

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION

In re: §  
3D Resorts-Bluegrass, LLC, § CASE NO. 11-41599-ACS  
Debtor § CHAPTER 11  
§  
§

**CHAPTER 11 TRUSTEE’S MOTION FOR APPROVAL OF COMPROMISE  
AND SETTLEMENT PURSUANT TO BANKRUPTCY RULE 9019**

Thomas M. Duddy (“Trustee”), Chapter 11 Trustee for 3D Resorts-Bluegrass, LLC (“Debtor”) hereby files this *Motion for Approval of Compromise and Settlement Pursuant to Bankruptcy Rule 9019* (the “Motion”). In support of this Motion, the Trustee states as follows:

**I.  
JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter concerns the administration of the bankruptcy estate; accordingly, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are 11 U.S.C. §§ 105(a) and Bankruptcy Rules 6004(h) and 9019 (the “Bankruptcy Rules”).

**II.  
BACKGROUND**

2. On November 16, 2011 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division. On December 8, 2011, the Debtor’s case was subsequently transferred to this Court. See Docket No. 1.

3. This Court entered an order on January 11, 2012 granting the United States Trustee’s application to appoint Thomas Duddy as the Chapter 11 Trustee. See Docket No. 43.

4. On May 11, 2012, the Trustee filed the *Motion to Approve Agreed Order (i) Authorizing Trustee to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 363 and 364; (ii) Granting Liens and Superpriority Claims to Plains Pursuant to 11 U.S.C. § 364; (iii) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (iv) Providing Adequate Protection to Plains Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Docket No. 72] (the “**Financing Motion**”). The Financing Motion sought Court approval of, *inter alia*, the Debtor’s use of PlainsCapital Bank’s (“PCB”) cash collateral up to, and through, July 31, 2012.

5. On July 27, 2012, this Court entered the *Agreed Order Remanding Hearings, Authorizing Appointment of Mediator, and Extending Agreed Order for Use of Cash Collateral* (the “**Agreed Cash Collateral Order**”). See Docket Nos. 158 and 162. The Agreed Cash Collateral Order extended the Trustee’s authorization to use PCB’s cash collateral up to and through August 31, 2012.

6. Pursuant to the Agreed Cash Collateral Order, PCB received replacement security interests and liens in all of the Debtor’s assets (excluding chapter 5 causes of action). See Docket No. 158 at p.6. PCB was also granted superpriority claims against the Debtor’s estate pursuant to section 507(b) of the Bankruptcy Code.

7. On June 14, 2013, the Consumer Financial Protection Bureau (the “CFPB”) commenced an administrative proceeding against the Debtor by filing a *Notice of Charges Seeking Rescission, Restitution, Civil Money Penalties, and Other Legal and Equitable Relief* (the “**Administrative Proceeding**”).

8. On June 17, 2013, the Trustee and PCB filed their *Joint Motion for Approval of Agreement Pursuant to Bankruptcy Rule 4001(d)* [Docket No. 266] (the “**4001(d) Motion**”).

Through the 4001(d) Motion, the Trustee and PCB agreed to grant PCB relief from the automatic stay of the Bankruptcy Code to foreclose on the Debtor's interest in certain promissory notes and related mortgages (the "**3D Mortgages**").

9. Also on June 17, 2013, the Trustee filed his *Motion for Order Pursuant to 11 U.S.C. §§ 105 and 363 and Bankruptcy Rules 2002 and 6004 Approving Sale of Certain Assets of the Debtor* [Docket No. 262] (the "**363 Motion**"). Through the 363 Motion, the Trustee seeks to sell the Debtor's interest in the Assets (as defined in the 363 Motion) to PCB. On August 30, 2013, this Court received competing orders on the 363 Motion and on September 4, 2013, this Court took the 363 Motion (and the competing orders) under advisement.

10. Through the relief requested in the 363 Motion, PCB will provide a fund for distribution to unsecured creditors -- including the distributions contemplated in the Agreement (defined below) to the Attorney General for the Commonwealth of Kentucky (the "**KYOAG**") and the CFPB.

11. On July 17, 2013, the 4001(d) Motion was approved by the Bankruptcy Court and PCB was granted relief from the automatic stay in the Bankruptcy Case to take all necessary actions and enforce its rights against the 3D Mortgages held by PCB as collateral. The CFPB has appealed the order approving the 4001(d) Motion asserting that Judge Stout abused his discretion in granting relief (the "**CFPB Appeal**").

12. On July 18, 2013, PCB conducted a Uniform Commercial Code foreclosure sale of the 3D Mortgages and related notes. As a result of that sale, PCB-ARC, Inc. ("**ARC**") owns the 3D Mortgages and notes.

13. The Administrative Proceeding is currently set to go to trial on October 28, 2013 before an administrative law judge (the "ALJ").

**III.  
SUMMARY OF TERMS OF THE PROPOSED SETTLEMENT AND COMPROMISE**

14. As a result of good-faith, arms-length negotiations, and to avoid the expense, inconvenience, delay, and expedite the closure of the Debtor's case, the Trustee, PCB, ARC, the KYOAG, and the CFPB (collectively, the "Parties") have reached terms to release all claims against each other in furtherance of completing administration of the Debtor's estate.

15. The major terms of the settlement agreement (the "Agreement") include:<sup>1</sup>

- The Parties provide various broad-form releases among the respective Parties;
- PCB will release all claims against the Debtor, including its superpriority administrative claim;
- The CFPB will dismiss the Administrative Proceeding and the KYOAG will dismiss the Grayson County state-court lawsuit as to the Debtor;
- The KYOAG and the CFPB shall each have an allowed unsecured claim in the amount of \$500,000.00, and will receive distributions pursuant to the Bankruptcy Code and Bankruptcy Rules until such time as \$50,000.00 of distributions have been made on account of each such claim, at which point no more distributions will be made;
- The Trustee will pay the KYOAG and the CFPB each \$50,000.00 in cash, using funds provided by PCB;
- The KYOAG will retain all funds currently held in escrow from the 2008 settlement entered into with the Debtor *i.e.* \$29,521.12;

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<sup>1</sup> The following is only intended to summarize the terms of the Agreement. If any discrepancy exists between this summary and the Agreement, the terms in the Agreement, a copy of which is attached as Exhibit A, shall control.

- ARC and PCB will offer certain settlement agreements to Lot Owners (as defined in the Agreement) and pursuant to the terms set forth in the Agreement;
- The Trustee will withdraw his objection to the CFPB's proof of claim, styled *Chapter 11 Trustee's Objection to Claim of the Consumer Financial Protection Bureau* [Docket 233]; and
- The CFPB will dismiss the CFPB Appeal, and the KYOAG and the CFPB will withdraw their objections to the 363 Motion.

16. Given the claims of various Lot Owners in this case, the outstanding litigation maintained by the KYOAG, and the Administrative Proceeding going to trial in several weeks, the Agreement represents a resolution to substantially all of the major issues in the Debtor's case.

17. Additionally, under the Agreement coupled with the relief requested in the 363 Motion, unsecured creditors, including the CFPB and the KYOAG, will receive a distribution. Thus, the Agreement constitutes an exercise of reasonable business judgment on behalf of the Trustee.

#### IV. BASIS FOR RELIEF REQUESTED

18. Pursuant to this Motion and in accordance with Bankruptcy Rule 9019(a), the Trustee respectfully requests that the Court enter an order (a) approving the proposed compromise and settlement between the Parties (the "Proposed Settlement"), (b) authorizing the Trustee to take any and all actions necessary to effectuate the Agreement, and (c) waiving any stay imposed by Bankruptcy Rule 6004(h).

19. This Court has the right and the power to approve the Agreement. *See* 11 U.S.C. § 105; FED. R. BANKR. P. 9019. Bankruptcy Rule 9019(a) provides, in pertinent part, "On motion by the trustee and after notice and a hearing, the court may approve a compromise or

settlement.” FED. R. BANKR. P. 9019(a). Section 105(a) of the Bankruptcy Code further provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105.

20. The Trustee believes the Proposed Settlement is in the best interests of the Debtor’s estate and its creditors and therefore should be approved. Specifically, if the Proposed Settlement is approved and the 363 Motion is granted, then unsecured creditors of the Debtor (including Lot Owners) may be able to receive a distribution otherwise unattainable in this case. Under the Agreement, Lot Owners will also have the option to resolve issues they may have with their respective lots.

