre Mountain Range. The Ranch is filled with various structures and cottages, including the ranch headquarters which is a 4,000 square foot two-story, four bedroom log home built in the 1950s and filled with Thomas Molesworth-style furniture. The fireplace still bears the footprints of Genevieve Kearns, then 3, the daughter of the family that once owned the Ranch and the “little Jennie” for which it is named. Outside is a heated swimming pool. There are in addition eleven cabins scattered throughout the Ranch, including barns, a ranch manager’s home, equipment sheds and a renovated homesteaders’ cabin now called the Honeymoon Cabin.

As of the Petition Date, the Ranch was home to and continues to be home to livestock, comprising of approximately 468 commercial cattle, 11 horses, 13 heifer calves, and 2 steer calves. The Ranch’s complex cattle operations are run by Mr. Dick Beck, one of the premier ranch managers in the United States, with Three Trees Ranch, Inc., one of the largest purebred Angus operations in the nation.

The Debtor acquired the Ranch in September, 2005 for a price of \$46,000,000. The sale included approximately \$1,600,000 of livestock, machinery, equipment and other personal property. Prior to closing, the Ranch had been listed for sale at \$55,000,000 and was only on the market for approximately 200 days.

The Debtor is managed by Stanley E. Thomas, a successful real estate developer, from Newnan, Georgia. The ownership consists of Little Suwannee Holdings, LLC (95%), of which Mr. Thomas owns 100%, and Mr. J. Bruce Williams (5%).

## **2. Overview of Assets and Liabilities**

### **Assets**

As of the Petition Date, the Debtor valued its assets at \$49,124,607.73, primarily comprised of the above-described real property located in Sublette County, Wyoming valued at \$46,029,895.50 and \$3,094,712.23 in personal property primarily consisting of cattle and accounts receivable.

### **Liabilities**

As of the Petition Date, Debtor had total estimated liabilities of \$75,377,945.46. Such liabilities consisted of a disputed secured obligation to MLIC Asset Holdings, LLC and MLIC CB Holdings, LLC (collectively, “**MetLife**”) of approximately \$23,203,543.17 and a second secured obligation to John D. Phillips of approximately \$33,000,000. Debtor also scheduled



various unsecured liabilities, including disputed claims, totaling approximately \$19,166,185.61, consisting of various trade payables, loans to affiliates, bills, and credit cards.

### **3. Reasons for Filing Bankruptcy**

Due to the Great Recession and financial crisis in the real estate market, Mr. Thomas required additional capital to fund his ongoing real estate ventures and in 2006 the Debtor received a loan from MetLife for \$30,000,000 of which funds were used to support Mr. Thomas' real estate ventures and the Ranch was pledged in connection therewith. As time progressed in the new recessionary economic climate, the Debtor began negotiating with MetLife for a consensual restructuring of the terms of the debt. Unable to reach a consensual resolution, in 2013 MetLife filed a complaint in Sublette County, Wyoming seeking foreclosure of its security interest in the Ranch and received an interlocutory (preliminary) judgment of foreclosure on December 24, 2013. A preliminary judgment of foreclosure under Wyoming law is a step in the foreclosure process in which the Wyoming Court allows the petitioning creditor to foreclose upon its collateral while the foreclosure action is pending, and then return to court to receive a final judgment after crediting the foreclosure proceeds to the debt. After the judgment of foreclosure the Debtor and MetLife continued to negotiate settlement with the Debtor continuing to make principal and interest payments in an attempt to save the Ranch from foreclosure.

However, even with the Debtor continuing to negotiate and make all payments as directed by MetLife, MetLife published notices of foreclosure in the local newspaper while the Debtor was attempting to sell the Ranch, thereby eviscerating the Debtor's ability to sell the Ranch for its fair market value, because purchasers concluded the Ranch could be purchased at a steep discount in foreclosure from MetLife. In January 2015, while yet another foreclosure notice was running, the Debtor filed for protection under Chapter 11 to preserve its business and maximize the value of assets. The Debtor believes that the Plan preserves and maximizes the value for all creditors through an orderly liquidation and sale of the assets while not being held hostage by MetLife to accept an artificially low value.

## **IV. DEBTOR'S CHAPTER 11 CASE**

Debtor's Plan proposes a liquidation under Chapter 11 of the Bankruptcy Code. The Debtor has continued to operate the Ranch and manage its business as a debtor-in-possession, as authorized under Sections 1107(a) and 1108 of the Bankruptcy Code. Significant developments during the Bankruptcy Case are described below.

### **A. Significant "First Day" Bankruptcy Orders**

At the outset of the Chapter 11 Case, Debtor filed motions with the Bankruptcy Court seeking both procedural and substantive relief, resulting in (1) an order authorizing Debtor to retain Stone & Baxter, LLP as their bankruptcy counsel, (2) an order establishing compensation procedures for Debtor's professionals whereby the fees and expenses of Debtor's professionals could be paid, and (3) an order preventing termination of utility services and establishing procedures by which the Debtor and utility companies could negotiate and determine what, if

any, deposits or other security the Debtor was required to provide to utility companies to insure continued service.

## **B. Significant Events During the Chapter 11 Case**

### **1. The Official Committee of Unsecured Creditors**

No creditor's committee has been appointed in the Bankruptcy Case.

### **2. The Filing of Schedules of Assets and Liabilities and Statement of Financial Affairs**

On February 18, 2015, Debtor filed its Schedules of Assets and Liabilities (the “**Schedules**”) and Statement of Financial Affairs (“**SOFA**”). The Schedules and SOFA are of record in the office of the Clerk of the Bankruptcy Court and available for inspection online and at the Clerk's Office.

The Schedules, filed under oath, list all known assets and liabilities of Debtor as of the Petition Date. The manner in which Claims against Debtor are listed in the Schedules is important. Under Section 1111(a) of the Bankruptcy Code, a Proof of Claim or Interest is deemed filed for any claim or interest that appears in the Schedules, except a claim or interest that is scheduled as disputed, contingent, or unliquidated. Parties satisfied with the manner in which their claim or interest is listed in the Schedules need not file a Proof of Claim in the Bankruptcy Case, but if there is disagreement with the amount so scheduled, unless a Proof of Claim is filed, the amount of the claim or interest shown in the Schedules establishes the amount of the claim or interest for all purposes in the Bankruptcy Case.

A Proof of Claim filed in the Bankruptcy Case automatically supersedes the Schedules, unless objected to. The Plan provides that Debtor will have sixty (60) days following the Confirmation Date within to object to Proofs of Claim or claims that are deemed filed prior to the Court's Bar Date. With respect to Rejection Claims and other Proofs of Claim filed after the Court's Bar Date, the Debtor shall have the later of sixty (60) days following the Confirmation Date or ninety (90) days after the Filing of such Proof of Claims within which to file an objection. Creditors have the burden of checking Debtor's Schedules to determine if their Claims are accurately scheduled.

### **3. Bar Date for Filing Proofs of Claims**

On Debtor's motion, the Bankruptcy Court set August 14, 2015 as the Bar Date for filing of Proofs of Claim for any person or entity. [Dkt. Nos. 93 and 94]. Any person who was required to but failed to file a Proof of Claim on account of a pre-petition Claim on or before the Bar Date is forever barred, estopped, and enjoined from voting on, or receiving a distribution under the Plan, and is forever barred, estopped, and enjoined from asserting a pre-petition Claim against the Debtor and its Estate.

To date, general unsecured Claims and secured Claims have been filed with the Bankruptcy Court in the Case. Some of these claims could be disputed by the Debtor. Debtor has been reviewing, and continues to review, such Claims with respect to amount, classification,

and validity. Debtor will file Claims objections, as appropriate, based on its continuing reconciliation of the Claims, including with respect to amount, classification, and validity. Specifically, but not in limitation of the Debtor's right to object to any claim upon any lawful basis, the Debtor and MetLife disagree over the amount of interest that accrued upon the MetLife claim prior to the filing of the Bankruptcy Case. If the parties cannot agree on the amount of the Met Life Claim, an objection will be filed to determine the amount of interest accrued. The dispute centers upon the Debtor's contention that Met Life voluntarily waived collecting interest at the default rate provided under the Loan Documents. Met Life disagrees. In addition, the issue of Met Life's entitlement to accrual of interest during the bankruptcy case must await the sale of the Ranch. If the Net Proceeds of the sale of the Ranch brings more than the Allowed Amount of the Met Life claim, Met Life will be entitled to reasonable interest, attorneys' fees and other charges provided for under the loan documents between the Petition Date and the Effective Date of the Plan. If not, the amount of the Allowed Secured Claim of Met Life will be limited to the Net Proceeds of the sale and Met Life will not be entitled to Post-petition interest, fees, or charges.

