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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 In re:
12 DONALD F. GAUBE,
13 Debtor.

Case No. 15-43783 CN

Chapter 11

**DEBTOR'S AMENDED DISCLOSURE
STATEMENT AND PLAN OF
REORGANIZATION
[Dated July 28, 2016]**

1 **PRELIMINARY STATEMENT**

2 Donald F. Gaube (the "Debtor") proposes this plan of reorganization (the "Plan")
3 pursuant to the provisions of Chapter 11 of the Bankruptcy Code. This Plan sets forth the Debtor's
4 proposal for the satisfaction of the Allowed Claims against him.

5 The Plan has been combined with the Debtor's Disclosure Statement to provide the
6 information concerning the Debtor and the Plan required by Bankruptcy Code Section 1125. This
7 information includes a summary of the Debtor's assets and liabilities, a summary of what the holders
8 of Allowed Claims will receive under the Plan, a discussion of certain alternatives to the Plan, and a
9 summary of the procedures necessary for Confirmation (approval) of the Plan. The Bankruptcy
10 Court approved the Disclosure Statement by its Order entered on _____. However, the
11 Court's approval of the Disclosure Statement does not constitute an endorsement of the Plan, and
12 the Court has made no independent investigation or determination of any factual statement or dollar
13 value set forth in the Plan and Disclosure Statement.

14 **THE DEBTOR URGES YOU TO READ THIS PLAN AND DISCLOSURE**
15 **STATEMENT CAREFULLY. THE PROJECTED FINANCIAL**
16 **INFORMATION IN THIS DISCLOSURE STATEMENT REFLECTS**
17 **ASSUMPTIONS BY THE DEBTOR THAT MAY OR MAY NOT PROVE TO**
18 **BE CORRECT. IN ADDITIONS, ESTIMATES OF ALLOWED CLAIMS**
19 **MAY VARY FROM THE FINAL AMOUNTS OF ALLOWED CLAIMS. ALL**
20 **OBJECTIONS TO CLAIMS ARE RESERVED.**

21 The Debtor urges all Creditors to vote to accept the Plan and requests that the bankruptcy
22 Court confirm the Plan to do so, if applicable, in accordance with the provisions of Section 1129(b)
23 of the Bankruptcy Code.

24 **SUMMARY OF THE PLAN**

25 The Plan seeks to restructure the Debtor's debts in accordance with his rights and
26 obligations under the Bankruptcy Code. As required by the Bankruptcy Code, the Plan divides the
27 Debtor's creditors into separate classes. Each Secured Creditor has its own class. There are multi-
28 creditor classes for general unsecured creditors, priority creditors, and administrative convenience

1 creditors, see Article III below.

2 The treatment of Secured Creditors varies. Wells Fargo Home Mortgage and Community
3 Bank of the Bay are unimpaired by the Plan. The Secured Creditor CCF Holdings, Inc. is being
4 permitted to immediately enforce its prepetition liens pursuant to a settlement with the Debtor. The
5 Secured Creditor Comerica Bank is being permitted to enforce its prepetition liens six months from
6 the Effective Date of the Plan. The Claims of the other Secured Creditors are bifurcated pursuant to
7 Section 506(a) of the Bankruptcy Code, which provides that a secured claim is deemed "secured" to
8 the extent that its underlying collateral has value, and unsecured as to the balance. The Debtor
9 believes that these Claims will be deemed entirely unsecured.

10 Unsecured Creditors, including the portion of the Claims held by Secured Creditors
11 which have been bifurcated pursuant to Section 506 of the Bankruptcy Code will share pro rata in
12 the net proceeds of complex commercial litigation to be prosecuted by the Debtor after confirmation
13 of the Plan. Because the total amount of Unsecured Claims is uncertain, as is the predictable
14 recovery on complex litigation, it is impossible to precisely estimate the likely percentage dividend
15 to Unsecured Creditors on their Allowed Claims. At this time, the Debtor believes that it could be
16 as little as 0, and that it will not be more than 50%.

17 This is a summary only. The Plan is a complex document containing additional detail
18 which should be studied in full. See Article VI below. Additionally, the treatment summarized here
19 applies only to "Allowed Claims", defined below. The Plan reserves the Debtor's right to dispute any
20 claim on any basis and to bring affirmative litigation claims against any party.

21 **ARTICLE I**

22 **DEFINITIONS**

23 As used in the Plan and Disclosure Statement, the following terms shall have the respective
24 meanings specified below:

25 "Administrative Claim" means a Claim for any cost or expense of administration of a
26 kind specified in Section 503(b) of the Bankruptcy Code, including any actual and necessary costs
27 and expenses of preserving the Estate incurred on or after the Petition Date and through and
28 including the Confirmation Date, any cure amounts that must be paid in connection with the

1 assumption of any executory contract or unexpired lease of the Debtor under Section 365 of the
2 Bankruptcy Code, fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and
3 compensation for legal or other services and reimbursement of expenses allowed by the Bankruptcy
4 Court under Sections 330 and 331 of the Bankruptcy Code or otherwise.

5 "Administrative Claims Bar Date" means that date which is thirty (30) days following the
6 Effective Date.

7 "Allowed" or "Allowed Amount" means the amount in which any Claim is allowed.
8 Unless otherwise expressly required by the Bankruptcy Code or the Plan, the Allowed Amount of
9 any Claim does not include interest on such Claim from or after the Petition Date.

10 "Allowed Administrative Claim" means all or any portion of an Administrative Claim
11 that has either been Allowed by a Final Order or has not been objected to within the time period
12 established by the Plan or by an order of the Bankruptcy Court.

13 "Allowed Claim", "Allowed Priority Claim", "Allowed Secured Claim", "Allowed Tax
14 Claim", or "Allowed Unsecured Claim" means a Claim of the given type (a) in respect to which a
15 proof of Claim has been filed with the Bankruptcy Court by the applicable Claims Bar Date and to
16 which no objection has been filed within the time fixed by the Plan or the Bankruptcy Court; (b) as
17 to which no proof of Claim has been filed and which has been listed on Schedule D, E or F of the
18 Debtor's Schedules and is not listed as disputed, contingent, unliquidated or unknown as to amount,
19 and to which no objection has been filed within the time fixed by the Plan or the Bankruptcy Court;
20 or (c) which is Allowed by a Final Order. No Claim shall be considered an Allowed Claim if (1) an
21 objection to the allowance thereof is interposed by a party in interest within the time fixed by the
22 Plan or the Bankruptcy Court, and such objection has not been overruled by a Final Order, or (2) the
23 Claim has already been satisfied.

24 "Available Cash" means any and all cash and cash equivalents owned or held by the
25 Reorganized Debtor or the Estate available for payment of Claims after payment of Allowed
26 Administrative Claims, Allowed Tax Claims, Allowed Priority Claims, Allowed Secured Claims,
27 and after reserving for expenses incurred and anticipated to be incurred as provided for under the
28 Plan.

1 "Bankruptcy Case" or "Case" means the bankruptcy case commenced by the Debtor
2 filing with the Bankruptcy Court of his Voluntary Petition under Chapter 11 of the Bankruptcy
3 Code, Case No. 15-43783 CN.

4 "Bankruptcy Code" means Title 11, United States Code, § 101, et seq. as in effect and
5 applicable to the Case.

6 "Bankruptcy Court" means the United States Bankruptcy Court for the Northern District
7 of California, Oakland Division, or such other court exercising jurisdiction over the Case.

8 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure promulgated
9 under 28 U.S.C. § 2075, as amended, as applicable to the Bankruptcy Case.

10 "Claim" means any (A) right to payment, whether or not such right is reduced to
11 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed,
12 legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance
13 if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is
14 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or
15 unsecured.

16 "Claims Bar Date" means (a) with respect to claims other than those held by
17 governmental units, April 11, 2016, (b) with respect to claims held by governmental units, June 10,
18 2016, and (c) with respect to Rejection Claims, the Rejection Claims Bar Date.

19 "Claims Objection Date" means the date ninety (90) days after the Effective Date;
20 provided, however, that the Claims Objection Date may be extended by the Bankruptcy Court for
21 cause upon the *ex parte* motion of the Reorganized Debtor or the Plan Administrator.

22 "Confirmation" means the entry by the Bankruptcy Court of the Order of Confirmation.

23 "Confirmation Date" means the date on which the Bankruptcy Court enters the Order of
24 Confirmation.

25 "Confirmation Hearing" means the hearing held by the Bankruptcy Court on
26 confirmation of the Plan as required by Section 1128(a) of the Bankruptcy Code.

27 "Creditor" means any entity holding a Claim against the Debtor.

28 "Debtor" means Donald F. Gaube, an individual.

1 "Debtor's Professionals" means MacConaghy & Barnier, PLC, and Bachecki Crom &
2 Co., LLP, and/or their respective successors, if any; and such other professionals whose employment
3 by the Debtor prior to Confirmation is approved by order of the Bankruptcy Court, if any; and
4 following the Effective Date, any professionals engaged by the Reorganized Debtor to represent or
5 assist him in fulfilling his duties and obligations under the Plan, including such accountant(s) as may
6 be selected to complete the Debtor's tax returns and other required filings with governmental
7 authorities having jurisdiction over the Reorganized Debtor or the Estate and such legal
8 professionals as might be appropriate to assist in administering the Plan, the Bankruptcy Case and
9 the Estate.