21. Settlements and compromises are a “normal part of the process of reorganization.” *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939). The Supreme Court of the United States has further said: “In administering [Bankruptcy] Proceedings in an economical and practical manner, it will often be wise to arrange the settlement of claims as to which there are substantially and reasonable doubts.” *Protective Comm. of Stockholders of TMT Trailer Ferry, Inc. v. Anderson (In re TMT Trailer Ferry, Inc.)*, 390 U.S. 414, 424 (1968), on remand, *TMT Trailer Ferry, Inc. v. Kirkland*, 471 F.2d 10 (5th Cir. 1972). Settlements are “desirable and wise methods of bringing to a close proceedings otherwise

lengthy, complicated and costly.” *Matter of Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

22. Under Bankruptcy Rule 9019(a), this Court may approve a compromise or settlement “on motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustee . . . .” *Protective Comm. For Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). “When determining whether to approve a proposed settlement . . . ‘the bankruptcy court is charged with an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is fair and equitable.’” *In re MQVP, Inc.*, 2012 WL 1233019, at \*3 (citing *Reynolds v. C.I.R.*, 861 F.2d 469, 473 (6th Cir. 1988)). To determine whether a settlement should be approved under 9019, the Court should:

form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

*TMT Ferry, Inc. v. Anderson*, 390 U.S. at 424-25.

23. A reviewing court will uphold the approval of a settlement if it is the result of “an adequate and intelligent consideration of the merits of the claims, the difficulties of pursuing them, the potential harm to the debtor’s estate caused by delay, and the fairness of the terms of the settlement.” *TMT Trailer Ferry, Inc.*, 390 U.S. at 434.

24. Under Sixth Circuit precedent, a bankruptcy court should consider four (4) factors when considering a motion to compromise:

- Probability of success in the litigation;
- The difficulties, if any, to be encountered in the matter of collection;
- The complexity of the litigation involved, and the expense inconvenience and delay necessarily attending it; and
- The paramount interest of the creditor and a proper deference to their reasonable views in the premises.

*In re Bard*, 49 F. App'x 528, 530 (6th Cir. 2002) (quoting *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929)). See also *In re MQVP, Inc.*, 2012 WL 1233019, at \*3; *Lyndon Prop. Ins. Co. v. Katz*, 196 F. App'x 383, 387 (6th Cir. 2006).

25. Under the Proposed Settlement, the four-part test is satisfied. The Proposed Settlement will resolve outstanding litigation claims against the Debtor's estate by the CFPB and the KYOAG, which could potentially result in multi-million dollar claims against the Debtor's estate. It is unclear whether the Trustee would be successful in litigation against the KYOAG and the CFPB in the Administrative Proceeding, thus the probability of success in defending those claims is uncertain. Additionally, it is unlikely that the Debtor's estate has any claims against PCB or ARC and so any probability of success against those parties is unlikely.

26. Even if the Debtor's estate had claims against PCB or if the Trustee would be successful in defending the litigation against the KYOAG and the CFPB, such litigation would take a significant amount of time and resources - both of which the estate does not have.

27. Finally, the interests of creditors are served by the Proposed Settlement. In this case, if the 363 Motion and this Motion are approved, then the CFPB and the KYOAG will have capped, unsecured claims against the estate while leaving cash in the estate for the Trustee to



distribute to the Debtor's unsecured creditors. Thus, the Proposed Settlement is in the best interest of creditors.

28. The Trustee requests that any order approving this Motion be effective immediately, thereby waiving the 14-day stay period imposed by Bankruptcy Rule 6004(h). This waiver of the 14-day stay period is necessary for the Agreement to be executed and implemented as expeditiously as possible and within the time frames contemplated by the Trustee and PCB. Accordingly, the Trustee hereby requests that the Court eliminate the 14-day stay periods imposed by Bankruptcy Rule 6004(h).

WHEREFORE, the Trustee respectfully requests that this Court enter an order (i) granting this Motion; (ii) approving the Proposed Settlement; (iii) granting the Trustee the authority to engage in any and all acts to consummate the Agreement; (iv) waiving the 14-day stay period imposed by Bankruptcy Rule 6004(h); and (v) awarding the Trustee any such other and further relief that this Court deems just and proper.

Dated: October 4, 2013

Respectfully submitted,

/s/ Michael A. Fiorella  
Michael A. Fiorella  
SULLIVAN, MOUNTJOY,  
STAINBACK & MILLER, P.S.C.  
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Owensboro, KY 42303-0727  
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*Counsel for Thomas M. Duddy, Trustee*

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with counsel for PCB, counsel for ARC, counsel for the CFPB, and counsel for the KYOAG, and none of those parties are opposed to the relief requested herein.

*/s/ Michael A. Fiorella* \_\_\_\_\_

Michael A. Fiorella

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (hereinafter referred to as the "Agreement") is made and entered into as of the \_\_\_\_ day of October, 2013, by and between PlainsCapital Bank ("PCB") and PCB-ARC, Inc. ("ARC"), Thomas M. Duddy, as Chapter 11 Trustee (the "Trustee") for 3D Resorts-Bluegrass, LLC (the "Debtor"), the Consumer Financial Protection Bureau (the "CFPB"), and the Office of the Attorney General for the Commonwealth of Kentucky (the "KYOAG," collectively with PCB, ARC, the Debtor, the Trustee, and the CFPB, referred to as the "Parties," or individually each as a "Party"), and the Parties represent as follows:

**I,  
DEFINITIONS**

1. "363 Motion" shall mean the *Motion for Order Pursuant to 11 U.S.C. §§ 105 and 363 and Bankruptcy Rules 2002 and 6004 Approving Sale of Certain Assets of the Debtor* [Docket No. 262], filed in the Bankruptcy Court in Case No. 11-41599.
2. "3D Mortgage" shall mean any mortgage on which the Debtor was the mortgagee as of June 30, 2013 together with any related promissory note.
3. "4001(d) Motion" shall mean the *Joint Motion for Approval of Agreement Pursuant to Bankruptcy Rule 4001(d)* [Docket No. 266] jointly filed by PCB and the Trustee.
4. "Administrative Proceeding" shall mean the administrative proceeding before the Consumer Financial Protection Bureau commenced on June 14, 2013 by the CFPB against the Debtor through its *Notice of Charges Seeking Rescission, Restitution, Civil Money Penalties, and Other Legal and Equitable Relief* and styled as *In the Matter of 3D Resorts-Bluegrass, LLC*, File No. 2013-CFPB-0002.
5. "Administrative Proceeding Consent Order" shall mean the form of document attached hereto as Exhibit A.
6. "Agreement" shall mean this Settlement Agreement and Release.
7. "ALJ" shall mean the administrative law judge presiding over the Administrative Proceeding.
8. "ARC" shall mean PCB-ARC, Inc., a Texas corporation.
9. "Bankruptcy Case" shall mean the bankruptcy case commenced by the Debtor on the Petition Date when it filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.
10. "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Western District of Kentucky, Owensboro Division.

11. "Cash Collateral Orders" shall mean the *Interim Agreed Order (i) Authorizing Trustee to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 363 and 364; (ii) Granting Liens and Superpriority Claims to Plains Pursuant to 11 U.S.C. § 364; (iii) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (iv) Providing Adequate Protection to Plains Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364* [Docket No. 158] entered by the Bankruptcy Court on July 26, 2012 together with the *Agreed Order Remanding Hearings, Authorizing Appointment of Mediator, and Extending Agreed Order for Use of Cash Collateral* [Docket No. 162] entered by the Bankruptcy Court on July 27, 2012.

12. "CFPB" shall mean the Consumer Financial Protection Bureau.

13. "CFPB Appeal" shall mean the CFPB's appeal of the Bankruptcy Court order granting the 4001(d) Motion that was commenced by the filing of the *Notice of Appeal* [Docket No. 318].

14. "Claims" shall mean any and all claims, demands, causes of action, obligations, charges, debts, agreements, promises, damages and liabilities of any nature whatsoever and of whatever kind of character, whether arising in contract, tort or otherwise whether or not known, suspected or claimed, existing as of the Effective Date that any Party may have or assert, or hereafter may have or assert, arising directly or indirectly out of or related to the Debtor, the Debtor's estate, the Green Farm Resort (including, without limitation, the development, financing, operation, maintenance, marketing or sales related thereto), the Bankruptcy Case, the foreclosure conducted pursuant to the 4001(d) Motion, the KYOAG Lawsuit, the Administrative Proceeding, and Lot Owners; provided, however, that Claims shall not include: (a) any obligation owed by any Party pursuant to this Agreement; or (b) any events of any kind occurring after the Effective Date.