As further set forth in the Plan and Disclosure State, the Confirmation Order will also serve as a Bar Date Order for certain Claims, including certain Administrative Claims and Executory Contract Rejection Claims not governed by another Bar Date.

#### **4. Meetings of Creditors under Section 341**

Debtor attended the 341 Meeting of Creditors on March 11, 2015.

#### **5. Motion for Transfer of Venue**

On February 6, 2015, MetLife filed its *Motion for Transfer of Venue* [Dkt. No. 20] seeking to transfer the venue of the case from the United States Bankruptcy Court Northern District of Georgia, Newnan Division, to the United States Bankruptcy Court for the District of Wyoming (the "**Motion to Transfer**"). Following hearing by the Court, the Debtor was successful in its opposition to the Motion to Transfer and the Court denied the Motion to Transfer. [Dkt. No. 56].

#### **6. Motion for Relief from Stay**

On February 6, 2015, MetLife filed its *Motion for Relief from Stay* [Dkt. No. 22] seeking relief from the automatic stay imposed by Section 362 of the Bankruptcy Code so that it could domesticate the pre-petition Wyoming judgment ("**Motion for Relief**"). The Debtor opposed the Motion for Relief, and after hearing by the Court, the Court denied MetLife's Motion for Relief finding the Wyoming Judgment of Foreclosure was interlocutory (preliminary) and could not be domesticated under the Reciprocal Enforcement of Judgment Act and therefore no cause existed to warrant the relief. [Dkt. No. 57].

#### **7. DIP Financing**

After hearing and over objection of MetLife, the Bankruptcy Court entered the Debtor-in-Possession Financing Order (the "**DIP Financing Order**") [Dkt. No. 62]. Under the DIP

Financing Order, the Bankruptcy Court authorized the Debtor to obtain a credit facility from Fourth Quarter Properties 100, LLC (“**FQP 100**”) in the maximum amount of \$500,000.00 which was necessary to meet the operating needs of the Ranch between the Petition Date and the Confirmation Date of the Plan. Pursuant to Section 364(b) of the Bankruptcy Code, FQP 100 was granted an administrative expense claim under Section 503(b)(1) of the Bankruptcy Code for amounts funded under the credit facility.

#### **8. Application to Employ Appraiser**

On February 24, 2015, in order to evaluate its possible reorganization options Debtor filed its *Application to Employ Appraiser* seeking to employ Thomas A. Ogle to appraise the Debtor’s Real Property. [Dkt. No. 43]. On February 26, 2015, the Bankruptcy Court authorized the employment of the appraiser. [Dkt. No. 44].

#### **9. Application to Employ Real Estate Broker**

The Debtor concluded that, although the Ranch produces sufficient income on an annual basis to sustain its cattle operations, the cattle operations, which constitute the Debtor’s only source of income, were insufficient to support a meaningful repayment plan to creditors. Accordingly, the Debtor determined that it is in the best interest of creditors to liquidate its assets. On August 13, 2015, Debtor filed an *Application for an Order Authorizing the Employment and Retention of Jackson Hole Real Estate Associates, LLC as Real Estate Broker for Debtor*. [Dkt. No. 100]. On August 14, 2015, the Bankruptcy Court authorized such employment. [Dkt. No. 101]. Debtor will use the broker in connection with the Plan to liquidate the Real Property. A copy of the Broker’s Marketing Plan is attached to this Disclosure Statement as **Exhibit B**.

#### **10. Avoidance of Transfers – Preferential Payments**

Under the Bankruptcy Code, certain payments to creditors before bankruptcy that result in the creditor improving its position *vis-a-vis* other creditors who were not paid may be forced to be repaid to the Bankruptcy Estate. The repaying creditor’s claim is then increased to reflect the refunded payment and distributions to the creditor are then calculated based upon the increased amount of the creditors claim. 11 U.S.C. §547. In order to be subject to repayment, the payments to the creditor must total in excess of \$6,225.00 during the applicable preference period. The elements of a preferential payment include:

The transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made—

- (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—
- (A) the case were a case under chapter 7 of the Bankruptcy Code;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of the Bankruptcy Code. This includes the concept that a creditor holding a fully-secured claim on the date of transfer has not improved its position by having received the payment because under a Chapter 7, it would be entitled to have its claim paid in full.

Defenses to the repayment of a transfer that would otherwise be deemed preferential include:

- (1) to the extent that such transfer was—
- (A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
  - (B) in fact a substantially contemporaneous exchange;
- (2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—
- (A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
  - (B) made according to ordinary business terms;

A transfer also need not be repaid to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—

- (A) not secured by an otherwise unavoidable security interest; and
- (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

The trustee has the burden of proving the avoidability of a preferential transfer, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving an affirmative defense to the repayment. An action to recover a preferential transfer requires the filing of an adversary proceeding, which is governed by the Federal Rules of Bankruptcy Procedure (F.R.B.P.) 7001, et seq.

The Statements of Financial Affairs filed in the Bankruptcy Case reflect potential preferential payments based upon the presumption of the insolvency of Debtor during the ninety (90) days preceding the Petition Date (one year with respect to insiders) under Section 547 of the Bankruptcy Code. If you received a payment or other transfer within ninety (90) days of the bankruptcy, then such transfer may be subject to avoidance under the Bankruptcy Code,

including its Sections 544, 547, and 550.

The potential preference payments identified in the SOFA include transfers:

MetLife	\$711,692.31
Treasurer, Sublette County Wyoming	\$8,216.93
Western Veterinary Service	\$12,285.77
All American Fuel Company, Inc.	\$18,123.96
Fourth Quarter Properties 100, LLC	\$987,835.55

## **11. Potential Claims Against Affiliates**

Under Chapter 11 of the Bankruptcy Code, for obvious reasons, a debtor-in-possession is not charged with the responsibility of examining claims or possible causes of action against Insiders, such as Affiliates, shareholders, officers or directors. Usually, that duty is placed upon the creditors' committee.<sup>1</sup> However, a committee has not been appointed in these Bankruptcy Cases.

Notwithstanding Debtor's lack of duty to "investigate themselves," in keeping with their responsibilities to make full disclosures to interested parties and to the Court, in its Schedules and Statements of Financial Affairs Debtor has identified multiple transactions between it and its Affiliates which occurred prior to the Petition Date. The Debtor is one of many entities owned or substantially controlled by Stanley E. Thomas. Mr. Thomas manages the finances of many of these entities through another of his entities, Fourth Quarter Properties 100, LLC. During the one-year prior to the filing of the Bankruptcy Case, the SOFA discloses the Debtor transferred \$1,319,420 to Fourth Quarter Properties 100, LLC. However, amounts substantially in excess of the funds transferred to Fourth Quarter Properties, LLC by the Debtor, were paid by Fourth Quarter Properties to or for the benefit of creditors of the Debtor, including payments to MetLife. Fourth Quarter Properties 100, LLC was acting as a clearing agent for cash management purposes. Accordingly, the Debtor does not plan to attempt to recover any payment made to Fourth Quarter Properties 100, LLC during the year preceding the Petition Date, because the Debtor believes that Fourth Quarter Properties 100, LLC has affirmative defenses to any such repayment.

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<sup>1</sup> The rights, powers, and duties of a debtor-in-possession are specified in Section 1107 of the Bankruptcy Code. Those duties include the powers and functions of a Chapter 11 trustee except the duties specified in Sections 1106(a)(2), (3) and (4) (the "Excluded Duties"). Section 1106(3) includes the duty to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or the formulation of a plan." Conversely, Section 1103(2) of the Bankruptcy Code provides that a committee may "investigate the acts, conduct, assets, liabilities an financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan."