10 "Disbursing Agent" means the professional fiduciary designated by Section 7.4 of the
11 Plan to hold and disburse the funds used to pay Claims.

12 "Disputed Claim" means a Claim against the Debtor (a) as to which a proof of Claim has
13 not been filed and that has been listed in the Debtor's Schedules as disputed, contingent,
14 unliquidated, or unknown as to amount or; (b) as to which an objection or adversary proceeding has
15 been filed within the time fixed by the Bankruptcy Court and which objection or adversary
16 proceeding has not been withdrawn or disposed of by a Final Order. "Distribution" means, as the
17 context requires: (a) the cash to be provided under the Plan to the holders of Allowed Claims; or (b)
18 the payment, transfer, delivery or deposit of cash to Creditors pursuant to the Plan.

19 "Distribution Date" means any date on which a Distribution is made pursuant to the Plan.

20 "Effective Date" means the thirtieth (30th) day following the Confirmation Date so long
21 as the Order of Confirmation is not subject to a stay.

22 "Estate" means the estate created by the commencement of the Bankruptcy Case and
23 comprised of the property described in Section 541 of the Bankruptcy Code and all property and
24 property interests acquired or arising after the Petition Date, including without limitation the
25 proceeds of any litigation. The "Estate" as used herein shall continue to exist on and after the
26 Effective Date.

27 "Final Order" means an order entered on the docket by the Bankruptcy Court as to which
28 no timely filed notice of appeal is pending within ten (10) days after entry of such order; or, if such

1 appeal is pending, for which no stay pending appeal has been issued.

2 "Local Rules" means the Local Rules of the United States Bankruptcy Court for the
3 Northern District of California, as amended, as applicable to this Bankruptcy Case.

4 "Order of Confirmation" or "Confirmation Order" means the order entered by the
5 Bankruptcy Court approving and confirming the Plan in accordance with the provisions of Chapter
6 11 of the Bankruptcy Code.

7 "Person" shall have the meaning ascribed to it in the Bankruptcy Code.

8 "Petition Date" means December 13, 2015, the date on which the Debtor filed his
9 Voluntary Petition under Chapter 11 initiating the Bankruptcy Case and on which date relief was
10 ordered in the Bankruptcy Case.

11 "Plan" means this PLAN OF REORGANIZATION (Dated July 28, 2016, including any
12 modification(s) hereof and/or amendment(s) hereto that comply with Section 1127 of the Bankruptcy
13 Code and Bankruptcy Rule 3019.

14 "Priority Claim" means any Claim entitled to priority pursuant to Section 507(a) of the
15 Bankruptcy Code, but not including an Administrative Claim or a Tax Claim.

16 "Priority Claims Objection Date" means the date thirty (30) days after the Effective Date.

17 "Pro Rata" means, with respect to any Distributions to be made to the holder of an
18 Allowed Claim, the proportion that such Allowed Claim bears to the aggregate of all outstanding
19 Allowed Claims in the same Class.

20 "Rejection Claim" means an Unsecured Claim arising from the Debtor's rejection of an
21 unexpired lease or executory contract pursuant to the Plan or pursuant to an order of the Bankruptcy
22 Court.

23 "Rejection Claims Bar Date" means the earlier of (a) thirty (30) days following the date
24 of the Effective Date, or (b) thirty (30) days after the rejection date with respect to an executory
25 contract or unexpired lease rejected before the Confirmation Date pursuant to a Final Order.

26 "Reorganized Debtor" means the Debtor from and after the Effective Date up through the
27 entry of a final decree closing the Case.

28 "Schedules" means the Debtor's respective schedules of assets and liabilities consisting of

1 Schedule "A" through "J" filed with the Bankruptcy Court pursuant to Section 521(a)(1) of the
2 Bankruptcy Code and Bankruptcy Rule 1007(b), as may be amended at any time prior to
3 Distribution.

4 "Secured Claim" means a Claim secured by a lien, security interest, or other charge
5 against or interest in property in which the Debtor has an interest or that is subject to setoff under
6 Section 553 of the Bankruptcy Code, to the extent of the value (as specified in the Plan, or if no
7 value is specified, as determined in accordance with Section 506(a) of the Bankruptcy Code) of the
8 interest of a holder of such Allowed Claim in the Debtor's interest in such property or to the extent of
9 the amount subject to such setoff, as the case may be.

10 "Tax Claim" means any Claim against the Debtor entitled to priority pursuant to Section
11 507(a)(8) of the Bankruptcy Code.

12 "Unsecured Claim" means a Claim which is not a Secured Claim. A term used in the Plan
13 that is not herein defined but is defined in the Bankruptcy Code or the Bankruptcy Rules shall have
14 the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules.

15 **ARTICLE II**

16 **BACKGROUND OF THE DEBTOR AND SIGNIFICANT POST PETITION EVENTS**

17 **History of the Debtor's Business**

18 The Debtor has been involved in retail commercial real estate development for over 35
19 years. He spent 17 years at Safeway Stores, ultimately becoming its Real Estate Director. After
20 leaving Safeway, he formed the Alamo Group and focused on private development up and down the
21 West Coast, often partnering with prestigious institutions and other significant business entities,
22 including the Harvard Endowment Fund, Farallon Capital, and Von's Grocery Stores. Many of the
23 Debtor's ventures were financed by Comerica Bank. The Debtor's business suffered two setbacks
24 resulting in the filing of this Chapter 11 Case.

25 First, like many participants in the real estate sector, the Debtor was caught up in the
26 liquidity crisis and temporary depression of values in the 2008-2012 "Great Recession." This
27 resulted in a number of challenges for the Debtor. Although the Debtor has solvent co-debtors on
28 many of these obligations and some are on appeal, the face value of these claims is in excess of \$15

1 Million.

2 Second, the Debtor incurred millions of dollars of debt in connection with the 2007
3 purchase of a business known as Gelato Classico Ice Cream from CCF Holdings, Inc. This was a
4 highly leveraged transaction whereby the Debtor and a group of investors agreed to purchase an 80%
5 equity in interest in the business for \$21 Million, payable by \$5 Million cash down and the balance
6 by a series of institutional and seller-carried notes. Following the original purchase agreement, the
7 investor group agreed to purchase the remaining 20% of the business, largely funded through seller-
8 carried notes. The Debtor personally guarantied all of these obligations. Ten other investors
9 executed Subscription Agreements which required them to co-guaranty these obligations. Their
10 liability to the Debtor is the subject of a pending lawsuit described in pages 9-11 below.

11 Following the closing, the business suffered significant financial losses. Among other
12 things, the buyer group learned that there were significant waste-water violations connected with the
13 operation in that it was not permitted to discharge dairy-related effluent into its sewerage hookup.
14 As a result, the Debtor and the buyer group defaulted on the notes to CCF Holdings and institutional
15 financing from Comerica Bank. The Debtor and CCF Holdings instituted a multi-year set of
16 complex litigation proceedings against each other, resulting in settlement agreements, charges of
17 breach of settlement agreements, arbitration proceedings, and ultimately in June, 2014, a money
18 judgment in favor of CCF Holdings and against the Debtor and Classico Holdings, LLC in the
19 approximate amount of \$16 Million.

20 Following the entry of this judgment, CCF Holdings obtained a Superior Court Receiver-
21 in-aid-of-execution, who took control of a number of the Debtor's retail commercial real estate
22 investments and other assets and liquidated them for the benefit of CCF Holdings. The Debtor
23 believes that the Receiver is currently holding approximately \$1.5 Million in cash, plus certain
24 unliquidated limited liability company interests. On December 13, 2015, before those funds could
25 be distributed, the Debtor filed this Chapter 11 Case, essentially freezing the status quo.

26 The Debtor's lending relationship with Comerica Bank was severely impacted by these
27 events. The Debtor and his Affiliates went into default on millions of dollars of Comerica Bank
28 loans, including the obligations arising out of the Gelato Classico Ice Cream business. Over the past

1 5-6 years, the Debtor has made significant progress in clearing these defaults and has repaid
2 Comerica sums well into the eight figures from the sale of shopping center properties and
3 commercial leaseholds throughout the West Coast, including assets in Norwood, CA, Renton, WA,
4 Rancho Mirage, CA, Richland, WA, Nampa, ID, and Gig Harbor, WA. Unfortunately, a
5 substantial deficiency on the Comerica Bank debt remains.

6 **Assets and Liabilities**

7 The Debtor filed detailed "Schedules of Assets and Liabilities" and "Statement of
8 Financial Affairs" shortly after the Petition and two separated Amendments to these documents,
9 which describe his assets and liabilities in detail. The Debtor has also filed, as required by Court
10 rules, detailed "Monthly Operating Reports" for each month following the Petition Date. These
11 documents are available for viewing online at the Court's PACER website. See
12 www.canb.uscourts.gov for instructions on how to access these materials, or contact the Debtor's
13 counsel to receive paper copies.

14 Over the last few years, due to the receivership order obtained by CCF Holdings, more
15 than 10 properties owned or controlled by the Debtor have been sold or abandoned and
16 approximately \$12 Million has been paid into the receivership fund.