15. "Consent Judgment" shall mean the form document attached hereto as Exhibit G to be executed and entered in the KYOAG Lawsuit.

16. "Debtor" shall mean 3D Resorts-Bluegrass, LLC, a Kentucky limited liability corporation.

17. "Effective Date" shall mean the date upon which the order approving this Agreement becomes a final order of the Bankruptcy Court that is no longer subject to appeal.

18. "Financing Motion" shall mean the *Motion to Approve Agreed Order (i) Authorizing Trustee to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 363 and 364; (ii) Granting Liens and Superpriority Claims to Plains Pursuant to 11 U.S.C. § 364; (iii) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (iv) Providing Adequate Protection to Plains Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* [Docket No. 72] filed by the Trustee May 11, 2012 in the Bankruptcy Court.

19. "Green Farm Resort" shall mean a resort located in Breckinridge and Grayson Counties, Kentucky which includes an 18-hole championship golf course, a bed & breakfast, cabins, residential lots, and undeveloped acreage.

20. "KYOAG" shall mean the Office of the Attorney General for the Commonwealth of Kentucky.

21. "KYOAG Lawsuit" shall mean the lawsuit styled as *Commonwealth of Kentucky v. 3D Resorts Communities, LLC, et al.*, Civ. Action 11-CI-212 and pending in the Grayson County Circuit Court.

22. "Lake Lots" shall mean the lots identified on Exhibit B.

23. "Lake Lot Owners" shall mean those individuals or entities who are Lot Owners of one or more Lake Lots.

24. "Lot Owner" shall mean any owner of a lot(s) who (i) is a Lake Lot Owner, Section 4 Owner, or a Non-Lake Lot Owner and (ii) purchased such lot(s) from 3D Resorts – Bluegrass LLC directly or through transactions arranged by National Resorts Marketing Corporation or Double Diamond, and (iii) remained an owner of such lot(s) as of June 30, 2013, and who has not entered into a settlement agreement with PCB prior to the Effective Date.

25. "Lot Owner Settlement Agreement" shall mean each of the form settlement agreements attached hereto as Exhibit C, Exhibit D, and Exhibit E.

26. "Non-Current Lot Owners" shall mean all Lot Owners who were not current on their 3D Mortgage and related promissory note as of June 30, 2013.

27. "Non Lake Lot Owners" shall mean those individuals or entities who are a Lot Owner of one or more lots in Section 2 or 3 of Green Farm Resort, other than Lake Lots.

28. "Offer Termination Date" shall mean the date that is forty (40) days after the Effective Date unless the initial offer to the Lot Owner is returned by the U.S. Postal Service as undeliverable in which case ARC shall notify the CFPB and KYOAG who shall have five (5) business days thereafter to provide an alternative address to ARC. If no address is provided within such time, the offer shall be deemed revoked. If an alternative address is provided within the required time period, ARC shall reissue the offer utilizing the new address and for such Lot Owner an additional twenty (20) days, after mailing of the reissued offer, shall be provided to accept the offer and execute the documents pursuant to Section III 2(f), below.

29. "Parties" shall mean, collectively, the KYOAG, the CFPB, the Debtor, PCB, ARC, and the Trustee.

30. "Petition Date" shall mean November 16, 2011.

31. "Plains" shall mean PCB, ARC, and their affiliates and their respective agents, attorneys, representatives, officers, and directors.

32. "Plains Administrative Claim" shall mean PCB's entitlement to distributions on its priority administrative-expense claim pursuant to the Cash Collateral Orders or any other administrative claims it may have against the Debtor's estate.

33. "POA" shall mean the Green Farm Property Owners' Association.

34. "PCB" shall mean PlainsCapital Bank, a Texas state bank.

35. "Pre-Petition Indebtedness" shall mean PCB's pre-Petition Date claim against the Debtor's estate in the amount of \$21,997,579.27, exclusive of attorneys' fees, costs, and other allowable charges under the loan documents executed by the Debtor.

36. "Section 4 Owners" shall mean those individuals or entities who are a Lot Owner of one or more lots in Section 4 of the Green Farm Resort.

37. "Stipulation" shall mean Exhibit F to be executed and submitted by the Debtor, by and through the Trustee to the CFPB.

38. "Taxes" shall mean the *ad valorem* taxes paid by the Debtor or Plains on any lot for the benefit of a Lot Owner and any ad valorem taxes, interest and fees due for tax year 2012.

39. "Trustee" shall mean Thomas M. Duddy, as Chapter 11 Trustee for the Debtor.

## II. RECITALS

WHEREAS on June 17, 2011 the KYOAG filed the KYOAG Lawsuit against, among others, the Debtor; and

WHEREAS, on the Petition Date, the Debtor commenced the Bankruptcy Case. On December 8, 2011, the Bankruptcy Case was converted to a case under Chapter 11 and transferred to the Bankruptcy Court; and

WHEREAS, on the Petition Date, PCB held a claim against the Debtor's estate in, at least, the amount of the Pre-Petition Indebtedness; and

WHEREAS, the Bankruptcy Court entered an order on January 11, 2012 granting the United States Trustee's application to appoint Thomas M. Duddy as the Trustee; and

WHEREAS, on May 11, 2012, the Trustee filed the Financing Motion. The Financing Motion sought Bankruptcy Court approval of, *inter alia*, the Debtor's use of PCB's cash collateral up to, and through, July 31, 2012; and

WHEREAS, as of July 20, 2012, over one hundred Lot Owners, KYOAG, CFPB and certain other creditors had filed proofs of claim against the Debtor's estate in the Bankruptcy Case.

WHEREAS, on July 26, 2012, the Bankruptcy Court entered the Cash Collateral Orders. The Cash Collateral Orders extended the Trustee's authorization to use PCB's cash collateral up to and through August 31, 2012; and

WHEREAS, pursuant to the Cash Collateral Orders, PCB received replacement security interests and liens in all of the Debtor's assets (excluding causes of action pursuant to 11 U.S.C. §§ 544-562). PCB was also granted the Plains Administrative Claim in the form of superpriority claims against the Debtor's estate pursuant to section 507(b) of the Bankruptcy Code; and

WHEREAS, on June 14, 2013, the CFPB commenced the Administrative Proceeding against the Debtor by filing a *Notice of Charges Seeking Rescission, Restitution, Civil Money Penalties, and Other Legal and Equitable Relief*; and

WHEREAS, the Trustee filed the 363 Motion on June 17, 2013. The 363 Motion seeks to sell certain assets of the Debtor to PCB in consideration of, *inter alia*, (i) cash; (ii) PCB's credit-bid on its Pre-Petition Indebtedness; and (iii) waiver of distribution on PCB's remaining Pre-Petition Indebtedness; and

WHEREAS, also on June 17, 2013, the Trustee and PCB filed the 4001(d) Motion. The 4001(d) Motion requested relief from the automatic stay of the Bankruptcy Code to permit PCB to foreclose on the 3D Mortgages; and

WHEREAS on July 17, 2013, the 4001(d) Motion was approved by the Bankruptcy Court and PCB was granted relief from the automatic stay in the Bankruptcy Case to take all necessary actions and enforce its rights against the 3D Mortgages held by PCB as collateral; and

WHEREAS, on July 18, 2013, PCB conducted a Uniform Commercial Code foreclosure sale of the 3D Mortgages. As a result of that sale, ARC owns the 3D Mortgages; and

WHEREAS, on July 18, 2013, the CFPB filed its CFPB Appeal in the Bankruptcy Case seeking reversal of the order granting the 4001(d) Motion; and

WHEREAS, on July 31, 2013, the KYOAG's Motion for Relief from Stay was granted by the Bankruptcy Court; and

WHEREAS, the Parties have agreed to enter into this Agreement pursuant to which the Parties compromise claims and causes of action.