## **V. SUMMARY OF THE PLAN**

**The following is a brief summary of the Plan. Holders of claims and interest are urged to read the Plan in full. Holders of claims and interests are also urged to, and should, consult with counsel in order to understand and analyze the Plan fully. If Confirmed, the Plan will become a legally binding agreement among Debtor and all of its creditors and parties in interest.**

### **A. Introduction**

Generally, the Plan provides for the treatment of Allowed Claims and Equity Interests. A Claim is defined by the Plan and the Bankruptcy Code to be a right to payment from Debtor, or from the property of Debtor, or a right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment. The Plan defines an Allowed Claim as follows: (a) a Claim that has been listed by Debtor on its Schedules as other than disputed, contingent, or unliquidated, to the extent that it is not otherwise a Disputed Claim; (b) a Claim for which a Proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, to the extent that it is not otherwise a Disputed Claim; or (c) a Claim that is allowed (i) in any Stipulation of Amount and Nature of Claim executed by Debtor and the Creditor; (ii) in any contract, instrument, or other agreement entered into in connection with the Plan; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan.

The categories of Claims and Equity Interests listed below classify Claims and Interests for all purposes, including (i) voting, (ii) confirmation of the Plan, and (iii) distribution pursuant to the Plan and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan designates six (6) Classes of Claims and one Class of Equity Interests. These Classes take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Interests. A Claim or Interest will be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class, and will be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. To the extent that the holders of any Allowed Claims or Interests object to Debtor's classification scheme, such objections will be considered at the Confirmation Hearing, and, if sustained, the classifications outlined below will be deemed modified in accordance with any order sustaining such objections.

Any Class of Claims that, as of the date of the commencement of the Confirmation Hearing, contains no Allowed Claims will be deemed deleted from the Plan for purposes of determining acceptance or rejection of the Plan by such Class under Section 1129(a)(8) of the Bankruptcy Code. The classification of Claims against and Equity Interests in Debtor, and their respective voting rights, pursuant to the Plan are as follows:

<b>Class</b>	<b>Impairment</b>	<b>Treatment</b>
<b>Unclassified Claims</b>	Unimpaired	Certain Claims may not be classified under chapter 11 plans, they include: Claims entitled to Administrative Expense Status, U.S. Trustee Fees, Court Costs, or Priority Status under 11 U.S.C. §507(a)(8) (certain tax claims). The Plan provides for payment of Unclassified Claims as required by the Bankruptcy Code.
<b>Class 1 – The Allowed Secured Claims of Governmental Units</b>	Unimpaired	There are no known claims in this class. All Pre-petition ad valorem taxes are believed to have been paid. If such claims are Allowed by the Bankruptcy Court, except to the extent the holder of an Allowed Class 1 Claim agrees to other, lesser treatment, any holder of an Allowed Class 1 Claim shall be paid in full on the Closing Date, together with interest accrued between the Petition Date and the date such claims are paid.
<b>Class 2 – The Allowed Secured Claims of MLIC Asset Holdings, LLC and MLIC CB Holdings, LLC.</b>	Impaired	The Allowed Secured Claims of the holders of Class 2 Claims shall be paid in full on or before the Effective Date out of the Net Proceeds from the sale of Real Property. The Real Property collateralizing any Allowed Secured Claim in Class 2 shall be sold, under this Plan, free and clear of liens, claims, or interests pursuant to 11 U.S.C. §1123(b)(4), with such liens claims or interest attaching to the proceeds of the sale, and the Debtor and any holder of any Allowed Secured Claim in Class 2 shall comply with 11 U.S.C. §1142(b) with respect to the transfer of the Real Property free and clear of liens, claims, and interests. In the event the proposed sale of the Real Property does not

		close on or before October 31, 2016, the Real Property shall be surrendered in full satisfaction of the Class 2 Claim (the “ <b>Surrender</b> ”). Interest, at the Plan Rate, will be paid from the Petition Date to the Closing Date if, and only if, the proceeds of the sale of the Real Property exceed the Allowed Amount of Allowed Secured Claim in Class 2. If the Real Property does not sell for an amount in excess of the Allowed Amount of the Allowed Secured Claim in Class 2, the Net Proceeds of the Sale will be paid to the holder of the Class 2 Allowed Secured Claim, and the balance of the Allowed Claim in Class 2 will be included in Class 5 and paid as provided for Allowed Claims in such Class. No provision of this Plan shall impair the credit bid rights of the holder of the Class 2 Claim.
<b>Class 3 – The Allowed Secured Claim of John D. Phillips.</b>	Impaired	Any Allowed Secured Claim in Class 3 shall be paid on the Effective Date from the Net Proceeds of the sale of the Real Property. To the extent Net Proceeds from the sale of the Real Property are insufficient to pay the Class 3 claim in full, any deficiency will be treated as a Class 5 Claim. In the event of Surrender, Class 3 shall only be entitled to distribution pursuant to Class 5.
<b>Class 4 – Non-Tax Priority Claims</b>	Impaired	Any Allowed Unsecured Priority Claims in Class 4 will be: (a) paid in full, together with Plan Interest, on the Effective Date, ; or (b) such other treatment as is in accordance with the Bankruptcy Code. In the event of Surrender, Class 4 shall be paid from the Net Proceeds from the sale of Personal Property prior to any

		payment to Class 5.
<b>Class 5 – General Unsecured Claims</b>	Impaired	Allowed Claims in Class 5 will receive, Pro Rata, the Net Proceeds of the sale of Personal Property of the Debtor, following payment of Unclassified and Class 4 Claims in full.
<b>Class 6 – Subordinated Claims</b>	Impaired	Any Allowed Subordinated Claims in Class 6 will be paid on a Pro Rata basis, the remaining Net Proceeds from the sale of the Real Property and Personal Property to the extent Net Proceeds are available after distributions to Allowed Unclassified, and Class 1 – 5 Claims. In the event of Surrender, Class 6 shall not be entitled to any distribution under this Plan.
<b>Class 7 – Equity Interest Holders of the Debtor</b>	Impaired	The Equity Interest Holders of the Debtor will not retain or receive any property under this Plan on account of such interests, provided, however, such equity interests shall not be deemed cancelled until final federal and state tax returns are filed by the Debtor and all property to be sold under this plan is conveyed in accordance with applicable law. Following cancellation of such interests, the equity security holders of the Debtor will nevertheless be deemed to hold sufficient interests to carry out any duties required under 11 U.S.C. §1142(b) and F.R.B.P. 6004(f)(2).

## **B. Unclassified Claims**

### **1. General Administrative Claims**

The Plan provides that, except to the extent the holder of an Allowed Administrative Claim agrees to other, lesser treatment, each holder of an Allowed Administrative Claim shall be paid in respect of such Allowed Claim the full amount thereof, in Cash, by the later of: (i) the Effective Date or (ii) the date on which such Claim becomes an Allowed Administrative Claim.

### **2. Statutory Fees**

The Plan provides that Allowed Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in Cash, in full, as such fees become due.

### **3. Fee Claims**

Professionals having Allowed Fee Claims shall be paid in full, in Cash, by Debtor in accordance with the Order Establishing Compensation Procedures for Professionals entered in the Bankruptcy Case on March 25, 2015 (Dkt. No. 63, the “**Administrative Fee Order**”) or, with respect to any disputed Fee Claim, the date upon which the Bankruptcy Court order allowing such Fee Claim becomes a Final Order. Upon entry of the Confirmation Order, Debtor shall set aside in escrow all unpaid amounts estimated to be owed to Professionals for Fee Claims through the Effective Date (less amounts previously paid or paid on an interim basis after Confirmation as authorized by the Administrative Fee Order) pending entry of a Final Order on each such Professionals’ application for Allowance of its Fee Claim.

The Bankruptcy Court must rule on all Professional fees and expenses incurred from the Petition Date through and including the Effective Date before such fees will be payable, unless the order approving such Professionals’ retention provides otherwise. For all Fee Claims except the statutory Clerk’s Office costs of Court and U.S. Trustee’s fees treated above, and unless the order approving such Professionals’ retention provides otherwise, the Professional in question must file and serve a properly noticed fee application, and the Bankruptcy Court must rule on the application. Only the amount of fees allowed by the Bankruptcy Court will be payable under the Plan.