17 As is discussed in greater detail in Articles III and VI below, most of the Debtor's
18 remaining assets are fully encumbered by one or more duly perfected liens in favor of various
19 Secured Creditors, all of which are sophisticated entities which have performed their own analyses
20 of the value of their respective collateral and their priority rights vis a vis other secured creditors.
21 Whichever Secured Creditor achieves priority, the net result is that virtually all of the Debtor's
22 tangible assets will be consumed for the benefit of Secured Creditors, and one or more of these
23 Secured Creditors will have substantial unsecured deficiency claims against the Estate.

24 **The Debtor's Potential Litigation Claims Against the "Class A Investors"**

25 The principal asset available to pay Administrative, Priority, Tax, and Unsecured Claims,
26 including unsecured deficiency claims, is the Debtor's anticipated litigation recoveries from the
27 "Class A Investors" in the Gelato Classico Ice Cream business referenced above. There were a total
28 of 24 investors in this venture. Eleven of those investors, known as the "Class A Investors"

1 committed to the Debtor to be fully liable for the debts of the business in exchange for preferred
2 distribution rights and beneficial tax consequences.

3 Specifically, each Class A Investor was granted a 12% annual dividend on his or her
4 investment with priority over the “Class B Investors”, and each was entitled to deduct all losses from
5 the venture due to their respective full recourse liability. In exchange for these benefits, each Class
6 Investor signed a “Confidential Private Placement Memorandum” and subscription agreement,
7 providing as follows:

8
9 The holders of the Class A Preferred will be required to sign a personal guarantee
10 for the Company’s proposed bank loan of \$6,000,000 and a separate contribution
11 agreement with respect to certain personal guarantees made by Manager Don
12 Gaube on the Company’s behalf;

13 After the Class A Investors acquired their preferred membership units in the venture they
14 received all of the benefits of the Class A preferred status. However, none of them executed the
15 guaranty of the \$6,000,000 Comerica Bank debt and none executed any separate contribution
16 agreement with the Debtor for his personal obligations to CCF Holdings for the purchase price of the
17 business. From and after the inception of the business in 2007, these investors knowingly took full
18 advantage of millions of dollars of tax benefits arising from their agreement to be personally liable
19 for the debts of the business.

20 The Debtor contends that, as a result of these breached commitments, the expenditures he
21 has already made, and the debts related to the Gelato Classico Ice Cream business he has incurred,
22 he holds indemnity claims against these 11 individuals and entities, jointly and severally, in the
23 approximate amount of \$18 Million. These individuals and entities have already been identified by
24 name in the Debtor’s duly filed Schedule B. The Debtor believes that the Class A Investors have the
25 aggregate solvency and liquidity to fully satisfy this \$18 Million indemnity claim. The Debtor
26 intends to pursue this indemnity claim to fund this Chapter 11 Plan, and has already filed an action
27 to do so, *Gaube v. Klein, etc. et al*, U.S. Bank Ct. N.D. Cal. A.P. No. 16-4157. The Debtor has
28 located qualified special counsel, Terry Gilbeau, Esq., who has tentatively agreed to prosecute this
litigation on a blended fixed fee/contingency arrangement consisting of a \$100,000.00 retainer and

1 20% of any recovery. It is anticipated that the Debtor will seek approval of special counsel's
2 employment prior to the Confirmation of the Plan. See Section 7.3 below for the specific Plan
3 provisions on these litigation matters.

4 **Post-Petition Developments**

5 Since the Petition Date, the Debtor has continued to manage his affairs as a Chapter 11
6 "Debtor-in-possession." Neither a trustee nor an official unsecured creditors committee has been
7 appointed. The Debtor believes that he has complied with all of his administrative obligations as a
8 Chapter 11 Debtor-in-possession. There have been a number of disputes which have arisen in this
9 Chapter 11 Case, some of which are still pending as of this writing.

10 **A. The Disputes with CCF Holdings, Inc.**

11 First, shortly after the Petition Date, the Debtor filed an adversary proceeding against
12 CCF Holdings, seeking to subordinate its Claim as against all other Creditor Claims in the case
13 pursuant to Sections 510(b) and (c) of the Bankruptcy Code, *Gaube v. CCF Holdings, Inc.*, U.S.
14 Bank. Ct. N.D. Cal. A.P. No 15-4130.

15 Second, CCF Holdings filed a Motion for Relief from Stay seeking Bankruptcy Court
16 authority to continue its Superior Court receivership proceedings.

17 Third, there were a series of proceedings over the Debtor's efforts to retain his original
18 reorganization counsel. Retention and compensation of Chapter 11 debtor's counsel is highly
19 regulated and requires a detailed motion to authorize such employment, including an accurate
20 description of all sums paid or to be paid counsel, pursuant to Sections 327 and 329 of the
21 Bankruptcy Code. After a number of briefs and hearings, the Bankruptcy Court declined to
22 authorize the employment of the Debtor's original counsel and ordered counsel to disgorge a
23 \$225,000.00 prepetition retainer funded by a third party business associate of the Debtor. That
24 retainer has been ordered to be held in the attorney-client trust account of the Debtor's current,
25 Court-approved counsel, pending determination of whether it is the property of the Estate, the third-
26 party funder, or CCF Holdings by reason of its prepetition judgment liens. In the meantime, the
27 Debtor filed a second adversary proceeding against CCF Holdings, *Gaube v. CCF Holdings, Inc.*,
28 U.S. Bank. Ct. N.D. Cal. A.P. No. 16-4012, seeking to avoid any lien rights of CCF Holdings on this

1 \$225,000 retainer and other assets pursuant to Sections 541 and 547 of the Bankruptcy Code.

2 All of these disputes between the Debtor and CCF Holdings have been settled. The
3 Debtor has agreed to grant CCF Holdings an Allowed Claim against the Estate in the amount of
4 \$16,778,811,41, to stipulate to relief from stay in favor of CCF Holdings to permit it to continue
5 with its receivership proceedings, and to dismiss with prejudice its action to subordinate the claim of
6 CCF Holdings (A.P. No. 15-4130). CCF Holdings agreed to release any lien rights it may have on
7 the \$225,000 retainer referred to above. On March 24, 2016, this settlement was approved by the
8 Bankruptcy Court pursuant to Bankruptcy Rule 9019.

9
10 **B. The Dispute with ROIP**

11 The other major post petition dispute in this Case was the Motion for Relief from Stay
12 filed by Retail Opportunities Investment Partnership, L.P. (“ROIP”). ROIP is an affiliate of Retail
13 Opportunities Investment Corporation, a publicly traded “UpREIT” on the NASDAQ (symbol
14 “ROIC”). ROIP purchased a highly successful retail shopping center in Danville, CA, developed
15 and partially owned by the Debtor and known as the Iron Horse Plaza. This transaction was closed
16 approximately one week prior to the Chapter 11 filing and under the supervision of the Superior
17 Court receiver. Due to federal income tax considerations, instead of paying the Debtor’s share of the
18 purchase price in cash, the Debtor received 377,488 in “O.P. Units” of ROIP, which are convertible
19 on demand at par into publicly traded shares of ROIC stock. As a condition of permitting the sale,
20 the Superior Court receiver required the Debtor to borrow the cash-equivalent value of the O.P.
21 Units from ROIP to be secured by the O.P. Units themselves. To close the sale, ROIP agreed and
22 lent the Debtor approximately \$6,700,000 which in turn was paid into the receivership. The ROIP
23 loan was due in five years, and required the Debtor to raise approximately \$120,000 per year to pay
24 debt service on the obligation.

25 ROIP filed a Motion for Relief from Stay seeking the right to immediately foreclose on
26 the Debtor’s OP Units. The Debtor initially opposed the Motion, contending that (1) the loan was
27 not in default, (2) due to a rise in the stock price of ROIC, there was significant equity in ROIP’s
28 collateral, and (3) the premature foreclosure of ROIP’s collateral would result in adverse tax

1 consequences to the Estate.

2 After further consideration, the Debtor concluded that the ultimate loss of the O.P. Units
3 was inevitable due to the impracticality of making sustained debt service payments, and the Debtor
4 further concluded that it was an opportune time to liquidate the Estate's position due to the increased
5 stock price of ROIC. Accordingly, the Debtor and ROIP stipulated to relief from stay, which
6 resulted in a satisfaction of the ROIP debt and a surplus of approximately \$395,000.

7 This surplus is subject to disputed lien claims asserted by CCF Holdings, Inc. arising out
8 of its "ORAP liens". Because of this lien dispute, the funds are currently held in a blocked account.
9 The Debtor has tentatively settled this dispute with CCF Holdings by agreeing to split the funds
10 50/50 between CCF Holdings and the Debtor. This settlement has been incorporated into the Plan
11 pursuant to Bankruptcy Code Section 1123(b)(3)(A). See Section 6.2 below.

12 13 **C. Tax Implications of the ROIP Transaction**

14 As noted above, the ROIP transaction arose out of the Debtor's desire to defer realization
15 of a multi-million dollar federal income tax gain otherwise due from the sale of the Iron Horse Plaza.
16 Realization of this gain – possibly as high as \$12,000,000 -- was likely triggered when the Debtor's
17 O.P. Units were liquidated. Theoretically, this could result in a seven-figure priority state and
18 federal income tax liability.