NOW, THEREFORE, the Parties hereby agree as follows:

### III. AGREEMENTS

1. **Consideration.** In consideration for the releases and promises set forth in this Agreement, the Parties agree to the following treatments and obligations of each respective Party:

a. The KYOAG shall:

- i. receive from the Debtor/Trustee (A), an allowed unsecured claim in the amount of \$500,000.00<sup>1</sup> and (B) cash in the amount of \$50,000.00 and, in consideration of its allowed claim and such cash payment, provide complete broad-form releases as identified in Sections III 3(f) - (h) below.
- ii. within three (3) business days after the execution of the Consent Judgment, tender said Consent Judgment to the Grayson Circuit Court for entry which shall, *inter alia*, dismiss, with prejudice, the Debtor from the KYOAG Lawsuit, but shall reserve all claims against any other individual or entity, including but not limited to the other defendants in the KYOAG Lawsuit.
- iii. retain all funds currently held in escrow from the 2008 settlement entered into with the Debtor *i.e.* \$29,521.12, which funds may be utilized in the sole discretion of KYOAG.
- iv. within three (3) business days after the entry of the Consent Judgment, withdraw its *lis pendens* filed against the Debtor's interests in the Green Farm Resort.
- v. within three (3) business days after the Effective Date, amend its proof of claim in the Bankruptcy Case to reflect the amount stated in Section III 1(a)(i)(A) above.

b. The CFPB shall:

- i. receive from the Debtor/Trustee (A) an allowed unsecured claim in the amount of \$500,000.00, \$499,999.00 of which shall be towards satisfaction of the judgment against the Debtor for equitable monetary relief as set forth in the Administrative Proceeding Consent Order, and \$1 of which shall be towards satisfaction of the judgment against the Debtor for a civil money penalty as set forth in the Administrative Proceeding Consent Order;<sup>2</sup> and (B) cash in the amount of \$50,000.00 and, in consideration of its allowed claim and such cash payment, provide complete broad-form releases as identified in Sections III 3(c), 3(d), and 3(e) below. The cash in the amount of \$50,000.00 shall be paid as equitable monetary relief for Affected Purchasers as defined in the Administrative Proceeding Consent Order. The CFPB shall deposit those

<sup>1</sup> Such claim will receive distributions pursuant to the Bankruptcy Code and Bankruptcy Rules until such time as \$50,000.00 of distributions have been made on account of such claim at which point no more distributions will be made.

<sup>2</sup> Such claim will receive distributions pursuant to the Bankruptcy Code and Bankruptcy Rules until such time as \$50,000.00 of distributions have been made on account of such claim at which point no more distributions will be made.



funds into a fund or funds administered by the CFPB or its agent in accordance with applicable statutes and regulations to be used for redress for Affected Purchasers as defined in the Administrative Proceeding Consent Order, and for any attendant expenses for the administration of such redress. If the CFPB determines, in its sole discretion, that providing redress to consumers is wholly or partially impracticable or otherwise inappropriate or if funds remain after the administration of redress is completed, the CFPB shall deposit remaining funds in the U.S. Treasury as disgorgement. Neither the Debtor nor any other Party shall have the right to challenge the CFPB's choice of remedies under this Section, and shall have no right to contest the manner of distribution chosen by the CFPB. This redress shall not limit consumers' rights in any way except to the extent set forth in any settlement agreement with such Lot Owner. Any request by a consumer to participate in the equitable monetary relief fund created by this section shall be reported in writing to the Trustee within twenty (20) business days of such request.

- ii. within three (3) business days after the Effective Date, move to dismiss or withdraw the CFPB Appeal with prejudice, provided that PCB and the Trustee shall join in such motion to dismiss.
  - iii. within three (3) business days after the Effective Date, file the Administrative Proceeding Consent Order for approval by the Director of the CFPB, which will conclude the Administrative Proceeding. If the Director doesn't approve the Administrative Proceeding Consent Order in the same form approved by the Bankruptcy Court, then this Agreement shall be null and void.
  - iv. within three (3) business days after the Effective Date, amend its proof of claim in the Bankruptcy Case to reflect the amount stated in Section III 1(b)(i)(A) above.
  - v. Upon the Effective Date, the CFPB withdraw its objection to (but will not join) the 363 Motion.
- c. PCB/ARC shall:
- i. comply with the obligations and agreements set forth in Section III 2 of this Agreement as it pertains to the Lot Owners.
  - ii. within seven (7) days of the Effective Date, pay to the Trustee/Debtor the amounts required under Section III 1(a)(i)(B), Section III 1(b)(i)(B), and make available the funds necessary to honor the obligations set forth in Section III (2) of this Agreement.
  - iii. timely issue any forms or documents required under the Internal Revenue Code for any of the transactions with the Lot Owners contemplated herein.

- iv. comply with its obligations under the order approving the 363 Motion, if such order is entered.
- v. refrain from reporting, or causing any third party to report, to any credit reporting bureau, office, or agency, any adverse credit information relating to any mortgage obligations of any Lot Owner, until the earlier of a Lot Owner's refusal to execute a Settlement Agreement as provided in Section III (2) below or the Offer Termination Date.
- vi. provide to the Debtor, CFPB and KYOAG, within four (4) business days after the Effective Date, a list of Lot Owners including their name(s), address, lot number(s) and the balance of any 3D Mortgage as of June 30, 2013 and the date of mailing to each Lot Owner of the offer referred to in Section III 2, below, in Excel format. Commencing on the 30 day anniversary of the Effective Date and every 30 days thereafter, PCB shall provide copies of executed Lot Owner settlement agreements to the CFPB and KYOAG.
- vii. not object to the entry of the Administrative Proceeding Consent Order, attached hereto as Exhibit A.
- viii. not object to the entry of the Consent Judgment, attached hereto as Exhibit G, by the Grayson Circuit Court.

d. The Trustee shall:

- i. upon the Effective date, withdraw its objection to the CFPB's proof of claim, styled *Chapter 11 Trustee's Objection to Claim of the Consumer Financial Protection Bureau* [Docket 233], and shall not object to an amended proof of claim filed by CFPB in accordance with the provisions of this Agreement.
- ii. not object to an amended proof of claim filed by KYOAG in accordance with the provisions of this Agreement.
- iii. upon the Effective Date, execute and submit to the CFPB the Stipulation attached hereto as Exhibit F and the Consent Order attached hereto as Exhibit A.
- iv. upon the Effective Date, execute and submit to the KYOAG the Consent Judgment attached hereto as Exhibit G, and not object to the entry of the Consent Judgment by the Grayson Circuit Court.
- v. refrain from reporting, or causing any third party to report, to any credit reporting bureau, office, or agency, any adverse credit information relating to any consumer's mortgage obligations relating to any Lot Owner.

- vi. make payment to the KYOAG under Section III 1(a)(i)(B) in the form of a wire transfer to the KYOAG or to such agent as KYOAG may direct, and in accordance with wiring instructions to be provided by counsel for KYOAG.
  - vii. make payment to the CFPB under Section III 1(b)(i)(B) in the form of a wire transfer to the CFPB or to such agent as the CFPB may direct, and in accordance with wiring instructions to be provided by counsel for the CFPB.
2. **Lot Owners.** ARC shall, within 3 days after the Effective Date, make offers to all Lot Owners in accordance with the notice provisions set forth above and the terms set forth below.
- a. **Non-Current Lot Owners.** PCB shall offer all Non-Current Lot Owners, for each lot owned, a deed-in-lieu of foreclosure in full satisfaction of their 3D Mortgage note, pursuant to the form attached as Exhibit C.
  - b. **Lake Lot Owners.** PCB shall offer all Lake Lot Owners, for each lot owned, at their election: (i) a credit of \$4,000.00 to be applied first against Taxes, second, to the outstanding balance of their respective 3D Mortgage as of June 30, 2013, third, to any outstanding POA dues, and then any excess shall be remitted to the Lake Lot Owner at his/her last-known address, pursuant to the form attached as Exhibit E, or (ii) a deed-in-lieu of foreclosure in full satisfaction of their 3D Mortgage note outstanding on such lot(s) pursuant to the form attached as Exhibit C. Any monies credited against Taxes or POA dues shall be retained by Plains.
  - c. **Section 4 Owners.** PCB shall offer all Section 4 Owners, for each lot owned, at their election: (i) a credit of \$4,000.00 to be applied first against Taxes, second, to the outstanding balance of their respective 3D Mortgage as of June 30, 2013, third, to any outstanding POA dues, and then any excess shall be remitted to the Section 4 Owner at his/her last-known address, pursuant to the form attached as Exhibit E, or (ii) a deed-in-lieu of foreclosure in full satisfaction of their 3D Mortgage note outstanding on such lot(s) pursuant to the form attached as Exhibit C. Any monies credited against Taxes or POA dues shall be retained by Plains.
  - d. **Non Lake Lot Owners.** PCB shall offer all Non Lake Lot Owners, for each lot owned, at their election: (i) a credit of \$1,000.00 to be applied first against Taxes, second, to the outstanding balance of their respective 3D Mortgage as of June 30, 2013, third, to any outstanding POA dues, and then any excess shall be remitted to the Non Lake Lot Owner at his/her last-known address, pursuant to the form attached as Exhibit D, or (ii) a deed-in-lieu of foreclosure in full satisfaction of their 3D Mortgage note pursuant to the form attached as Exhibit C. Any monies credited against Taxes or POA dues shall be retained by Plains.