### **4. Bar Dates for General Administrative Claims**

The holder of an Administrative Claim *other than*: (1) a Fee Claim, (2) a Post-petition Obligation incurred and payable in the Ordinary Course of Business by a Debtor (and not past due, but excluding personal injury claims and workman’s compensation claims – the holders of which must initiate an appropriate procedure for allowance thereof under this subparagraph of this Plan on or before the Administrative Bar Date), specifically including the obligations of the Debtor to Fourth Quarter Properties 100, LLC, which is typically paid upon the sale of calves, which normally occurs in the fall of a given year, and (3) an Administrative Claim that has been Allowed on or before the Effective Date, must file with the Bankruptcy Court and serve on the Debtor and the Office of the United States Trustee, a request for payment of such Administrative Claim within the later of thirty (30) days after service of notice of entry of the Confirmation

Order or the publication date of notice of entry of the Confirmation Order and of the Administrative Claim Bar Date in the official publications in Sublette County, Wyoming (the “**Administrative Bar Date**”). Such request must include at a minimum (A) the name of the holder of the Claim, (B) the amount of the Claim, and (C) the basis of the Claim. ***Failure to File and serve such request timely and properly shall result in the Administrative Claim being forever barred and discharged.*** Objections to general Administrative Claims must be Filed and served on the parties that were served with such Claims or requests and the requesting party by the later of: (A) 60 days after the Confirmation Date; (B) 30 days after the Filing of the applicable request for payment of Administrative Claims; or (C) such later date as provided for by order of the Bankruptcy Court, which order may be entered upon application of the Debtor without further notice or hearing (the “**Administrative Claim Objection Deadline**”). ***The holders of the Administrative Claims enumerated in (1)–(3) above of this paragraph shall not be required to file a request for payment of their Administrative Claims, and shall be paid as further specified in this Article.***

## **5. Priority Tax Claims**

Each holder of an Allowed Priority Tax Claim will be paid in respect of such Allowed Claim (including with respect to any interest that is determined to be part of its Allowed Claim) the full amount thereof, in Cash, by the later of: (i) at Closing or (ii) the date on which such Claim becomes an Allowed Claim; or (iii) shall receive such lesser amount or other treatment as the holder of an Allowed Priority Tax Claim and the Debtor might otherwise agree.

## **C. Classification and Treatment of Claims and Interests**

### **1. Treatment of Claims in Class 1 (Allowed Secured Claims of Governmental Units).**

There are no known claims in this class. All Pre-petition ad valorem taxes are believed to have been paid. If such claims are Allowed by the Bankruptcy Court, except to the extent the holder of an Allowed Class 1 Claim agrees to other, lesser treatment, any holder of an Allowed Class 1 Claim shall be paid in full on the Closing Date.

### **2. Treatment of Claims in Class 2 (Allowed Secured Claims of MetLife).**

The Allowed Secured Claims of MLIC Asset Holdings, LLC and MLIC CB Holdings, LLC collateralized by a security interest in the Real Property is included in Class 2 and shall be paid in full on the Effective Date from the Net Proceeds from the sale of the Real Property. The Allowed Secured Claims of the holders of Class 2 Claims shall be paid in full on or before the Effective Date out of the proceeds of the Real Property. The Real Property collateralizing any Allowed Secured Claim in Class 2 shall be sold, under this Plan, free and clear of liens, claims, or interests pursuant to 11 U.S.C. § 1123(b)(4), with such liens claims or interest attaching to the proceeds of the sale, and the Debtor and any holder of any Allowed Secured Claim in Class 2 shall comply with 11 U.S.C. § 1142(b) with respect to the transfer of the Real Property free and clear of liens, claims, and interests. In the event the proposed sale of the Real Property does not close on or before October 31, 2016, the Real Property shall be surrendered in full satisfaction of the Class 2 Claim (the “**Surrender**”). Interest, at the Plan Rate, will be paid from the Petition Date to the Closing Date if, and only if, the proceeds of the sale of the Real Property exceed the



Allowed Amount of Allowed Secured Claim in Class 2. If the Real Property does not sell for an amount in excess of the Allowed Amount of the Allowed Secured Claim in Class 2, the Net Proceeds of the Sale will be paid to the holder of the Class 2 Allowed Secured Claim, and the balance of the Allowed Claim in Class 2 will be included in Class 5 and paid as provided for Allowed Claims in such Class. No provision of this Plan shall impair the credit bid rights of the holder of the Class 2 Claim.

**3. Treatment of Claims in Class 3 (Allowed Secured Claims of John D. Phillips).**

The Allowed Secured Claim of John D. Phillips collateralized by a second position security interest in the Real Property is included in Class 3. The Real Property collateralizing any Allowed Secured Claim in Class 3 shall be sold, under this Plan, free and clear of liens, claims, or interests pursuant to 11 U.S.C. § 1123(b)(4), with such liens claims or interest attaching to the proceeds of the sale, and the Debtor and any holder of any Allowed Secured Claim in Class 3 shall comply with 11 U.S.C. § 1142(b) with respect to the transfer of the Real Property free and clear of liens, claims, and interests. Any Net Proceeds of such sale in excess of the amount payable to the holder of the Allowed Secured Claim in Class 2 hereunder, shall be paid to the holder of any Allowed Secured Claim in Class 3 on the Effective Date. To the extent Net Proceeds from the sale of the Real Property are insufficient to pay the Class 3 claim in full, any deficiency will be treated as a Class 5 Claim. In the event of Surrender, Class 3 shall only be entitled to distribution pursuant to Class 5. No provision of this Plan shall impair the credit bid rights of the holder of the Class 3 Claim.

**4. Treatment of Claims in Class 4 (Non-Tax Priority Claims).**

Holders of Allowed Claims in Class 4 will be: (a) paid in full on the Effective Date, together with Plan Interest, equal to the amount of such Allowed Claim; or (b) such other treatment as is in accordance with the Bankruptcy Code. In the event of Surrender, Class 4 shall be paid from the Net Proceeds from the sale of Personal Property prior to any payment to Class 5.

**5. Treatment of Claims in Class 5 (General Unsecured Claims).**

Holders of Allowed Claims in Class 5 will be paid on the Effective Date the Net Proceeds from the sale of the Real Property and Personal Property on a Pro Rata basis. In the event of Surrender, Class 5 shall only be entitled to a Pro Rata distribution from the Net Proceeds from the sale of Personal Property after payment of Class 4 Claims.

**6. Treatment of Claims in Class 6 (Subordinated Claims).**

Claims in Class 6 shall be paid if and only if Allowed Claims in Classes 1-5 (collectively, the “**Claims Senior to Class 6**”) have been paid in full or otherwise settled as provided under this Plan. If paid, Allowed Class 6 Claims shall be paid on the Effective Date the Net Proceeds from the sale of the Real and Personal Property on a Pro Rata basis. In the event of Surrender, Class 6 shall not be entitled to any distribution under this Plan.

## **7. Treatment of Claims in Class 7 (Equity Interest Holder of Debtor).**

The Equity Interest Holders of the Debtor will not retain or receive any property under this Plan, provided, however, such equity interests shall not be deemed cancelled until final federal and state tax returns are filed by the Debtor and all property to be sold under this plan is conveyed in accordance with applicable law. Following cancellation of such interests, the equity security holders of the Debtor will nevertheless be deemed to hold sufficient interests to carry out any duties required under 11 U.S.C. §1142 and F.R.B.P. 6004(f)(2) – which basically means the Principals of the Debtor would retain the authority to execute any document necessary to carrying out the terms of the Plan and winding up the affairs of the Debtor, including executing and filing tax returns and participating in tax audits.

## **D. Means of Implementation of the Plan**

### **1. Funding of the Plan**

The Plan is a liquidating chapter 11 plan. The funds required for implementation of the Plan and repayment of the DIP financing will be generated from operating the cattle ranch and proceeds of the sale of personal property, and funds required the distributions hereunder shall be provided from the proceeds of the sale of the Real Property and Personal Property of the Debtor.