19 The Debtor has conferred with competent tax professionals and believes that he will be
20 able to eliminate this tax liability by two offsetting losses: (1) his investment in the Gelato Classico
21 Ice Cream Business; and (2) his investment in a real estate venture known as Alamo Thunderbird.
22 The Debtor believes that the losses from these two ventures will exceed \$18,000,000 and will be
23 realized in 2016. The Debtor believes that these \$18,000,000 in losses will cancel out his gain from
24 the Iron Horse Plaza transactions and that, therefore, the Estate will have no Chapter 11
25 Administrative Priority tax liability. Creditors should note, however, that the Debtor's tax situation
26 is exceedingly complex, and the Debtor's position could be challenged by the Internal Revenue
27 Service or the Franchise Tax Board.

1 **ARTICLE III**

2 **DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

3 The Allowed Claims against the Debtor are designated and classified below for purposes
4 of the Plan. Except to the extent that the Plan provides otherwise, a Claim that is properly includable
5 in more than one class is classified in a particular class only to the extent that it qualifies within the
6 description of that class, and is placed in a different class to the extent it qualifies within the
7 description of such different class.

8 **3.1 Class 1 (Secured Claim of the County of Contra Costa, CA)**. Class 1 consists of
9 the Allowed Claim of the County of Contra Costa, or its assignee, for unpaid real and personal
10 property taxes to the extent that such Claim constitutes an Allowed Secured Claim on the real and
11 personal property owned by the Debtor. The Class 1 Claim is further divided into separate subclasses
12 to reflect the Class 1 Creditor's separate Claims on separate collateral as follows: 1A – 287 Cross
13 Road, Alamo, CA; 1B –206 Cameo Dr., Danville, CA. The Class 1 Claims were current as of the
14 Petition Date. The Debtor estimates that the Allowed Amount of the Class 1A and Class 1B Claims
15 will be \$7,871.44 and \$4,036.75, respectively, as of the Effective Date. Class 1 is unimpaired and
16 not entitled to vote on the Plan.

17 **3.2 Class 2 (Secured Claim of the County of Placer, CA)**. Class 2 consists of the
18 Allowed Claim of the County of Placer, CA or its assignee, for unpaid real and personal
19 property taxes to the extent that such Claim constitutes an Allowed Secured Claim on the real and
20 personal property owned by the Debtor located at 627 Brassie Ave., Kings Beach, CA. The Class 2
21 Claim was current as of the Petition Date. The Debtor estimates that the Allowed Amount of the
22 Class 2 Claim will be approximately \$4,800.00, as of the Effective Date. Class 2 is unimpaired and
23 not entitled to vote on the Plan.

24 **3.3 Class 3 (Secured Claim of Comerica Bank)**. Class 3 consists of the Allowed
25 Claims of Comerica Bank, or its assignee, evidenced by that certain Amended and Restated Variable
26 Rate Note (Prime Referenced Rate) dated November 27, 2013, in the stated principal amount of
27 \$6,000,000, made by Debtor and payable to the order of Comerica Bank (the “Caffe Classico Note”)
28 and related loan documents further evidencing and securing said note (the “Caffe Classico Loan

1 Documents”), and such Claims constitute an Allowed Secured Claim on certain real property owned
2 by the Debtor commonly known as 287 Cross Rd., Alamo, CA, and 627 Brassie Ave, Kings Beach,
3 CA, and certain personal property owned by the Debtor, including without limitation the Debtor’s
4 membership interests in Alamo Silverdale, LLC, and JFP-AG/Holdings, LLC. The Debtor hereby
5 stipulates that the Class 3 Claim is an Allowed Claim under this Plan, and the Allowed Amount of
6 the Class 3 Claim was \$5,795,453.28 as of the Petition Date. Class 3 is impaired and entitled to vote
7 on the Plan.

8 **3.4 Class 4 (Secured Claim of Wells Fargo Home Mortgage).** Class 4 consists of the
9 Allowed Claim of Wells Fargo Home Mortgage, or its assignee, to the extent that such Claim
10 constitutes an Allowed Secured Claim on certain real property owned by the Debtor commonly
11 known as 206 Cameo Dr., Danville, CA. The Debtor estimates that the Allowed Amount of the
12 Class 4 Claim is \$241,146.16 and that it is fully secured. Class 4 is unimpaired and not entitled to
13 vote on the Plan.

14 **3.5 Class 5 (Secured Claim of CCF Holdings, Inc.)** Class 5 consists of the Allowed
15 Claim of CCF Holdings, Inc., or its assignee, to the extent that such Claim constitutes an Allowed
16 Secured Claim on the real and personal property of the Debtor. The Debtor estimates that the
17 Allowed Amount of the Class 5 Claim was \$16,778,811.41 as of the Petition Date. Of that sum, the
18 Debtor estimates that by operation of Section 506 of the Bankruptcy Code, the Allowed Amount of
19 the Class 5 Secured Claim will be approximately \$2,200,000, consisting of the estimated value of the
20 Debtor’s assets in the Class 5 Claimant’s Superior Court receivership estate and the remaining equity
21 in the 206 Cameo Dr. real property after satisfaction of the Wells Fargo Bank first deed of trust. The
22 balance of the Class 5 Claim is likely unsecured as to assets of the Debtor. [The Class 5 Claimant
23 may hold additional collateral rights against non-Debtor entities]. Class 5 is impaired and entitled to
24 vote on the Plan.

25 **3.6 Class 6 (Priority Domestic Support Claim of Jane Gaube)** Class 6 consists of
26 the Allowed Claim of Jane Gaube for domestic support to the extent entitled to Priority pursuant to
27 the provisions of Bankruptcy Code Section 507(a)(1). Ms. Gaube, the estranged spouse of the
28 Debtor filed a Priority Proof of Claim under Section 507(a)(1) in an amount “... to be determined.”

1 The Debtor agrees that he may owe a significant ongoing domestic support obligation to Ms. Gaube.
2 However, he does not believe he owed any such support as of the Petition Date, and he further
3 contends that his post-petition domestic support liability is not subject to the Claim distribution
4 scheme set forth in Section 507. Accordingly, the Debtor believes that the Allowed Amount of the
5 Class 6 Claim will be zero. However, because a Proof of Claim has been filed, this Class has been
6 created for precautionary purposes only. Class 6 is unimpaired and not entitled to vote on the Plan.

7 **3.7 Class 7 (Secured Claim of Owens Realty Mortgage, Inc.)** Class 7 consists of the
8 Allowed Claim of Owens Realty Mortgage, Inc., or its assignee, to the extent that such Claim
9 constitutes an Allowed Secured Claim on the real and personal property of the Debtor. The Debtor
10 estimates that the Allowed Amount of the Class 7 Claim was approximately \$2,500,000.00 as of the
11 Petition Date. Of that sum, the Debtor estimates that by operation of Section 506 of the Bankruptcy
12 Code, the Allowed Amount of the Class 7 Secured Claim will be zero, since it is junior to the
13 Secured Claims of Comerica Bank and CCF Holdings, which vastly exceed the value of the
14 available collateral. The Class 7 Creditor will therefore likely be treated as a Class 10 general
15 unsecured creditor under the Plan. Class 7 is impaired and entitled to vote on the Plan.

16 **3.8 Class 8 (Secured Claim of Community Bank of the Bay)** Class 8 consists of the
17 Allowed Claim of Community Bank of the Bay, or its assignee, to the extent that such Claim
18 constitutes an Allowed Secured Claim on certain contract rights held by the Debtor under an
19 “Agreement Regarding Implementation of GS Business Plan” whereby the Debtor has agreed to
20 provide certain consulting services to Gilroy-San Ysidro Associates, LLC. The Debtor estimates
21 that the Allowed Amount of the Class 8 Claim is \$300,000. Class 8 is unimpaired and not entitled
22 to vote on the Plan.

23 **3.9 Class 9 (Administrative Convenience Claims)** Class 9 consists of Allowed Non-
24 Priority Unsecured Claims in the amount of \$1,000 or less. The Debtor believes that there are no
25 Class 9 Claims. This Class has been created for precautionary purposes only. Class 9 is unimpaired
26 and not entitled to vote on the Plan.

27 **3.10 Class 10 (General Unsecured Claims)** Class 10 consists of all Allowed Unsecured
28 Claims against the Debtor, other than those in Class 9. As is noted above, it is difficult to calculate

1 an accurate amount of the Class 10 Claims, since the Debtor has a number of solvent, principally
2 liable co-debtors on the Class 10 Claims and the Debtor's largest Creditor, CCF Holdings, Inc., is
3 partially secured and is expected to realize substantial sums through the ongoing liquidation of its
4 collateral. The Allowed Amount of the Class 10 Claims could be as high as \$37,000,000, but the
5 Debtor's best estimate is that the amount ultimately owing to Class 10 Claimants will be
6 approximately \$18,000,000. An analysis of the likely maximum and minimum amount of the
7 Allowed Unsecured Claims is set forth on the attached Exhibit 1. Class 10 is impaired and entitled
8 to vote on the Plan.

9 **3.11 Class 11 (Interest of Jane Gaube).** Class 11 consists of the Allowed Interest of
10 Jane Gaube in the exempt property of the Debtor, including without limitation any allowed
11 homestead, the Debtor's qualified retirement account, the Debtor's right to future social security
12 income, and any other property duly exempted pursuant to Bankruptcy Code Section 522(b). Class
13 11 is unimpaired and not entitled to vote on the Plan.