e. **Limitation.** The offers identified in Sections III 2(b)(i), III 2(c)(i), and III 2(d)(i) above shall not be available to Non-Current Lot Owners.

f. **Any Lot Owner who accepts an offer pursuant to this Section III 2 shall:**

- i. Execute the applicable Lot Owner Settlement Agreement;
- ii. Withdraw his/her proof of claim (if applicable) filed in the Bankruptcy Case and his/her objection to the 363 Motion; and
- iii. If applicable, execute and deliver a deed to ARC in the form attached as Exhibit C.

g. Any offer to a Lot Owner pursuant to Section III 2 of this Agreement that is not accepted by the Offer Termination Date shall be deemed revoked. In order to accept the offer, a Lot Owner shall comply with Section III 2(f)(i-iii) above.

h. Any monies credited against Taxes or POA dues shall be retained by Plains. Plains shall bear all costs in administering the Lot Owner Settlement Agreements, and no Lot Owner shall be required to provide payment or other administrative costs in executing, or incidental to, his or her deed in lieu of foreclosure.

i. Any Lot Owner choosing to retain ownership of his or her lot(s), regardless of whether consideration is paid to that Lot Owner, shall also retain all rights and privileges, if any, he or she possesses with regard to the use or enjoyment of his or her lot and any currently existing Common Areas and Recreational Facilities, consistent with the terms and provisions of the Declaration of Reservations, Covenants, Restrictions and Conditions for the Green Farm Resort, filed of record at Deed Book 314, Page 70 in the Office of the Grayson County Clerk's Office, as modified by amendment, by law provision or contract between the Lot Owner and the Debtor.

**3. Releases:**

a. **Release by Plains of the Debtor and the Trustee.** In consideration for the releases and consideration set forth herein, Plains, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES the Debtor and the Trustee and their respective agents, representatives, attorneys, successors and assigns of and from any and all Claims.

b. **Release by the Trustee and the Debtor of Plains.** In consideration for the releases and consideration set forth herein, the Trustee and the Debtor, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES Plains and their respective agents, representatives, attorneys, successors and assigns of and from any and all Claims.

c. **Release by the CFPB of Plains.** In consideration for the releases and consideration set forth herein, the CFPB, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES Plains and their respective agents, representatives,

attorneys, successors and assigns of and from any and all Claims. It is acknowledged by the Parties that neither National Resorts Marketing Corporation nor Double Diamond, Inc. are or have ever been agents of Plains.

d. **Release by the CFPB of the Trustee.** In consideration for the releases and consideration set forth herein, the CFPB, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES the Trustee and his respective agents, representatives, attorneys, successors and assigns of and from any and all Claims. It is acknowledged by the Parties that neither National Resorts Marketing Corporation nor Double Diamond, Inc. are or have ever been agents of the Trustee.

e. **Release by the CFPB of the Debtor.** In consideration for the releases and consideration set forth herein, the CFPB, on the Effective Date, RELEASES, ACQUITS, and FOREVER DISCHARGES the Debtor of and from any and all Claims. This release shall not be effective as to any agent of the Debtor. It is acknowledged by the Parties that Plains is not and has never been an agent of the Debtor. Further, the Trustee is not an agent of the Debtor for purposes of this release.

f. **Release by the KYOAG of Plains.** In consideration for the releases and consideration set forth herein, the KYOAG, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES Plains and their respective agents, representatives, attorneys, successors and assigns of and from any and all Claims. It is acknowledged by the Parties that neither National Resorts Marketing Corporation nor Double Diamond, Inc. are or have ever been agents of Plains.

g. **Release by the KYOAG of the Trustee.** In consideration for the releases and consideration set forth herein, the KYOAG, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES the Trustee and his respective agents, representatives, attorneys, successors and assigns of and from any and all Claims. It is acknowledged by the Parties that neither National Resorts Marketing Corporation nor Double Diamond, Inc. are or have ever been agents of the Trustee.

h. **Release by the KYOAG of the Debtor.** In consideration for the releases and consideration set forth herein, the KYOAG, on the Effective Date, RELEASES, ACQUITS, and FOREVER DISCHARGES the Debtor of and from any and all Claims. This release shall not be effective as to any agent of the Debtor. It is acknowledged by the Parties that Plains is not and has never been an agent of the Debtor. Further, the Trustee is not an agent of the Debtor for purposes of this release.

i. **Release by Plains of the CFPB.** In consideration for the releases and consideration set forth herein, Plains, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES the CFPB and its respective agents, representatives, heirs, attorneys, successors and assigns of and from any and all Claims.

j. **Release by Plains of KYOAG.** In consideration for the releases and consideration set forth herein, Plains, on the Effective Date, RELEASES, ACQUITS and

FOREVER DISCHARGES the KYOAG and their respective agents, representatives, attorneys, successors and assigns of and from any and all Claims.

k. **Release by the Trustee and the Debtor of the CFPB.** In consideration for the releases and consideration set forth herein, the Trustee, on behalf of himself, his agents, representatives, heirs, attorneys, successors and assigns, and on behalf of the Debtor, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES the CFPB and its respective agents, representatives, attorneys, successors and assigns of and from any and all Claims.

l. **Release by the Trustee and the Debtor of KYOAG.** In consideration for the releases and consideration set forth herein, the Trustee, on behalf of himself, his agents, representatives, heirs, attorneys, successors and assigns, and on behalf of the Debtor, on the Effective Date, RELEASES, ACQUITS and FOREVER DISCHARGES the KYOAG and its respective agents, representatives, attorneys, successors and assigns of and from any and all Claims.

4. **Matters Not Released:**

a. **Matters Not Released.** Notwithstanding any other provision herein to the contrary, the releases recited in this Agreement do not apply to the Pre-Petition Indebtedness.

b. **Treatment of the Pre-Petition Indebtedness.** The Pre-Petition Indebtedness shall be treated and enforced as provided in the final orders granting the relief requested in the order granting the 4001(d) Motion and the order granting the 363 Motion, if each such order is entered by the Bankruptcy Court.

5. **No Effect Upon Interstate Land Sales Registration.** Nothing in this Agreement shall affect or impair the suspension of the Statement of Record filed pursuant to the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.* ("ILSA") and its implementing regulations related to the Green Farm Resort, and nothing herein shall make the Statement of Record filed pursuant to ILSA and its implementing regulations related to the Green Farm Resort effective.

6. **No Effect Upon Required Compliance with the Kentucky Recreation and Retirement Use Land Sales Act.** Nothing in this Agreement shall obviate, affect or impair any duty of any individual or entity to comply, after the Effective Date, with all applicable Kentucky law, including the Consumer Protection Act and the Recreation and Retirement Use Land Sales Act.

7. **Assertion of Claims:**

a. The Trustee hereby represents and warrants that he has not assigned, transferred, or purported to have assigned or transferred to any person or entity any claim, demand, right, damage, liability, debt, account, action, cause of action, or matter herein released.