### **2. The Debtor**

The Plan will be administered by the Debtor, who will be vested with power and authority over all Assets of the Ranch and the Estate and with the obligation to liquidate all Assets of the Estate and to make distributions in accordance with the Plan. The Debtor shall be deemed as of the Confirmation of the Plan to be the general representative of the Estate as authorized under and pursuant to the Bankruptcy Code, specifically including without limitation section 1123(b)(3). The Debtor shall also have standing to pursue Causes of Action on behalf of the Estate as the representative of the Estate as provided under section 544 of the Bankruptcy Code. The Debtor shall be indemnified by the Estate for fees and costs, including attorneys' fees, for any actions it takes or fails to take, except for those done with gross negligence or malicious intent.

### **3. Management of Debtor**

The Manager of the Debtor will be Stanley E. Thomas, continuing to utilize the services of Fourth Quarter Properties 100, LLC and Three Rivers Ranch, Inc., as assisted by the Company's counsel of record, Stone & Baxter, LLP.

### **4. Powers of Debtor**

Except as otherwise provided in the Plan, the Debtor shall be vested with and shall have all rights, powers, and duties that the Debtor-in-possession had immediately prior to Confirmation under sections 1106, 1107, 1108 of the Bankruptcy Code and otherwise, including without limitation with respect to the sale of the Assets of the Estate and the Causes of Action (whether or not commenced as of Confirmation). The Debtor shall have exclusive control of the

Assets, including, without limitation, the Causes of Action. The Debtor shall have authority to authorize the sale, abandonment, or other liquidation of all Assets as further set forth in the Plan. The Debtor shall be the representative of the Estate and shall have the capacity to sue and be sued, as provided under 11 U.S.C. section 323 and section 1123(b)(3) and otherwise under the Plan or the Bankruptcy Code.

## **5. Monthly Operating Reports**

Until the entry of a Final Decree, the Debtor shall prepare and file the Monthly Operating Reports required by the Office of the United States Trustee within the times specified by the United States Trustee.

## **6. Tax Returns**

The Debtor shall cause to be prepared and filed all federal, state or local tax returns required to be prepared and filed by the Debtor that have not been prepared or filed by the Confirmation Date, or which fall due thereafter.

## **7. Application for Final Decree**

As soon as reasonably practicable following substantial consummation this Plan, the Debtor shall file a final report and application for Final Decree, if not previously filed.

## **8. Standard of Care for Debtor-in-Possession**

The Debtor shall perform the duties and obligations imposed on the Debtor by the Plan with reasonable diligence and care under the circumstances. The Debtor shall not be personally liable to the Creditors or to Persons entitled to receive distributions of Assets under the Plan, except for such of its own acts as shall constitute fraud, bad faith, willful misconduct, gross negligence or willful disregard of its duties. Except as aforesaid, the Debtor shall be entitled to be exonerated and indemnified from time to time from the Assets against any and all losses, claims, costs, expenses, and liabilities arising out of or in connection with the Assets or the implementation of the Plan. The foregoing provisions of this paragraph shall also extend to the employees, Professionals and agents of the Debtor, as the case may be.

# **VI. EXECUTORY CONTRACTS**

## **A. Assumption or Rejection of Executory Contracts.**

On the Confirmation Date, all Insurance Contracts, the USDA Permits, the Joint Venture Management Agreement with Three Trees Ranch, Inc., the Cash Management and Control Agreement with Fourth Quarter Properties 100, LLC are deemed assumed and all other Executory Contracts and unexpired leases not previously assumed or rejected by the Debtor shall be automatically rejected by the Debtor without further notice or order, in accordance with the provisions of section 365, 1113, 1123, and any other relevant provisions of the Bankruptcy Code. Any Cure Costs associated with the assumed contracts as shown on Schedule 5.1 will be paid on

the Effective Date, unless otherwise agreed with the other party to such Executory Contract. The provision does not apply to Post-petition contracts.

**B. Cure Cost Claims.**

Any Cure Costs associated with the assumed contracts will be paid on the Confirmation Date, unless otherwise agreed with the other party to such Executory Contract. All Allowed Cure Costs (which are defined in the Plan as Administrative Claims) associated with the assumed Executory Contracts will be paid in accordance with Section 3.1.1 of the Plan.

**C. Rejected Contracts.**

**Each Person who is a party to an Executory Contract or unexpired lease rejected by the Debtor, including those rejected under the Plan, must File, by not later than 30 days after service of notice of entry of the Confirmation Order, a Proof of Claim for any Rejection Claim, or be forever barred, unless such a Proof of Claim has been previously filed.** A copy of such Proof of Claim shall be Filed with the Bankruptcy Court and served on the Debtor in accordance with the notice provisions of the Plan, not later than 30 days after service of notice of entry of the Confirmation Order. If the Rejection Claim becomes an Allowed Claim, then such Claim shall be classified as an Unsecured Claim, entitled to distributions as provided in this Plan. Objections to Rejection Claims must be Filed and served on the claimant and upon the parties that were served with such Claims by the later of (a) 60 after service of the Confirmation Order; (b) 60 days after the filing of the applicable Proof of Claim for such Rejection Claim; or (c) such later date as provided for by order of the Bankruptcy Court, which order may be entered without further notice or hearing.

**VII. PROVISIONS GOVERNING PAYMENT AND DISTRIBUTIONS**

**A. Manner of Payment**

Any payment in Cash to be made by Debtor shall be made, at the election of Debtor, by check drawn on a domestic bank or by wire transfer from a domestic bank.

**B. Funds and Accounts for Payment of Claims and Plan Implementation**

As soon as practicable after the Confirmation Date, Debtor shall establish or maintain the following funds and/or accounts to implement the Plan:

**1. Disputed Claims Reserve**

At the time funds become available for distribution to Allowed Claims receiving payments under the Plan, the Debtor shall establish and maintain an interest-bearing account which shall be called the Disputed Claims Reserve, into which the Debtor shall deposit on the due date of distributions to the Class including a disputed claim, the amount of distribution that would have been due to holders of Disputed Claims in such Class in accordance with the terms of the Plan. Such Disputed Claims Reserve shall be maintained by the Debtor until each

Disputed Claim in each respective class has been allowed or disallowed by Order of the Bankruptcy Court. Thereafter, any excess funds in the Disputed Claims Reserve shall be transferred back to the General Fund and Operating Account (as defined below) for distribution to holders of Allowed Claims in accordance with the Plan.

## **2. General Fund and Operating Account**

As of and after the Confirmation Date, the Debtor shall continue to maintain an account called the General Fund and Operating Account, which need not be interest-bearing, through which all funds of the Debtor and the Estate will be deposited and cleared. Funds may be transferred by the Debtor from the General Fund and Operating Account to such other accounts as and when necessary, *inter alia*, to fund the Disputed Claims Reserve and to make distributions in accordance with the Plan.

## **3. Management of Accounts Established Pursuant to the Plan**

Monies deposited into any accounts established and maintained by Debtor under the Plan shall be invested as specified in this paragraph and need not comply with Bankruptcy Code Section 345. Any accounts established by Debtor shall be established at a federally-insured financial institution or may be invested in government-backed securities in a brokerage account approved by the United States Trustee. For interest-bearing accounts, any interest earned upon balances on deposit in such accounts shall be used to fund the Plan. Debtor may relocate any or all accounts to another federally-insured financial institution or approved brokerage account, from time to time, until all payments provided for under the Plan have been made. If all Allowed Claims are paid in full (highly unlikely) remaining funds shall revert to the Debtor, except for unclaimed distributions which will be disbursed as provided by the Plan.

## **4. Payment of Claims and Interests**

Notwithstanding any other provision of this Plan, the Debtor shall make no distribution to holders of Claims that are not Allowed Claims as defined in this Plan. Notwithstanding any other provision of this Plan, the Debtor shall have discretion to make the distributions called for under the Plan at the times specified in the Plan, or earlier if the Debtor deems such earlier distribution to be necessary or beneficial.