14 15 16 **ARTICLE IV**

17 **CLASSES OF CLAIMS NOT IMPAIRED UNDER THE PLAN**

18 The following classes of Claims are not impaired under the Plan and shall receive the
19 following treatment:

20 **4.1 Class 1 (Secured Claim of County of Contra Costa).** Except to the extent that the
21 holder of the Class 1 Claim has agreed to a different treatment of such Claim, the holder of the
22 Allowed Class 1 Claim shall be paid in accordance with applicable non-bankruptcy law, except as
23 provided in Section 1124(2) of the Bankruptcy Code. The holder of the Allowed Class 1 Secured
24 Claim shall retain its lien on the Debtor's property to the extent enforceable under non-bankruptcy
25 law, and shall be permitted to exercise all of its State law enforcement rights with respect to the
26 particular collateral in question.

27 **4.2 Class 2 (Secured Claim of County of Placer).** Except to the extent that the holder of
28 the Class 2 Claim has agreed to a different treatment of such Claim, the holder of the Allowed

1 Class 2 Claim shall be paid in accordance with applicable non-bankruptcy law, except as provided in
2 Section 1124(2) of the Bankruptcy Code. The holder of the Allowed Class 2 Secured Claim shall
3 retain its lien on the Debtor's property to the extent enforceable under non-bankruptcy law, and shall
4 be permitted to exercise all of its State law enforcement rights with respect to the particular collateral
5 in question.

6 **4.3 Class 4 (Secured Claim of Wells Fargo Home Mortgage).** Except to the extent that
7 the holder of the Class 4 Claim has agreed to a different treatment of such Claim, the holder of the
8 Allowed Class 4 Claim shall be paid in the ordinary course of business by and between the Class 4
9 Claimant and Debtor, and in accord with the terms and conditions of the applicable loan documents,
10 except as provided in Section 1124(2) of the Bankruptcy Code. The holder of the Allowed Class 4
11 Secured Claim shall retain its lien on the Debtor's property to the extent enforceable under non-
12 bankruptcy law, and in the event of a default shall be permitted to exercise all of its State law
13 enforcement rights with respect to the particular collateral in question.

14 **4.4 Class 6 (Priority Domestic Support Claim).**
15 The Allowed Class 6 Priority Domestic Support Claim shall be paid in full on the Effective
16 Date.

17 **4.5 Class 8 (Secured Claim of Community Bank of the Bay).** Except to the extent that
18 the holder of the Class 8 Claim has agreed to a different treatment of such Claim, the holder of the
19 Allowed Class 8 Secured Claim shall retain its lien on the Debtor's property to the extent
20 enforceable under non-bankruptcy law, and in the event of a default shall be permitted to exercise all
21 of its State law enforcement rights with respect to the particular collateral in question.

22 **4.6 Class 9 (Administrative Convenience Claims).**
23 Each holder of an Allowed Class 9 Administrative Convenience Claim shall be paid a lump
24 sum dividend equal the amount of its Allowed Claim from Available Cash on the Effective Date.

25 **4.7 Class 11 (Interest of Jane Gaube).**
26 The Class 11 Interest shall be treated and paid as determined by Judgment or other
27 appropriate order of the Superior Court in the dissolution action Marriage of Gaube, Contra Costa
28 Superior Court Case No. D16-01907.

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ARTICLE V

TREATMENT OF UNCLASSIFIED CLAIMS

Unclassified Claims shall be treated as follows:

5.1 Allowed Administrative Claims. Except to the extent that the holder of a particular Administrative Claim has agreed to a different treatment of such Claim, each holder of an Allowed Administrative Claim shall be paid in cash, in full upon the later of (a) the Effective Date, (b) if such Claim is initially a Disputed Claim, when it becomes an Allowed Administrative Claim, and (c) if such Claim is incurred after the Petition Date in the ordinary course of the Debtors’ business by a person other than an insider, within such time as payment is due pursuant to the terms giving rise to such Claim. Any request for allowance of an Administrative Claim pursuant to Section 503(a) of the Bankruptcy Code (including an estimation of expenses to be incurred after the Effective Date), other than by the Debtor’s Professionals, must be filed on or before the Administrative Claims Bar Date or the holder of such Claim shall be forever barred from asserting such Claim or receiving any payment on account of such Claim.

5.2 Tax Claims. The holders of Allowed Claims entitled to priority under 11 U.S.C. § 507(a)(8) (“Allowed Tax Claims”) will receive deferred cash payments, payable quarterly, commencing with an initial payment six months from the Effective Date, over a period not exceeding five (5) years after the Petition Date, the unpaid portion of any such claim to bear interest at the statutory rate. The Reorganized Debtor reserves the right to pay Allowed Tax Claim(s) in full at any time after the Effective Date, provided that all claims entitled to higher priority pursuant to Bankruptcy Code Section 507(a) are first paid in full.

ARTICLE VI

TREATMENT OF CLASSES OF CLAIMS THAT ARE IMPAIRED UNDER THE PLAN

The following classes of Claims are impaired under the Plan and shall receive the following treatment:

6.1 Class 3 (Secured Claims of Comerica Bank). Pursuant to the provisions of Bankruptcy Code Section 1123(a)(5) and 1123(b)(3)(A), the Class 3 Claims shall be deemed an

1 Allowed Claim, and the rights of the Estate and other appropriate parties in interest shall be
2 compromised and settled as provided in this Section.

3 **Allowed Amount of Class 3 Claims.** The holder of the Class 3 Claims shall be
4 deemed an Allowed Claim in the amount of \$5,795,453.28 as of the Petition Date, less any
5 payments made by or on behalf of the Debtor and applied to the loan balance since that time,
6 and plus attorneys fees and other collection costs incurred by the Class 3 Claimant. The
7 Debtor acknowledges that as of the date of the filing of this Plan, no payments on the Class 3
8 Claim have been made since the Petition Date. The Debtor also acknowledges that Comerica
9 Bank has elected to have the Class 3 Claim treated as fully secured under Section 1111(b).
10 Thus the Allowed Class 3 Claim shall be treated as fully secured under this Plan.
11

12 **Lien Retention, Ride Through of Loan Documents, and Enforcement** The holder
13 of the Allowed Class 3 Secured Claims shall retain its liens under non-bankruptcy law, as
14 well as all other rights and remedies available to it under the Caffe Classico Loan
15 Documents, which Caffe Classico Loan Documents shall ride through this bankruptcy and
16 shall remain in full force and effect after the Effective Date, except that as of the Petition
17 Date the principal balance of the Caffe Classico Note shall be set at \$5,795,453.28
18 Following the Effective Date, the holder of the Allowed Class 3 Secured Claim shall be
19 permitted to enforce its lien rights under applicable non-bankruptcy law as to all the Debtor's
20 property in which it has collateral rights, and shall be entitled to enforce any other rights and
21 remedies available to it under the Caffe Classico Loan Documents. Notwithstanding the
22 foregoing, the Class 3 Claimant shall forbear from noticing, scheduling, or conducting a
23 foreclosure sale as to the Debtor's real property commonly known as 287 Cross Road,
24 Alamo, CA or 627 Brassie Ave, Kings Beach, CA until on or after six months from the
25 Effective Date of the Plan. Nothing in this Plan shall impair the rights of the Class 3
26 Claimant as to any collateral owned by a non-debtor entity, including an Affiliate of the
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Debtor. Without limiting the foregoing, the Class 3 Claimant may immediately commence the non-judicial foreclosure process on the Debtor’s real property located at 287 Cross Road, Alamo, CA and/or 627 Brassie Ave, Kings Beach, CA by, among other things, recording a notice of default as to each such property. However, the Class 3 Claimant may not notice, schedule, or conduct a foreclosure sale for such property until the aforementioned six month period post-Effective Date has passed. In addition, the Class 3 Claimant may, on and after the Effective Date, exercise all state law remedies with respect to any personal property owned by the Debtor that secures the Class 3 Claim, including, without limitation, the Debtor’s membership interests in Alamo Silverdale, LLC and JFP-AG/Holdings, LLC, and may apply such collateral or the proceeds of such collateral to any obligations secured thereby, including obligations of non-debtor third parties.

Waiver of Right to Object to Claim and Release of Counter-claims As of

Effective Date, the Debtor, the Reorganized Debtor, their predecessors, heirs, successors, and assigns, including any chapter 7 trustee, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Class 3 Creditor, its predecessors, successors, assigns, and its present and former directors, shareholders, officers, agents, attorneys, advisors, accountants, financial advisors, investment bankers, and employees, and any entity claimed to be liable derivatively through any of the foregoing, from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including any derivative claims asserted on behalf of the Debtor or Reorganized Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on, relating to, or in any manner arising from, in whole or in part, the Debtor, the Reorganized Debtor, the Debtor’s Bankruptcy Case, the negotiation, execution, or collateralization of any loan document

1 connected in any way with the Class 3 Claim, or the subject matter of, or the transactions or
2 events giving rise to, the Class 3 Claim. This waiver and release includes, without
3 limitation, (1) any right to object to the Class 3 Claim, (2) any right to surcharge the Class 3
4 Claim, (3) any right to incur secured debt with a “priming lien” as to the Class 3 Claim, (4)
5 any claims or causes of action which may exist pursuant to Bankruptcy Code Sections 502,
6 506, 510, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, and 552, (5) any claims or
7 setoff rights for usury, and (6) any claims or set offs arising out of any non-bankruptcy right
8 under contract, tort, or statute in law or equity. The release granted by this Section shall be
9 deemed to include an express and irrevocable waiver of any rights conferred by California
10 Civil Code Section 1542, which states: “A general release does not extend to claims which
11 the creditor does not know or suspect to exist in his or her favor at the time of executing the
12 release, which if known by him or her must have materially affected his or her settlement
13 with the debtor.”