- b. The CFPB hereby represents and warrants that it has not assigned, transferred, or purported to have assigned or transferred to any person, firm, federal, state, or local governmental agency or authority (or quasi-governmental agency or authority) or corporation, any claim, demand, right, damage, liability, debt, account, action, cause of action, or matter herein released.
  - c. The KYOAG hereby represents and warrants that it has not assigned, transferred, or purported to have assigned or transferred to any person, firm, federal, state or local governmental agency or authority (or quasi-governmental agency or authority) or corporation, any claim, demand, right, damage, liability, debt, account, action, cause of action, or matter herein released.
  - d. Plains hereby represents and warrants that it has not assigned, transferred, or purported to have assigned or transferred to any person, or entity, any claim, demand, right, damage, liability, debt, account, action, cause of action, or matter, whether herein released, or that is or could be attributable to its proof of claim in the Debtor's case, the Plains Administrative Claim, and/or the Pre-Petition Indebtedness.
8. **Voluntary Agreement.** This Agreement is voluntarily entered into and is not based on any representations or statements of any kind by any Party to this Agreement or their representatives as to the merits, legal liability, or value of any claim or Claims by the Parties. This Agreement is fully and voluntarily entered into after each Party has had the opportunity to seek advice of counsel and that they have read this Agreement, understand its terms, and execute it voluntarily with full knowledge of its legal significance.
9. **Complete Agreement.** This Agreement represents the entire agreement among the Parties and supersedes any prior agreements or understandings among them.
10. **Authority of Parties to Execute Agreement.** The Parties represent and warrant to one another that they have the necessary authority to settle this matter fully on behalf of themselves (and the parties whose interests they purport to release) in accordance with the terms of this Agreement and that the individuals who execute this Agreement on their behalf are fully authorized to execute the Agreement and to bind their respective Party.
11. **Costs.** Each Party shall be responsible for any costs it incurred in connection with this Agreement. If an order granting the 363 Motion is not entered, nothing herein will affect the KYOAG and CFPB from receiving the cash payments set forth in Section III 1(a)(i) or Section III 1(b)(i), respectively.
12. **No Admission of Liability.** The Parties hereby agree that neither the giving of any consideration hereunder nor its acceptance shall operate as or be evidence of any admission of liability for any claim hereby released. Any contributions or consideration made by Plains pursuant to this Agreement is not an acknowledgement or admission of any wrongdoing and shall not be construed or characterized as a payment of any fine, monetary relief, equitable monetary relief, disgorgement, assessment, censure, or civil money penalties as to Plains.

13. **Amendments.** Any modification of this Agreement or additional obligation assumed by any of the Parties in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party. Additionally, this Agreement cannot be changed or terminated orally, but may be changed only through written addendum executed by all Parties hereto.
14. **Counterparts.** This Agreement may be executed in multiple counterparts and all such counterparts shall together be deemed to constitute one final agreement, as if one document had been signed by all of the undersigned Parties; and each such counterpart shall be deemed to be an original, binding the Party subscribed thereto, and multiple signature pages affixed to a single copy of this Agreement shall be deemed to be a fully executed original agreement. Executed counterparts may be exchanged by facsimile or electronic transmission.
15. **Severability.** In the event any non-material provision of this Agreement is determined by a court or arbitrator to be legally invalid or unenforceable, that such non-material provision shall be deemed inoperative and stricken from the Agreement, and the remainder of the Agreement shall remain in effect and binding on the Parties.
16. **Exercise of Rights.** Any failure or forbearance by any of the undersigned Parties to exercise any right or remedy with respect to enforcement of this Agreement or any instrument executed in connection herewith shall not be construed as a waiver of any of such Party's rights or remedies, nor shall such failure or forbearance operate to modify this Agreement or such instruments in the absence of a writing as provided above.
17. **No Waiver.** No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all Parties. The waiver by any Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any of the Parties, nor shall any waiver operate or be construed as a rescission of this Agreement.
18. **Choice of Law and Venue.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky, and any challenge to any of the terms or provisions of this Agreement shall be made before and heard by the Bankruptcy Court. The Administrative Proceeding Consent Order shall be enforceable by the CFPB against the Debtor only in the Bankruptcy Court for so long as the Bankruptcy Case is open, and thereafter in any appropriate forum.
19. **Agreement Subject to Bankruptcy Court Approval.** This Agreement and the obligations of the Parties hereunder shall be subject to the prior approval of the Bankruptcy Court, after notice and an opportunity for hearing, by a final order which shall contain a waiver of the requirements contained in Fed. R. Bankr. P. 6004 and be in the form attached hereto as Exhibit H.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]



AGREED:

**3D Resorts-Bluegrass, LLC**

Date: \_\_\_\_\_

By: \_\_\_\_\_

*Thomas M. Duddy, Trustee of 3D Resorts-Bluegrass, LLC*

**PlainsCapital Bank**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PCB-ARC, Inc.**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Consumer Financial Protection Bureau**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Office of the Attorney General for the Commonwealth of Kentucky**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU**

**ADMINISTRATIVE PROCEEDING  
File No. 2013-CFPB-0002**

**In the Matter of:**

**3D Resorts -Bluegrass, LLC**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (the "Bureau" or "CFPB") filed a Notice of Charges against 3D Resorts-Bluegrass, LLC (the "Respondent" or "3D Resorts-Bluegrass") on June 14, 2013, for violations of the Interstate Land Sales Full Disclosure Act ("ILSA"), 15 U.S.C. §§ 1701-1720, and its implementing regulations.

The Respondent, by and through Thomas M. Duddy, the Chapter 11 Trustee for the bankruptcy estate of 3D Resorts-Bluegrass, LLC, has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated ^, 2013 (the "Stipulation"), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order ("Consent Order") by the Bureau under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§ 5563, 5565. Respondent admits the Bureau's jurisdiction over Respondent and the subject matter of this Consent Order.

The CFPB hereby issues, pursuant to 12 U.S.C. §§ 5563 and 5565, this Consent Order.

I. CFPB CHARGES

The CFPB filed its Notice of Charges in this proceeding asserting the following:

1. The CFPB has jurisdiction over this matter pursuant to Sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563, 5565.

2. The Respondent is a limited-liability company organized under the laws of Kentucky.

3. Respondent is the owner and operator of property located in the Commonwealth of Kentucky commonly known as the Green Farm Resort or The Falls Resort & Golf Club (the "Resort Property"), a golf and recreation facility with hundreds of individual lots spread over several different development phases.

4. The Respondent is, and at all times relevant to this proceeding has been, a "developer," as that term is defined under ILSA, 15 U.S.C. § 1701(5), because it directly or indirectly sold, offered to sell, or advertised for sale lots on the Resort Property.

5. The Resort Property is, and at all times relevant to this proceeding has been, a "subdivision," as that term is defined under ILSA, 15 U.S.C. § 1701(3).

6. Each lot sold and offered for sale on the Resort Property constituted a "lot" within the meaning of the regulations implementing ILSA, 12 C.F.R. § 1010.1(b), and was not exempt under 15 U.S.C. § 1702 or any subsection thereunder.

7. On November 16, 2011, the Respondent filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Western District of Texas.

8. On December 8, 2011, the United States Bankruptcy Court for the Western District of Texas entered an order converting the case to a Chapter 11 bankruptcy, and

transferring the case to the United States Bankruptcy Court for the Western District of Kentucky. On January 11, 2012, Thomas M. Duddy was appointed to be the Chapter 11 Trustee for the bankruptcy estate of the Respondent, and continues to serve as the trustee of the Respondent's bankruptcy estate.

9. The Respondent is the debtor in a bankruptcy currently pending in the United States Bankruptcy Court in the Western District of Kentucky (the "Bankruptcy Court"), *In re 3D Resorts-Bluegrass, LLC*, Case Number 11-41599.

10. Since late 2008, 3D Resorts-Bluegrass has been engaged in the development of the Resort Property, and by February 2009, 3D Resorts-Bluegrass was marketing and selling lots on the Resort Property.

11. There were four sections in which lots were available for purchase, identified as Sections 1, 2, 3, and 4. Lots were marketed as properties on which purchasers could build "vacation homes" and enjoy the golf course and other amenities of the Resort Property.

12. 3D Resorts-Bluegrass, directly and through its agents, also engaged in the origination of mortgages by providing financing for the sales of lots on the Resort Property and serviced such mortgages. Additionally, 3D Resorts-Bluegrass collected debts on the notes, including allegedly delinquent notes.

13. 3D Resorts-Bluegrass, directly and through its agents, advertised and marketed the sale of lots on Resort Property through the mail, newspaper advertisements, the internet, and trade shows, and hosted promotional dinners or other events, made phone call solicitations, and used other instruments of transportation and communication in interstate commerce and the mails.