## **5. Unclaimed Distributions**

Payment will be stopped on checks disbursed by the Debtor to holders of Allowed Claims if such checks remain not cashed ninety (90) days after the date of disbursement. The Cash represented by such checks shall be redistributed Pro Rata to holders of the remaining Allowed Claims, as provided under this Plan at the time of the next scheduled distribution to Allowed Claims hereunder. No further distribution shall be made under this Plan to the holder of any Allowed Claim who fails to negotiate a check issued by the Debtor on account of a claim for payment within the ninety (90) days after the date such check was mailed to the holder, and any unclaimed distribution on account of such Allowed Claim shall thereby be deemed waived. Any balance of \$15,000.00 or less remaining in the General Fund and Operating Account or other funds established by the Plan after making all distributions required by this Plan may, in lieu of

being redistributed to holders of Allowed Claims, be paid over into the registry of the Bankruptcy Court for the use and benefit of the United States.

#### **6. Rounding of Dividend Amounts**

Notwithstanding any other provision of the Plan, Debtor shall not be required to make any distribution of less than \$5.00 to the holder of any Allowed Claim, and may round all distributions to the nearest \$1.00.

#### **7. Distributions to the Last Known Address**

Distributions to holders of Allowed Claims will be sent to the last known address set forth on such holder's proof of Claim Filed with the Court, or on the Schedules, if no proof of Claim has been filed. Holders of Claims may change the address to which distributions, if any, will be sent by furnishing written notice to Debtor, in accordance with Article X of the Plan. A proper notice of change of address will be effective for a distribution if received at least 30 days in advance of such distribution date. U.S. Postal notifications of changes of address will be honored, provided that Debtor shall have no obligation to investigate the address of the holder of an Allowed Claim following expiration of such U.S. Postal notifications.

#### **8. Assignment of Claims**

Notwithstanding Bankruptcy Rule 3001(e), written notice of any assignment of an Allowed Claim shall be given to Debtor by the assignee thereof before Debtor shall be obligated to direct distributions to such assignee. Absent receipt by Debtor of such written notice of assignment, neither Debtor, nor the Estate shall have any liability to any such assignee or to any other Person on account of a misdirected distribution.

#### **9. Withholding or Other Taxes**

Any federal, state, or local withholding or other taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes.

#### **10. Setoffs**

Subject to the limitations provided in section 553 of the Bankruptcy Code, the Debtor may, but shall not be required to, setoff against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever the Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such Claim or other Claims, rights, or Causes of Action that the Debtor may have against such holder.



## **11. Subordination Rights**

All subordination rights, claims, and defenses of the Debtor shall remain valid, enforceable, and unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise, except as otherwise specifically provided in this Plan.

## **VIII. PROVISIONS GOVERNING OBJECTIONS TO CLAIMS**

### **A. Disputed Claims**

The following provisions of the Plan apply only to Claims that are Disputed Claims.

#### **1. Disputed Claims Reserve per Classes**

The Plan provides that Debtor shall deposit into the Disputed Claims Reserve the distribution which would have been due to all holders of Disputed Claims in Classes 1, 2, 3, 4, 5, and 6 as if they were Allowed Claims.

#### **2. Previously Disputed Claims that Are Subsequently Allowed**

Within fifteen (15) days from the date of which any order of the Bankruptcy Court allowing a previously Disputed Claim becomes a Final Order, with no appeal pending, or if an appeal is filed, the date on which all orders affirming allowance of such claims becomes non-appealable, the Debtor shall transfer from the Disputed Claims Reserve to the General Fund and Operating Account an amount equal to the amount deposited into the Disputed Claims Reserve on account of each previously Disputed Claim and shall then pay the holder of such previously Disputed Claim the amount due on such Claim as of the date of such distribution to its Class. No interest shall be payable on account of any delayed distribution unless such interest is a distribution of Plan Interest specifically set forth in the Plan and payable for that Class.

#### **3. Allowance of Claims**

Except as expressly provided in the Plan, the Debtor after Confirmation will have and retain any and all rights and defenses the Debtor had with respect to any Claims as of the Petition Date, including the Causes of Action referenced in the Plan and this Disclosure Statement and the Filing of any motions or other pleadings for estimation of the amount of Disputed Claims.

### **B. Examination and Objections to Claims**

#### **1. Examination**

The Plan provides following the Confirmation Date, the Debtor shall examine all Claims not previously objected to by the Debtor and shall have the responsibility of filing objections to the allowance of such Claims and continuing prosecutions of objections to Claims filed prior to the Confirmation Date.

## **2. Objection Deadlines**

Except as otherwise specified in the Plan (including, without limitation, with respect to Administrative Claims, Fee Claims, and Executory Contract Claims), objections to Claims shall be Filed with the Bankruptcy Court and served upon Creditors by the Claims Objection Bar Date, which shall be no later than 60 days after the service of the Confirmation Order or 60 days after such Claim is Filed, whichever date is later, provided, however, that this deadline may be extended by the Bankruptcy Court upon motion of the Debtor, without notice or a hearing. After an order, judgment, decree or settlement agreement allowing a Disputed Claim becomes a Final Order, Distributions with respect to and on account of such previously Disputed Claim will be made on or before the time of the next scheduled distribution to holders of Allowed Claims in the Class in which the previously Disputed Claim is allowed.

## **3. Claims Resolution**

Objections to Claims may be litigated to judgment, settled, or withdrawn by Debtor. The Plan provides that any proposed settlement of a Disputed Claim where the original face amount of the Claim is more than \$100,000 will be subject to the approval of the Bankruptcy Court after 20-days' notice and an opportunity for a hearing has been served on the Special Notice Parties described in the Plan. Debtor may settle Claims where the original face amount of such Claim is between \$50,000 and \$100,000 without Bankruptcy Court approval, provided that the Special Notice Parties will have had 10-days' notice of any such proposed settlement prior to consummating the settlement. If an objection to the proposed settlement is served on Debtor and not resolved consensually within 10 additional days after expiration of the 10-day notice period, the Bankruptcy Court will determine whether such proposed settlement should be approved. If the original face amount of the Disputed Claim is less than \$50,000, Debtor can settle such Claim without any notice or approval of any other party.

### **C. No Distributions to Holders of Disputed Claims**

Notwithstanding any other provision of the Plan, no Cash or other Property shall be distributed under the Plan on account of any Claim which is not an Allowed Claim. This provision does not apply to Unclassified Claims.

### **D. Estimation of Claims**

Under the Plan, The Debtor may, at any time, request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code, as applicable, regardless of whether the Debtor previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during the litigation concerning any objection to any Claims, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute the Allowed amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution

procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

## **IX. PROVISIONS REGARDING EFFECTS OF CONFIRMATION**

### **A. Discharge of Debtor**

#### **1. Discharge of Debtor**

All property of the Estate shall remain vested in the Debtor-in-possession until sold as provided by this Plan. Liens, claims, and interests of creditors and equity interest holders shall continue in such property until sold. The Debtor shall not receive a discharge.

#### **2. Terms Binding**

The Plan provides upon the entry of the Confirmation Order, pursuant to 11 U.S.C. §1141(a), all provisions of this Plan, including all agreements, instruments and other documents filed in connection with this Plan and executed by the Debtor in connection with this Plan, shall be binding upon the Debtor, any entity acquiring property under the Plan, all Claim and Equity Interest Holders and all other Persons that are affected in any manner by this Plan. All agreements, instruments and other documents filed in connection with this Plan shall have full force and effect, and shall bind all parties thereto as of the entry of the Confirmation Order, whether or not such exhibits actually shall be executed by parties other than the Debtor, or shall be issued, delivered or recorded on the Effective Date or thereafter.

#### **3. Continuation of Pre-Confirmation Injunction or Stays**

All injunctions or stays, whether by operation of law or by order of the Bankruptcy Court, provided for in the Bankruptcy Case pursuant to Sections 105, 362, or 525 of the Bankruptcy Code or otherwise that are in effect on the Confirmation Date or imposed by the Confirmation Order shall remain in full force and effect until the Final Decree.