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16 **Stipulation to Allowance of Unsecured Claim.** In addition to the above treatment,
17 the Debtor hereby stipulates to the allowance of the unsecured claim filed by Comerica Bank
18 as Proof of Claim No. 7 on the claims register for this bankruptcy case, in the amount of
19 \$6,303,837.91 as of the Petition Date.

20
21 **6.2 Class 5 (Secured Claim of CCF Holdings, Inc.)** Pursuant to the provisions of
22 Bankruptcy Code Section 1123(a)(5) and 1123(b)(3)(A), the Class 5 Claim shall be deemed an
23 Allowed Claim, and the rights of the Estate and other appropriate parties in interest shall be
24 compromised and settled as provided in this Section.

25 **Reaffirmation of March 7, 2016, Settlement Agreement.** Except as is specifically
26 set forth below, the Class 5 Claim shall be treated pursuant to that certain Settlement
27 Agreement between the Debtor and the Class 5 Claimant dated March 7, 2016, and approved
28 by the Court pursuant to Bankruptcy Rule 9019 on March 24, 2016.

1 **Distribution of ROIP Surplus.** As of the Effective Date, the ROIP Surplus shall be
2 split 50/50 between the Debtor’s Estate and the Class 5 Claimant, and the Confirmation
3 Order shall be deemed to be sufficient authorization for such disbursement by Bruce
4 Cornelius, Esq., the custodian of the funds.
5

6 **Stipulated Lien Avoidance as to 287 Cross Road.** As of the Effective Date, all
7 judgment and ORAP liens held by the Class 5 Claimant on the real property commonly
8 known as 287 Cross Road, Alamo, CA shall be deemed avoided pursuant to the provisions of
9 Bankruptcy Code Section 522(f), and the Reorganized Debtor shall have the right to seek a
10 separate Order of the Court so providing.
11

12 **Lien Rights as to 206 Cameo Dr.** The holder of the Allowed Class 5 Claim shall
13 retain its lien under applicable non-bankruptcy law as to the Debtor’s joint tenancy interest in
14 the real property commonly known as 206 Cameo Dr., Danville, CA. Following the
15 Effective Date, the holder of the Allowed Class 5 Secured Claim shall be permitted to
16 immediately enforce its lien rights under applicable non-bankruptcy law as to the Debtor’s
17 interest in 206 Cameo Dr. Notwithstanding the foregoing, the Class 5 Claimant shall forbear
18 from conducting an execution sale Debtor’s interest in 206 Cameo Dr. until on or after
19 December 31, 2016; provided however, that the Debtor shall have the right to satisfy the
20 Class 5 Secured Claim at any time prior to December 31, 2016 by tender of the “Agreed
21 Price” for the subject joint tenancy interest through a sale or refinancing.
22

23 The “Agreed Price” shall be determined as follows: (a) the parties shall determine the
24 Fair Market Value of the entire fee interest in 206 Cameo Dr. as of July 1, 2016, or such
25 other date as is agreed upon; (b) from the fair market value of the entire fee, the parties shall
26 subtract (i) the sum of \$10,000.00 for transaction costs, (ii) the amount of the first deed of
27 trust held by Wells Fargo Home Mortgage, not including any arrearages, and (iii) 50% of the
28 subtotal on account of Jane Gaube’s joint tenancy interest in the subject property. The

1 remainder shall be the “Agreed Price”. In the event the parties are unable to agree on a Fair
2 Market Value of the entire fee, each shall select a licensed, local residential real estate
3 broker or appraiser to perform a market valuation of the entire fee. If the valuations are
4 within ten percent (10%) of each other, the parties shall split the difference to determine the
5 Fair Market Value. If the valuations are greater than ten percent (10%) apart, the two
6 brokers/appraisers selected by the parties shall select a third broker/appraiser to perform a
7 market analysis, whose determination of the Fair Market Value shall be binding on both
8 sides.
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10 **6.3 Class 7 (Secured Claim of Owens Realty Mortgage, Inc.)**. The Allowed Class 7
11 Claim shall be bifurcated pursuant to the provisions of Bankruptcy Code Section 506. To the extent
12 that the Allowed Class 7 Claim is deemed an Unsecured Claim, it shall be treated as an Allowed
13 Class 10 Claim. To the extent that it is deemed a Secured Claim, it shall be permitted to enforce its
14 lien rights under applicable non-bankruptcy law.
15

16 **6.4 Class 10 (General Unsecured Claims)**. The holders of Allowed Class 10 Claims
17 shall receive Pro Rata distributions from Available Cash in the Plan Distribution Account until the
18 net proceeds of the Estate Reserved Litigation have been exhausted or they have been paid the full
19 amount of their Allowed Claims, plus interest at the federal judgment rate, whichever occurs first.
20

21 **ARTICLE VII**

22 **MEANS FOR IMPLEMENTATION OF THE PLAN**

23 **7.1 Post Confirmation Operations and Management of the Post-Confirmation**
24 **Estate**. On and after the Effective Date, the Reorganized Debtor shall be free to operate its business
25 without further supervision or control by the Bankruptcy Court and free of any restrictions imposed
26 by the Bankruptcy Code except as provided in the Plan or by an order of the Bankruptcy Court.
27 Specifically and without limitation, the Reorganized Debtor may sell, lease, or refinance its
28 properties without further Order of Court.

7.2 Retained Power to Sell Free and Clear of Liens. The Reorganized Debtor reserves

1 its pre-confirmation rights and powers to sell its property free and clear of liens and interests by
2 noticed motion pursuant to Bankruptcy Code § 363(f), as to any lien or interest whether scheduled or
3 unscheduled, and whether perfected or unperfected. The Class 1, 2, 3, and 4 Creditors reserve any
4 and all grounds to object to such relief. The Court expressly reserves jurisdiction over those matters.

5 **7.3 Litigation Management**

6 **7.3.1 In General.** The Estate reserves all litigation claims, including without
7 limitation any claims arising out of Bankruptcy Code Sections 363(h), 502, 506, 510, 541, 542, 543,
8 544, 545, 546, 547, 548, and 549, including without limitation any and all claims against the “Class
9 A Investors” referenced above (the “Estate Reserved Litigation”). Any proceeds of the Estate
10 Reserved Litigation, after payment of compensation and other costs, shall be paid into the Plan
11 Disbursement Account. The Reorganized Debtor shall have exclusive standing to investigate,
12 prosecute, and, if appropriate, compromise any of the Estate Reserved Litigation. Any such
13 compromise may be consummated without notice, hearing, or order of the Court. The Reorganized
14 Debtor and any other party in interest reserve the right to object to any and all Claims.

15 **7.3.2 Special Litigation Counsel and Other Professionals.** From and after the
16 Effective Date, the Reorganized Debtor may retain and compensate special litigation counsel and
17 other experts and consultants he deems necessary to prosecute the Estate Reserved Litigation
18 without further Order of the Court; provided however, that (1) nothing herein shall relieve the
19 Debtor or any professional retained by the Debtor prior to Confirmation with the obligation to
20 comply with Bankruptcy Code Sections 327, 328, 330, and/or 331, (2) no more than \$100,000 shall
21 be used from sources other than the recovery on the Estate Reserved Litigation to compensate such
22 professionals, and (3) there shall be no post-confirmation amendment or modification of any
23 professional employment agreement approved by the Court pursuant to Bankruptcy Code Sections
24 327 and/or 328 without further Order of the Court.

25 **7.3.3 Litigation Management Fee.** The Reorganized Debtor shall be entitled to
26 receive a litigation management fee in the amount of 5% of any net proceeds collected from the
27 litigation against the Class A Investors after payment of costs and attorneys’ fees.

28 **7.4 Distributions.**

1 **7.4.1 Disbursing Agent.** Randy Sugarman, or such other person appointed by
2 the Court in the Confirmation Order, shall as Disbursing Agent for the Estate in making all cash
3 Distributions to Allowed Administrative, Priority, Tax, and Unsecured Claims required to
4 consummate the Plan. All such Distributions shall be made from the Plan Disbursement Account.
5 The Disbursing Agent shall serve with a \$50,000 bond and shall be compensated at an hourly rate of
6 \$450.00

7 **7.4.2 Plan Disbursement Account.** The Disbursing Agent shall hold any
8 proceeds of assets of the Estate in a segregated Plan Disbursement Account for the benefit of holders
9 of Allowed Administrative, Priority, Tax, and Unsecured Claims.

10 **7.4.3 Timing of Distributions.** The Disbursing Agent shall make a first
11 Distribution to holders of applicable Allowed Claims as soon as practicable after the Effective Date.
12 Thereafter, the Disbursing Agent shall make subsequent Distributions in his discretion when funds
13 are available to do so. Distributions may be made without further Order of Court.