14. 3D Resorts-Bluegrass, directly or indirectly, used the mail, newspaper advertisements, and the internet; participated in trade shows; hosted promotional dinners or other events; made phone call solicitations; and used other instruments of transportation and communication in interstate commerce and the mails with respect to the sale of lots and offers to sell lots on the Resort Property, and such activity constitutes "use of any means or instruments of transportation or communication in interstate commerce, or of the mails" under 15 U.S.C. § 1703(a).

15. On or about October 29, 2010, 3D Resorts-Bluegrass entered into a Management Agreement with National Resort Marketing Corp. ("NRMC") pursuant to which NRMC, as an agent of 3D Resorts-Bluegrass, became involved in the marketing and sale of lots on the Resort Property, as well as the operation and development of the Resort Property.

16. In marketing the Resort Property, 3D Resorts-Bluegrass, directly and through its agents, made material misrepresentations and material omissions in the Property Reports distributed to purchasers and prospective purchasers.

17. On or about January 29, 2009, 3D Resorts-Bluegrass filed with the United States Department of Housing and Urban Development ("HUD"), as part of its Statement of Record, a Property Report dated February 26, 2009 ("February 26, 2009 Property Report"). 3D Resorts-Bluegrass distributed the February 26, 2009 Property Report to purchasers and prospective purchasers. The February 26, 2009 Property Report contains numerous untrue statements of material fact or omits material facts, which are set forth in the Notice of Charges.

18. In or about January 2010, 3D Resorts-Bluegrass filed with HUD, as part of its consolidated and amended Statement of Record, a Property Report dated January 13, 2010 ("January 13, 2010 Property Report"). 3D Resorts-Bluegrass distributed the January 13, 2010

Property Report to purchasers and prospective purchasers. The January 13, 2010 Property Report also contains untrue statements of material fact or omits material facts, which are set forth in the Notice of Charges.

19. On or before March 22, 2010, 3D Resorts-Bluegrass made several material changes to the January 13, 2010 Property Report, but this Property Report retained the January 13, 2010 date on its cover (the "March 22, 2010 Property Report"). 3D Resorts-Bluegrass did not file this Property Report with HUD, but did distribute it to purchasers and prospective purchasers from on or about March 22, 2010 forward as the effective property report for the Resort Property. The March 22, 2010 Property Report contains untrue statements of material fact or omitted material facts, which are set forth in the Notice of Charges.

20. Further, the March 22, 2010 Property Report was provided to purchasers and prospective purchasers with the false implication that it was the official Property Report that had been filed with HUD and was effective, despite 3D Resorts-Bluegrass never filing this document with HUD.

21. 3D Resorts-Bluegrass sold lots on the Resort Property after providing the February 26, 2009 Property Report, the January 13, 2010 Property Report, and the March 22, 2010 Property Report, which contained untrue statements of material fact or omitted material facts required to be stated therein pursuant to 15 U.S.C. §§ 1704-1707 or the regulations implementing ILSA. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. § 1703(a)(1)(C). Those violations were knowing and material.

22. The March 22, 2010 Property Report was provided to purchasers and prospective purchasers with the false implication that it was the official Property Report that had been filed with HUD and was effective, despite 3D Resorts-Bluegrass never filing this document with

HUD. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. §§ 1703(a)(1)(B) and 1707(b). Those violations were knowing and material.

23. 3D Resorts-Bluegrass, directly and indirectly through its agents, made material misrepresentations to purchasers and potential purchasers in advertisements, marketing materials, sales pitches, oral communications, demonstratives, and other promotional materials pertaining to the infrastructure and amenities available to the lot or on the Resort Property to induce consumers to purchase lots on the Resort Property. These material misrepresentations are set forth in the Notice of Charges.

24. In making these misrepresentations, 3D Resorts-Bluegrass and its agents employed devices, schemes, or artifices to defraud, and obtained money by means of untrue statements of material fact, and by means of omissions of material facts necessary to make the statements not misleading. Additionally, in making these representations and omissions, 3D Resorts-Bluegrass engaged in a transaction, practice, or course of business which would operate as a fraud or deceit upon purchasers. These misrepresentations were material and had a natural tendency to influence, and were capable of influencing, the decisions of purchasers and prospective purchasers. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. § 1703(a)(2)(A), (B), and (C). Those violations were knowing and material.

25. On or about April 19, 2011, HUD served a suspension notice (the "Suspension Notice") on 3D Resorts-Bluegrass and its agents, pursuant to 15 U.S.C. § 1706(b) and its implementing regulations. The Suspension Notice advised that HUD had conducted a review of 3D Resorts-Bluegrass' consolidation and amendment to the filed Statement of Record, including the January 13, 2010 Property Report, and found it deficient in certain material respects.

26. Based upon these deficiencies and the denial of the consolidation and amendment to the Statement of Record, the Suspension Notice provided that the Statement of Record for the Resort Property was considered suspended until such time that HUD granted 3D Resorts-Bluegrass an effective date for the Statement of Record, and that the sale of lots on the Resort Property, unless exempt, would violate ILSA and potentially subject 3D Resorts-Bluegrass and others to penalties.

27. The Suspension Notice prohibited 3D Resorts-Bluegrass and its agents from selling or leasing any lot until the Statement of Record was amended and the Suspension Notice was lifted. Neither 3D Resorts-Bluegrass nor others have taken the appropriate corrective actions with respect to the deficiencies cited in the Suspension Notice, which remains in effect.

28. As a result of the Suspension Notice, there was no longer an effective Statement of Record for the Resort Property, and under such circumstances, ILSA prohibits the sale of any lot on the Resort Property pursuant to 15 U.S.C. § 1703(a)(1)(A).

29. From approximately April 22, 2011 through approximately August 1, 2011, notwithstanding the Suspension Notice and the statutory prohibition, 3D Resorts-Bluegrass and its agents conducted twenty-eight tours of the Resort Property (and scheduled an additional fifty-five such tours); marketed the Resort Property and the lots to prospective purchasers through interstate mailers; engaged in the same marketing and solicitation activities as it had prior to the suspension date; and sold two lots on the Resort Property. In selling and offering to sell such lots, 3D Resorts-Bluegrass falsely claimed that the subdivision was registered with HUD, and failed to disclose that its effective date and registration in fact had been suspended as of April 19, 2011. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. § 1703(a)(2)(A), (B), and (C). Those violations were knowing and material.



30. After service of the Suspension Notice, 3D Resorts-Bluegrass, through its agents, directly or indirectly, sold Lot Number 955 and Lot Number 970, and each sale was a violation of 15 U.S.C. § 1703(a)(1)(A). Those violations were knowing and material.

31. 3D Resorts-Bluegrass and its agents also failed to comply with several registration and filing requirements mandated by ILSA and its implementing regulations.

32. Pursuant to 24 C.F.R. § 1710.310 (now 12 C.F.R. § 1010.310), 3D Resorts-Bluegrass is required to file the annual reports of activity on any initial or consolidated Statement of Record that is not under suspension within thirty days of the annual anniversary of the effective date of the initial Statement of Record. The effective date for the initial Statement of Record was February 26, 2009. 3D Resorts-Bluegrass failed to timely file the annual reports of activity and pay the corresponding filing fee that was due in March 2010 and March 2011. Beginning on or about March 28, 2010, and continuing until April 19, 2011, 3D Resorts-Bluegrass violated 24 C.F.R. § 1710.310 (now codified at 12 C.F.R. § 1010.310). These violations were knowing and material.

33. Each year after the initial effective date, 3D Resorts-Bluegrass must submit a copy of its latest financial statements, and to date, it has failed to timely file annual financial statements, in violation of 24 C.F.R. § 1710.212 (now codified at 12 C.F.R. § 1010.212). 3D Resorts-Bluegrass failed to submit a copy of its financial statements for fiscal years 2010, 2011, and 2012, which remain outstanding and overdue. 3D Resorts-Bluegrass, therefore, violated 24 C.F.R. § 1710.212 (now codified at 12 C.F.R. § 1010.212). These violations were knowing and material.