## **X. PRESERVATION OF CAUSES OF ACTION**

### **A. Representative of the Estate**

The Plan provides that, in accordance with Section 1123(b)(3) of the Bankruptcy Code, any Claims, rights, and Causes of Action that Debtor or Estate may hold or have the power to commence at any time against any Person or Entity will be preserved and retained and enforced by Debtor, and Debtor will have the right to continue or commence or otherwise enforce, as the authorized representative of Debtor and the Estate, any and all such Claims, rights, or Causes of Action. Debtor may pursue any and all such Claims, rights, or Causes of Action, or objections or Claims as appropriate, in accordance with the best interests of the holders of Allowed Claims.

Subject to the provisions of the Plan, Debtor will have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such Claims, rights, objections, and Causes of Action.

**B. Retention of Jurisdiction**

Notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date under the Plan, until such time as all payments and distributions required to be made and all other obligations required to be performed under the Plan have been made and performed by Debtor, the Bankruptcy Court will have and retain the maximum jurisdiction as is legally permissible over the Causes of Action. The Plan sets forth in more detail the jurisdiction to be retained by the Bankruptcy Court.

**XI. MISCELLANEOUS PROVISIONS OF THE PLAN**

**A. Modifications or Amendment**

The Plan provides that it may be modified or amended prior to confirmation as allowed by the Code or Rules. Following confirmation, amendments or modifications to the Plan may be made by a voting process similar to the voting process for acceptance of the Plan. These procedures are set out in detail in Article X of the Plan.

**B. Exemption from Transfer Taxes**

Pursuant to Section 1146(c) of the Bankruptcy Code, the Confirmation Order, and any sale orders entered in the Bankruptcy Case, the transfer or making or delivery of any instrument whatsoever in furtherance of or in connection with the Plan, including, without limitation, any transfer of the Assets, subsequent transfers to creditors or purchaser(s), and any assignments, documents, instruments, and agreements and other conveyance documents executed and delivered by Debtor in connection with the sale of the Assets in furtherance of the implementation of the Plan or otherwise, shall not be subject to any stamp, real estate transfer, personal property, recording, or other similar tax.

**C. Effectuating Documents, Further Transactions and Corporate Action**

The Debtor, all holders of Allowed Claims receiving distributions under this Plan, and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan. Prior to, on or after the Effective Date (as appropriate), all matters provided for under this Plan that would otherwise require approval of the shareholders or directors of the Debtor shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the applicable limited liability company laws of Georgia without any requirement of further action by the holders of membership units of the Debtor.

**D. Successors and Assigns**

The rights, benefits and obligations of any Person or Entity named or referred to in the Plan will be binding on, and will inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such Entities.

**E. Governing Law**

Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan and Disclosure Statement will be governed by and construed and enforced in accordance with the laws of the State of Georgia. The sale and transfer of the Real and Personal Property shall be carried out in compliance with the laws of the State of Wyoming.

**F. Conflicts**

As provided in the Plan, to the extent any provision of the Disclosure Statement, and any documents executed in connection with the Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to the foregoing) conflicts with or is in any way inconsistent with the terms of the Plan, the terms and provisions of the Plan will govern and control.

**G. Default After Confirmation**

Under the Plan, the failure of the Debtor to make any payment due under the Plan when due, and the failure of the Debtor to cure such monetary default within fifteen (15) days after written notice to the Debtor of such default shall constitute a default under the Plan. Such written notices shall be given to the Debtor in accordance with the notice provisions in Section 10.10 of the Plan. Any "default," as defined in Section 10.3 of the Plan, shall entitle the holder of an Allowed Claim(s) affected thereby to the remedies provided under the Bankruptcy Code. Any suit in law or in equity to enforce the rights and remedies under the Plan may be brought only in either the Court or in any court of competent jurisdiction within the State of Georgia.

**XII. FINANCIAL INFORMATION**

Debtor filed their Schedules with the Bankruptcy Court as required by the Bankruptcy Code. Debtor will supplement and amend its Schedules as necessary and appropriate from time to time. Debtor will file post-confirmation quarterly operating reports after the Confirmation Date through the earlier of the entry of a Final Decree or court Order excusing further filings. This financial information has not been included in this Disclosure Statement, but may be examined at the Clerk's Office, United States Bankruptcy Court, Northern District of Georgia, 18 Greenville Street, Newnan, Georgia, or online through PACER at <http://www.pacer.gov/>.

### **XIII. ACCEPTANCE AND CONFIRMATION**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that (i) the plan is accepted by all impaired classes of Claims and Interests or, if rejected by an impaired class, that the plan “does not discriminate unfairly” and is “fair and equitable” as to such class, (ii) the plan is feasible, and (iii) the plan is in the “best interests” of creditors and holders of Claims and Interests impaired under the plan.

#### **A. Acceptance of Plan**

In order for an Impaired Class of Claims or Interests to accept the Plan, (a) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in amount of the Allowed Claims or number of Interests actually voting in such Class must have voted to accept the Plan and, with respect to Claims only, (b) the holders (other than any holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

Holders of Claims in Impaired Classes are entitled to vote to accept or reject the Plan

The Plan provides that the Plan will constitute a request that the Bankruptcy Court confirm the Plan over such rejection in accordance with Section 1129(b) of the Bankruptcy Code, the so-called “cram down” provision. Debtor reserves the right to alter, amend, modify, revoke, or withdraw the Plan or this Disclosure Statement, including any exhibit or attachment, if necessary to satisfy the requirements of Section 1129(b) of the Bankruptcy Code.

#### **B. Feasibility**

As a condition to confirmation of the Plan, Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the Plan is not likely to be followed by the liquidation of Debtor unless such liquidation is proposed in the Plan, which in this case this is a liquidating plan.

#### **C. “Best Interests of Creditors” Test**

Confirmation of the Plan also requires that each claimant either (i) accept the Plan or (ii) under the Plan, receive or retain property with a value, as of the Effective Date, that is not less than the value such claimant would receive or retain if Debtor had its assets liquidated under Chapter 7 of the Bankruptcy Code.

Specifically, Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired Class of claims or interests, that such Class either accept the Plan or that each holder in such Class “will receive or retain under the plan on account of such claim or interest, property of a value as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.” This is referred to as the Best Interest of Creditors test for confirmation of chapter 11 plans, and basically provides that unless creditors agree to accept less than they would receive in a Chapter 7 liquidation, a plan proponent must propose to pay at least that amount to all holders



of claims in order for its plan to be eligible for confirmation by the Bankruptcy Court, assuming all other requirements of confirmation have been met. Here, this Plan calls for liquidation of all assets of the Debtor and the distribution of the proceeds of liquidation strictly in accordance with statutory protocols. Accordingly, the Best Interests of Creditors Test is satisfied by definition. Nevertheless, the following table will attempt to project the “best case” Chapter 7 liquidation value of unsecured claims.

### Chapter 7 Liquidation Analysis

Asset	Book or Non-Discounted Value	Estimated Cost of Sale (Real Property 4.5%; Personal Property 10%)	Payments to Secured Creditors	Estimated Net Value to Creditors
Cash	\$9,210.91	\$0.00		\$9,210.91
Real Property	\$46,029,895.00	\$2,071,345.28	\$43,958,549.72	\$0.00
Personal Property	\$2,551,070.00	\$255,107.00	\$0.00	\$2,295,963.00
Accounts Receivable <sup>2</sup>	\$534,431.32	\$0.00	\$0.00	\$534,431.32
Recoveries from Causes of Action	\$38,000.00	\$8,000.00	\$0.00	\$30,000.00
Total Net Value before Deductions	\$49,162,607.23	\$2,334,452.28	\$43,958,549.72	\$2,869,605.23

Chapter 7 Trustee’s Commissions	(\$140,650.00)
Chapter 7 Trustee’s Professional Fees	(\$25,000.00)
Chapter 11 Administrative Expenses	(\$100,000.00)
Priority Claims	\$0.00
Net Liquidation Value	\$2,603,955.23

The above projected “best case” distribution to unsecured claims of \$2,603,955.23, distributed among unsecured and deficiency claims totaling approximately \$31,411,179 yields a “best case” projected dividend to holders of Allowed Unsecured Claims of approximately 8%. However, the values stated in the above chart for each asset listed above are rough estimates and no asset can be guaranteed to liquidate for the amount shown. If a greater amount is received or the projected amount of unsecured claims is less, the dividend will be greater. If a lesser amount than projected is received or the total of unsecured claims is greater than projected, the dividend will be lower. In either case, however, the Plan satisfies the Best Interests of Creditors test because everything that can be distributed to unsecured creditors will be distributed to unsecured creditors. Additionally, the Chapter 11 case will avoid incurring the statutory fees to a Chapter 7

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<sup>2</sup> The Debtor notes it owns an account receivable from Fourth Quarter Properties XII, LLC in the amount of \$24,847,842.98, but such entity is no longer operating with no assets and the actual value of such receivable is \$0.00.