14 **7.4.4 Distribution Addresses.** Unless the Creditor has provided the Reorganized
15 Debtor with written notice of a different address, Distributions will be sent to Creditors at the
16 address set forth in the proofs of Claim filed with the Bankruptcy Court. If no proof of Claim is
17 filed with respect to a particular Claim, the Distribution will be mailed to the address set forth in the
18 Schedules.

19 **7.5 De Minimis Distributions.** Notwithstanding any other provision of the Plan,
20 Distributions of less than \$10.00 need not be made on account of any Allowed Claim or Allowed
21 Interest; provided that Distributions that would otherwise be made but for this provision shall carry
22 over until the next Distribution Date until the cumulative amount to which any holder of an Allowed
23 Claim or Allowed Interest is entitled to more than \$10.00, at which time the cumulative amount of
24 such Distributions will be paid to such holder.

25 **7.6 Unclaimed Distributions.** Any cash Distributions that remain unclaimed or
26 unnegotiated for ninety (90) days following Distribution or are returned for reasons other than the
27 absence of a current or correct address (unless a current or correct address cannot be determined
28 after reasonable inquiry) shall become the property of the Estate and be considered Available Cash.

1 **7.7 Tax Returns and Payments.** The Reorganized Debtor shall file or cause to be filed
2 any and all delinquent and final tax returns and pay any and all taxes owed by the Debtor and the
3 Reorganized Debtor on a timely basis (other than Tax Claims provided for under the Plan.

4 **7.8 Further Orders.** Upon motion by the Reorganized Debtor, on not less than ten (10)
5 days' notice to registered ECF participants entitled to notice in this Case, the Bankruptcy Court may
6 enter such other and further orders as may be necessary or appropriate to facilitate consummation of
7 the Plan.

8 **7.9 Post-Confirmation Operating Expenses.** From and the Effective Date, except as is
9 specifically set forth in this Plan, the Reorganized Debtor may incur and pay operating expenses in
10 the ordinary course of business.

11 **7.10 Post-Confirmation Reports, Fees, and Final Decree.**

12 **7.10.1 U.S. Trustee Fees.** Not later than thirty (30) days after the end of each
13 calendar quarter that ends after the Effective Date (including any fraction thereof), the Reorganized
14 Debtor shall pay to the United States Trustee the quarterly fee for such quarter until this case is
15 converted, dismissed, or closed pursuant to a Final Decree, as required by 28 U.S.C. § 1930(a)(6).

16 **7.10.2 Post-Confirmation Reports.** Not later than thirty (30) days after the end of
17 the calendar quarter which ends after the Effective Date, the Reorganized Debtor shall file and serve
18 upon the United States Trustee separate quarterly post-Confirmation status reports in substantially
19 the form provided by the United States Trustee. Further reports shall be filed thirty (30) days after
20 the end of every calendar quarter thereafter until entry of a Final Decree, unless otherwise ordered
21 by the Bankruptcy Court.

22 **7.10.3 Final Decree.** Once the Plan is substantially consummated, the Reorganized
23 Debtor shall file an application for a Final Decree as provided in the Local Rules.

1 **7.11 Default.** A material breach of any of the provisions of the Plan by the Reorganized
2 Debtor shall be deemed an Event of Default in the Plan. Upon any purported default, any party in
3 interest may give written notice to cure to the Reorganized Debtor. If such purported default is not
4 cured within 10 days from the date of said notice, such party in interest may move for conversion of
5 the case to Chapter 7. The Reorganized Debtor and any other party in interest may oppose such
6 motion.

7 **ARTICLE VIII**

8 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

9 **8.1 In General.** All limited liability company operating agreements and consulting
10 agreements between the Debtor and any Entity shall be deemed assumed as of the Effective Date.
11 All other executory contracts and unexpired leases, if any, shall be deemed rejected as of the
12 Effective Date.

13 **8.2 Adding and Removing Executory Contracts and Unexpired Leases.** The
14 provisions of this Article VIII may be amended, with appropriate notice to those parties in interest
15 directly affected, at any time prior to the conclusion of the hearing on Confirmation of the Plan, to
16 add or remove executory contracts and unexpired leases to be assumed, assumed and assigned, or
17 rejected pursuant to the Plan.

18 **8.3 Effect of Assumption of Executory Contracts and Unexpired Leases.** All
19 executory contracts assumed prior to Confirmation or pursuant to the Plan and not otherwise rejected
20 pursuant to the Plan shall remain in full force and effect, be unimpaired by the Plan except as
21 specifically modified by the Plan and the Order of Confirmation, and be binding on the parties
22 thereto.

23 **8.4 Rejection Claims.** Rejection Claims shall be classified as Class 9 Claims. The
24 holder of a Rejection Claim shall file with the Bankruptcy Court a proof of Claim relative to such
25 Rejection Claim on or before the Rejection Claims Bar Date or be forever barred from asserting any
26 such Claim or receiving any payment or other Distribution on account of such Claim.

27 **ARTICLE IX**

28 **PROOFS OF CLAIM; OBJECTIONS**

1 successor Disbursing Agent on motion by any party in interest, (l) to consider such other matters as
2 may be set forth in the Plan or the Order of Confirmation, (m) to hear and determine any Claim of
3 any Persons of any nature whatsoever against the Disbursing Agent, the Debtor, the Reorganized
4 Debtor, and/or the Debtor's Professionals arising in or related to the Case, and (n) to enter a Final
5 Decree closing the Bankruptcy Case. If closed, the Bankruptcy Case may be reopened at any time to
6 facilitate the provisions of this Article.

7 ARTICLE XI

8 EFFECT OF ORDER OF CONFIRMATION

9 As of the Effective Date, the effect of the Order of Confirmation shall be as follows:

10 **11.1 Binding Effect of Plan.** The provisions of the confirmed Plan shall bind the Debtor,
11 the Reorganized Debtor, the Estate, any entity acquiring property under or otherwise accepting the
12 benefits of the Plan, every Creditor, whether or not such entity has filed a proof of Claim in the
13 Bankruptcy Case, whether or not the Claim of such entity is impaired under the Plan, and whether or
14 not such Creditor or entity has accepted or rejected the Plan.

15 **11.2 Preliminary Injunction.** From and after the Effective Date, except as otherwise
16 provided for herein or in the Order of Confirmation, as long as there is no material default in the
17 Plan and up through entry of the Debtor's discharge, all Persons who have held, currently hold or
18 may hold a debt, Claim or interest against the Debtor, the Reorganized Debtor, the Estate, or their
19 respective property, including the property transferred pursuant to this Plan are enjoined from taking
20 any of the following actions on account of any such debt or Claim: (a) commencing or continuing in
21 any manner any action or other proceeding against Debtor, the Reorganized Debtor, the Estate, or
22 their respective property; (b) enforcing, attaching, collecting, or recovering in any manner any
23 judgment, award, decree, or order against the Debtor, the Reorganized Debtor, or the Estate; (c)
24 creating, perfecting, or enforcing any lien or encumbrance against the Debtor, the Reorganized
25 Debtor, the Estate, or their respective property including the property transferred pursuant to this
26 Plan; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation
27 due to the Estate, the Reorganized Debtor, or the Debtor; and (e) commencing or continuing any
28 action, in any manner, in any place that does not comply with or is inconsistent with the provisions

1 of the Plan or the Order of Confirmation.

2 **11.3 Grant of Discharge.** On completion of all payments required by the Plan, the Court
3 shall grant the Debtor a discharge of any and all debts of the Debtor that arose any time before
4 Confirmation. The discharge shall be effective as to each Claim regardless of whether a proof of
5 claim therefor was filed, whether the Claim is an Allowed Claim, or whether the holder thereof votes
6 to accept this Plan.

7 **11.4 Effect of Discharge.** The discharge provided for under this Plan shall have the
8 effects set forth in the Bankruptcy Code including, but not limited to:

9 (a) voiding any judgment obtained against the Debtor on any discharged
10 debt; and;

11 (b) operating as a permanent injunction against the commencement or
12 continuation of any action to collect, recover, or offset either any discharged debt from the Debtor,
13 or the Estate, or any property of the Debtor, or the Estate, except as otherwise permitted by this Plan,
14 the Bankruptcy Code, or order of the Court.

15 **ARTICLE XII**

16 **MISCELLANEOUS PLAN PROVISIONS**

17 **12.1 Plan Interpretation.** The headings contained in the Plan are for convenience of
18 reference only and shall not limit or otherwise affect in any way the meaning or interpretation of the
19 Plan. All references in the Plan to the singular shall be construed to include references to the plural
20 and vice versa. All references in the Plan to any one of the masculine, feminine or neuter genders
21 shall be deemed to include references to both other such genders. All exhibits attached to the Plan
22 are, by this reference, hereby incorporated into the Plan. All references in the Plan to a Section or an
23 Article shall mean the appropriately numbered Section or Article of the Plan. Whenever the Plan
24 uses the term “including,” such reference shall be deemed to mean “including, but not limited to.”
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1 **12.2 Modification.** The Debtor may propose amendments to or modifications of the Plan
2 under Section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019 at any time prior to the
3 conclusion of the hearing on Confirmation of the Plan. After the Confirmation Date, (1) the
4 Reorganized Debtor may seek to modify the Plan as to any issues under Section 1127(b) of the
5 Bankruptcy Code and Bankruptcy Rule 3019 and all parties in interest shall retain the right to object.