34. 3D Resorts-Bluegrass and its agents failed to timely file amendments disclosing changes to material facts required to be in the Statement of Record. The Management Agreement

dated October 29, 2010, by and between 3D Resorts and NRMC is a material change required to be disclosed no later than 15 days after the contract was executed. Further, on February 6, 2010, the General Store located on the Resort Property was destroyed in a fire. The destruction of the General Store constituted a material change required to be disclosed no later than 15 days after the General Store was destroyed. In both instances, 3D Resorts-Bluegrass failed to file a timely amendment to the Statement of Record, and violated 24 C.F.R. § 1710.23 (now codified at 12 C.F.R. § 1010.23). These violations were knowing and material.

35. The CFPB alleges, by and through the conduct set forth above, 3D Resorts-Bluegrass harmed purchasers of lots on the Resort Property. Purchasers affected by the conduct of 3D Resorts-Bluegrass and its agents are any individuals or entities—and their successors who acquired a lot by inheritance, divorce, annulment, succession, or trust transfer—that purchased one or more lots on the Resort Property from 3D Resorts-Bluegrass or its agents, including but not limited to NRMC and Double Diamond, Inc. (“Affected Purchasers”).

36. The CFPB further alleges, the harm incurred by any such Affected Purchaser includes amounts that the Affected Purchaser, or someone on the Affected Purchaser’s behalf, paid to 3D Resorts-Bluegrass or its agents towards the purchase of a lot or other charges imposed by the real estate sales contract, and amounts that the Affected Purchaser has paid or is obligated to pay towards any loan that 3D Resorts-Bluegrass or its agents provided the Affected Purchaser to finance the purchase of a lot, minus the value of the lot. These amounts include: (1) the purchase price of the lot, including down payments and principal mortgage payments that the Affected Purchaser has paid, as well as remaining principal mortgage balances that the Affected Purchaser is obligated to pay; (2) mortgage interest paid under any loan originated by 3D Resorts-Bluegrass or its agents; (3) utility or infrastructure connection fees required by the real

estate sales contract; and (4) any other payments or fees paid to 3D Resorts-Bluegrass or its agents required by the real estate sales contract. (Collectively, such harm shall be referred to as "Affected Purchaser Harm.")

**II. ORDER TO CEASE AND DESIST, PAY CIVIL MONEY PENALTIES, AND TO TAKE OTHER AFFIRMATIVE ACTION**

**IT IS ORDERED**, pursuant to sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563 and 5565, that:

37. 3D Resorts-Bluegrass shall permanently cease and desist from engaging in interstate land sales and any other activity governed by ILSA.

38. A judgment for equitable monetary relief is hereby entered in favor of the Bureau and against 3D Resorts-Bluegrass, and 3D Resorts-Bluegrass is ordered to fully compensate Affected Purchasers for the Affected Purchaser Harm identified in paragraph 36 of this Consent Order; provided, however, that in consideration of 3D Resorts-Bluegrass' demonstrated inability to pay and its status as a debtor in bankruptcy, full payment of this judgment for equitable monetary relief shall be suspended upon satisfaction of the obligations set forth in paragraph 40 of this Consent Order and paragraphs III.1.d.i -- III.1.d.vii of the Settlement Agreement and Release entered into by and between the Bureau, the Respondent, PlainsCapital Bank, PCB-ARC, Inc., and the Office of the Attorney General for the Commonwealth of Kentucky (the "Settlement Agreement").

39. Pursuant to section 1055(c) of the CFPB, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Notice of Charges, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), including 3D Resorts-Bluegrass' demonstrated inability to pay a higher amount, 3D Resorts-Bluegrass shall also pay \$1 in civil money penalties. The civil money

penalty paid pursuant to this Consent Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with 12 U.S.C. § 5497(d).

40. Within three (3) days of the Effective Date, 3D Resorts-Bluegrass shall withdraw its objection to the CFPB's proof of claim in *In re Resorts-Bluegrass, LLC*, Bankr. No. 11-41599 (Bankr. W.D. Ky. filed Nov. 16, 2011), and shall allow an unsecured claim in the amount of \$500,000, subject to the pro rata basis distribution made in accordance with the Bankruptcy Code, to be paid towards satisfying the judgment for equitable monetary relief imposed in paragraph 38 and the judgment for a civil money penalty imposed in paragraph 39, provided that such claim will receive distributions pursuant to the Bankruptcy Code and Bankruptcy Rules until such time as \$50,000 of distributions have been made on account of such claim, at which point no more distributions will be made.

41. Any funds, aside from \$1 paid in satisfaction of the judgment for civil money penalties, received by the Bureau in satisfaction of the proof of claim described in paragraph 39 of this Consent Order shall be deposited into a fund or funds administered by the Bureau or its agent in accordance with applicable statutes and regulations to provide the redress described in paragraph 38 of this Consent Order, and for any attendant expenses for the administration of any such redress.

42. If the CFPB determines, in its sole discretion, that providing redress to consumers is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the administration of redress is completed, the CFPB may apply any remaining funds for such other equitable relief (including consumer information remedies) as determined to be reasonably related to the violations described in Section I of this Consent Order. Any funds not used for such equitable relief shall be deposited in the U.S. Treasury as disgorgement. Respondent shall

have no right to challenge the CFPB's choice of remedies under this Section, and shall have no right to contest the manner of distribution chosen by the CFPB.

43. Redress provided under this Consent Order shall not limit Affected Purchasers' rights in any way.

44. With regard to the equitable monetary relief and civil money penalty paid by 3D Resorts-Bluegrass, 3D Resorts-Bluegrass may neither seek nor receive, directly or indirectly, any reimbursement or indemnification from any insurance policy, and shall treat such payments for such equitable monetary relief in the ordinary course for tax purposes and may claim lawful deductions but shall not seek any extraordinary tax credit or other treatment.

45. 3D Resorts-Bluegrass shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law, and no part of the funds shall be returned to the Respondent.

### III. COOPERATION

#### IT IS FURTHER ORDERED that:

46. Within 30 days after the entry of this Consent Order, 3D Resorts-Bluegrass shall provide to the CFPB information in its or its agents' possession, custody, or control regarding the identity and location of, and the amount of injury sustained by, each Affected Purchaser.

### IV. ADMINISTRATIVE PROVISIONS

47. In accordance with 31 U.S.C. § 7701, Respondent, unless it already has done so, shall furnish to the CFPB its taxpayer identifying numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

48. Unless otherwise directed in writing by a CFPB representative, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing

and shall be sent by overnight courier (not the U.S. Postal Service), as follows:

Enforcement Director  
Consumer Financial Protection Bureau  
ATTENTION: Office of Enforcement  
1700 G Street, N.W.  
Washington, D.C. 20552

Provided, however, that Respondent may send such reports or notifications by first-class mail, but only if Respondent contemporaneously sends an electronic version of such report or notification to Enforcement\_Compliance@cfpb.gov.

49. This Consent Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 5563(b).

50. This Consent Order shall be effective on the date of issuance (the "Effective Date").

51. The provisions of this Consent Order shall be binding upon 3D Resorts-Bluegrass, and, until their discharge by the Bankruptcy Court, upon the Chapter 11 Trustee or any subsequent Chapter 7 trustee that may be appointed in the Respondent's bankruptcy case. This Consent Order shall remain in full force and effect notwithstanding any dismissal or conversion of the Respondent's bankruptcy case.

52. Calculation of time limitations shall be based on calendar days, unless otherwise noted,

53. The provisions of this Consent Order shall be enforceable by the Bureau. Any violation of this Consent Order may result in the imposition by the Bureau of the maximum

amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c).

54. This Consent Order and the accompanying Stipulation and the Settlement Agreement contain the complete agreement between the Bureau and 3D Resorts-Bluegrass. No promises, representations, or warranties other than those set forth in this Consent Order and the accompanying Stipulation have been made by and between the Bureau and 3D Resorts-Bluegrass. This Consent Order and the accompanying Stipulation and the Settlement Agreement supersede all prior communications, discussions, or understandings, if any, of the Bureau and 3D Resorts-Bluegrass, whether oral or in writing.

55. Nothing in this Consent Order or the accompanying Stipulation shall be construed as allowing the Respondent, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Richard Cordray  
Director  
Consumer Financial Protection Bureau

Exhibit B  
Lake Lots

<u>Section</u>	<u>Lot</u>
2	419
2	420
2	421
2	422
2	425
2	426
2	427
2	428
2	429
2	432
2	434
2	435
2	436
3	715
3	716
3	736
3	737
3	738
3	739
3	740
3	741
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