Trustee and a Chapter 7 Trustee's professional fees. Therefore, the distribution under this Plan is projected to be greater than a distribution under Chapter 7.

#### **XIV. FEASIBILITY OF THE PLAN**

The Plan is feasible. The Plan provides for the liquidation of all assets of the Debtor. A broker has been retained for that purpose that will be compensated out of the proceeds of sale as provided under Section 506(c) of the Bankruptcy Code. The maintenance, operating and restructuring costs of the Estate pending the closing of the sale of its assets are being funded out of cattle operations and the DIP Credit facility. The Debtor will be able to maintain the value of its assets, fund the closing costs of liquidation, and preserves the mechanism for distributing the proceeds to creditors in the manner provided by the Plan.

#### **XV. CERTAIN TAX CONSEQUENCES**

The confirmation and execution of the Plan may have tax consequences to holders of Claims and Interests, as well as to the Debtor.

##### **A. In General**

The federal income tax consequences of the implementation of the Plan to a Creditor will depend in part on (a) whether the Creditor's Claim constitutes a security for federal income tax purposes, (b) whether the Creditor reports income on the accrual basis, (c) whether the Creditor receives consideration in more than one (1) tax year, and (d) whether all the consideration received by the Creditor is deemed to be received by that Creditor as part of an integrated transaction. The federal tax consequences upon the receipt of cash and notes allocable to interest are discussed in "Receipt of Interest" below.

##### **B. Gain or Loss on Exchange**

While Debtor does not believe that any of its trade creditor's claims or long-term obligations will constitute tax securities, certain of his long-term obligations can, in some instances, be classified as tax securities. Whether a debt instrument constitutes a security is based on the facts and circumstances surrounding the origin and nature of the debt and its maturity date. Generally, claims arising out of the extension of trade credit have been held not to be securities. Instruments with a five-year term or less rarely constitute securities. Accordingly, a Creditor will recognize gain or loss on the exchange of his existing Claim (other than a Claim for accrued interest) for any consideration. The amount of such gain or loss will equal the difference between (a) the "amount realized" in respect of such Claim and (b) the adjusted tax basis of the Creditor in such Claim. Pursuant to Section 1001 of the Internal Revenue Code, the "amount realized" will be equal to the sum of the cash plus the fair market value of any other property received in such exchange.

## **1. Receipt of Cash**

A Creditor who received cash in full satisfaction of his claim will be required to recognize gain or loss on the exchange. The Creditor will recognize gain or loss equal to the difference between the “amount realized” in respect of such Claim and the adjusted tax basis of the Creditor in the Claim, and the tax treatment of the exchange will parallel the tax treatment set forth under “Gain or Loss on Exchange” above.

## **2. Determination of Character of Gain or Loss**

In the case of a Creditor whose existing Claim does not constitute a capital asset, the gain or loss realized on the exchange will give rise to ordinary income or loss. In the case of a Creditor whose existing Claim does constitute a capital asset in his hands, the gain or loss required to be recognized will generally be classified as a capital gain or loss, except to the extent of interest. Any capital gain or loss recognized by a Creditor will be long-term capital gain or loss with respect to those Claims for which the holding period of the Creditor is more than twelve (12) months, and short-term capital gain or loss with respect to such Claims for which the holding period of the Creditor is twelve (12) months or less.

## **C. Receipt of Interest**

The Bankruptcy Tax Act of 1980 reversed prior law by providing that consideration attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the Creditor’s existing Claims are capital assets in his hands and the exchange is pursuant to tax reorganization. A Creditor who, under his accounting method, was not previously required to include income accrued, but unpaid interest attributable to his existing Claims, and who exchanges his interest Claim for Cash, other property or Stock, or a combination thereof, pursuant to the Plan will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that Creditor realizes an overall gain or loss as a result of the exchange of his Claims.

## **D. Backup Withholding**

Under the Internal Revenue Code, interest, dividends and other “reportable payments” may, under certain circumstances, be subject to “backup withholding” at a thirty-one percent (31%) rate. Withholding generally applies if the holder: (i) fails to furnish his social security number or other taxpayer identification number (“**TIN**”), (ii) furnishes an incorrect TIN, (iii) fails to report interest or dividends or (iv) under certain circumstances fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding.

## **E. Tax Consequences to Interest Holders**

The Federal and State Income tax consequences to the individual debtor on account of the discharge contemplated in this Bankruptcy will be negligible. No undisputed debt will be discharged and phantom income from discharge of indebtedness in a bankruptcy is not recognized under Section 108 of the Internal Revenue Code, subject to a reduction in certain tax attributes not relevant to this case. On the other hand, the sale or liquidation of property under

this plan will trigger capital gains tax and the rental income received by Debtor (less deductible expenses) will be taxable as ordinary income during the execution of the Plan. Accordingly, Debtor will reserve from the sale of properties proceeds to meet anticipated capital gains and ordinary income taxes.

**Because the final outcome depends so much on each individual creditor's or interest holder's situation, it is imperative that each creditor or interest holder seek individual tax counsel for advice on its particular situation.**

**All holders of claims and interests are urged to consult their own tax advisors with respect to any federal, state, local, and foreign tax consequences of the Plan. This Disclosure Statement is not intended, and should not be construed, as legal or tax advice to any creditor or interest holder.**

## **XVI. ALTERNATIVES TO CONFIRMATION/CONSUMMATION OF THE PLAN**

If the Plan is not confirmed and consummated, the alternatives include (a) liquidation of Debtor under chapter 7 of the Bankruptcy Code or (b) an alternative plan of reorganization. Debtor believes that if the Plan is not confirmed, then holders of Allowed Claims will receive a smaller dividend than proposed under the Plan.

### **A. Liquidation Under Chapter 7.**

If no plan can be confirmed, the Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code. A Chapter 7 trustee would be appointed to liquidate the remaining assets of Debtor for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. A Chapter 7 trustee would need time to investigate Debtor's pre-petition transactions, and their assets and liabilities. A Chapter 7 trustee would retain and liquidate Debtor's remaining assets, and, if necessary, investigate and pursue Causes of Action. The liquidation of Debtor's assets would result in distressed recoveries and would therefore reduce the recovery to Unsecured Creditors. Debtor also believes that the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code and the appointment of a Chapter 7 trustee would increase the costs of administration, and reduce and postpone any distribution to holders of Allowed Claims.

For all of the foregoing reasons, Debtor has concluded that Creditors are likely to receive an amount under the Plan that is substantially greater than the amount such Creditors would receive under Chapter 7 liquidation.

## **XVII. SOLICITATION**

The Disclosure Statement you are reading is submitted by Debtor in compliance with their obligations under the Bankruptcy Code to provide "adequate information" to enable you to reach an informed decision regarding whether it is in your best interest to vote to accept the Plan.

All Claims are to receive the maximum distribution possible under the circumstances at a much earlier date than distributions would be paid if the Case were converted to a Chapter 7 case.

Debtor urges all holders of claims and interests to carefully consider the Liquidating Plan of Debtor and complete the attached Ballot accepting the Plan.

Debtor thanks you, in advance, for your support.

IN WITNESS WHEREOF, the undersigned have caused this Disclosure Statement to be duly executed as of the date written below, which execution may be in multiple identical counterparts.

Dated this the 28<sup>th</sup> day of August, 2015.

FOURTH QUARTER PROPERTIES 86, LLC  
By:

/s/ Stanley E. Thomas  
\_\_\_\_\_  
Stanley E. Thomas, Manager.

**STONE & BAXTER, LLP**  
By:

/s/ Ward Stone, Jr. \_\_\_\_\_  
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