6 **12.3 Waiver.** After the Confirmation Date, except as otherwise specifically set forth in
7 the Plan, any term of the Plan may be waived only by the party or parties entitled to the benefit of
8 the term to be waived.

9 **12.4 Reservation of Rights.** Neither the filing of the Plan nor any statement or provision
10 contained in the Plan or in the Disclosure Statement, nor the taking by any party in interest of any
11 action with respect to the Plan, shall (a) be or be deemed to be an admission against interest, and (b)
12 until the Effective Date, be or be deemed to be a waiver of any rights any party in interest may have
13 (i) against any other party in interest, or (ii) in any of the assets of any other party in interest, and,
14 until the Effective Date, all such rights are specifically reserved. In the event that the Plan is not
15 confirmed or fails to become effective, neither the Plan nor the Disclosure Statement nor any
16 statement contained in the Plan or in the Disclosure Statement may be used or relied upon in any
17 manner in any suit, action, proceeding or controversy within or without this Bankruptcy Case
18 involving the Debtor or the Estate, except with respect to Confirmation of the Plan.

19 **FEASIBILITY OF THE PLAN**

20 Successful consummation of the Plan is not certain. Nonetheless, the Debtor believes that
21 the Plan meets the feasibility test of Bankruptcy Code Section 1129(a)(11). The specific
22 contingencies to the success of the Plan include the following:

23 First, a meaningful return to Creditors under the Plan is almost entirely contingent on the
24 success of the Estate Reserved Litigation, particularly the litigation claims against the “Class A
25 Investors.” While the Debtor is confident that he has a meritorious case, it is expected that the Class
26 A Investors will vigorously dispute the claims. Any complex commercial litigation is speculative
27 and uncertain to a significant degree.
28

1 Second, it is possible that the Debtor may incur significant adverse federal income tax
2 consequences arising out of the ongoing liquidation of his assets by Secured Creditors. The Debtor
3 is in the process of consulting with qualified tax advisors to lawfully defer or minimize such
4 liabilities. However, if there are large Allowed Tax Claims, the Debtor may be unable to satisfy
5 those Claims in the manner required by Section 1129 of the Bankruptcy Code.

6 7 **ALTERNATIVES TO THE DEBTOR'S PLAN**

8 **A. Chapter 7 Liquidation**

9 In a chapter 7 liquidation proceeding, the Debtor's interest in any assets of the Estate,
10 including litigation rights, would vest in a chapter 7 trustee, who would succeed to all either (1)
11 release all the assets to the respective secured creditors or (2) attempt to administer the assets and
12 distribute any proceeds remaining after pay off of the Secured Creditors to the other creditors of the
13 estate under the priorities established by Bankruptcy Code Section 507.

14 The Debtor believes that the Plan is more beneficial to Creditors and other parties in interest
15 than chapter 7 for two reasons.

16 First, it is anticipated that the Plan will be funded primarily from litigation recoveries from
17 the "Class A Investors". Theoretically, the recovery from such litigation would be the same whether
18 it is prosecuted by the Debtor or a trustee. However, as a practical matter, the Debtor is in a better
19 position to maximize this recovery due to his background knowledge of the underlying claims and
20 the potential defendants.

21 Second, chapter 7 liquidation adds another layer of administrative expense to the Estate. If a
22 chapter 7 Trustee is appointed, she will be entitled to a statutory commission on the funds distributed
23 to creditors, which could reach well into the six figures. A chapter 7 trustee is also likely to hire
24 another set of accountants and lawyers who would be compensated on an hourly basis from the
25 assets of the Estate.

26 A "worst case" and "best case" liquidation analysis is attached to this Disclosure Statement
27 and labeled Exhibit 2. Somewhat unrealistically, the liquidation analysis assumes that the litigation
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1 recovery will be the same whether the claims in question are prosecuted by the Debtor or a chapter 7
2 trustee.

3 **B. No Other Plans**

4 The Bankruptcy Code permits different parties to propose competing plan of reorganization
5 under certain circumstances. The Debtor's Plan is the only Plan which has been proposed at this
6 time.

7 **FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

8 Each Creditor should consult its own tax advisors concerning any income tax consequences
9 of its respective treatment under the Plan.

10 **VOTING, ACCEPTANCE AND CONFIRMATION**

11 **A. In General.**

12 The Hon. Charles Novack, Judge, United States Bankruptcy Court, has set a date for the
13 hearing on the Confirmation of the Plan. The hearing is to held at the United States Bankruptcy
14 Court, 1300 Clay St., Rm. 215, Oakland, CA 94612. The Plan can be implemented only if accepted
15 by the requisite percentage of creditors and confirmed by the Bankruptcy Judge. Creditors entitled
16 to vote should vote on the Plan by filling out and mailing the accompanying ballot to counsel. There
17 is no assurance that, if accepted, the Plan will be confirmed by the Bankruptcy Judge.

18 **B. Voting.**

19 Only impaired classes under the Plan will be entitled to vote on the Plan. The definition of
20 an "impaired" class of Creditors is set forth in Section 1124 of the Bankruptcy Code. Classes 3, 5, 7
21 and 10 are impaired by the Plan and entitled to vote. No other Classes are impaired under the Plan.
22 Pursuant to Section 1126(f) of the Bankruptcy Code, a class that is not impaired under the Plan, and
23 each holder of a Claim of such class, are conclusively presumed to have accepted the Plan, and
24 solicitation of acceptances with respect to such class from the holders of Claims of such class is not
25 required. The Bankruptcy Code defines "acceptance" of a plan by a class of Creditors as acceptance
26 by the holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the
27 claims of that class which actually cast ballots for acceptance or rejection of the Plan.

1 In addition to the requirement that a Creditor be in an “impaired class”, in order for a
2 creditor’s vote to be counted, either for or against the Plan, the creditor must have either (1) filed a
3 proof of claim on or before the “Claims Bar Date”, which was previously set by the Court at April
4 11, 2016, or (2) have been listed by the Debtor in the Schedule of Liabilities as having a claim which
5 was noncontingent and undisputed.

6 **IF YOU HAVE ALREADY FILED A CLAIM YOU NEED NOT REFILE FOR THE PURPOSE OF VOTING ON**
7 **THE PLAN.**

8 If a Creditor wishes to vote for or against the Plan, the Creditor should complete an
9 acceptance or rejection of the Plan on the form ballot enclosed herewith which must be returned
10 pursuant to the instructions set forth thereon.

11 **C. Confirmation**

12 If no impaired Creditor classes accept the Plan, it cannot be confirmed. If at least one
13 impaired class of Creditors accepts the Plan, the Court will hold a Confirmation Hearing. At the
14 Confirmation hearing, the Bankruptcy Judge has the duty to determine whether the Plan meets the
15 requirements of Section 1129 of the Bankruptcy Code. The principal requirements of Section 1129
16 include the following: (1) that the proponents of the Plan have complied with the applicable
17 provisions of the Bankruptcy Code on all matters connected with the case; (2) that the Plan has been
18 proposed in good faith, and not by any means forbidden by law; (3) that the requisite amount of
19 creditors have accepted the Plan or that the creditors are receiving an amount not less than they
20 would receive if liquidation under chapter 7 took place; (4) that at least one class of Creditors has
21 accepted the Plan; and (5) that confirmation of the Plan is not likely to be followed by liquidation, or
22 the need for further financial reorganization of the debtor; and (6) that the Debtor and the Plan in all
23 other respects comply with applicable law. Only if such determinations are made will the Judge
24 confirm the Plan.

25 If there are impaired Creditor classes which have rejected the Plan, the Bankruptcy Judge
26 may order Confirmation over its rejection, but only if the Judge first determines that the rights of
27 non-consenting classes of creditors are protected under Bankruptcy Code Section 1129(b) and other
28

1 applicable law. The Debtor reserves the right to seek confirmation under Bankruptcy Code Section
2 1129(b) of this Plan.

3 **D. Notice to Unsecured Creditors of Section 1129(a)(15) Rights**

4 Section 1129(a)(15) of the Bankruptcy Code provides that in the case of an individual
5 Chapter 11 Debtor, any unsecured creditor may block confirmation of the Plan unless the Plan
6 provides that the Debtor will devote his “net disposable income” over the next 5 years to the
7 payment of Creditor Claims. Section 1129(a)(15) is triggered only if an unsecured creditor holding
8 an Allowed Claim files a formal objection.

9 The Debtor’s Plan does not provide that any of his post-bankruptcy earnings will be used to
10 satisfy creditor claims because the allowable amount of those claims is so large that this will not
11 result in a meaningful incremental dividend. However, all creditors of the Debtor should be aware
12 that they can compel this payment, or block confirmation of the Plan, through the filing of a Section
13 1129(a)(15) objection.

14 **CONCLUSION**

15 The Debtor believes that his Plan of Reorganization realistically affords to Creditors their
16 best opportunity for receiving a prompt, meaningful dividend. The Debtor respectfully request
17 Creditors vote to accept the Plan.

18 DATED this 28th day of July, 2016.

19 MacCONAGHY & BARNIER, PLC
20

21 By: /s/ John H. MacConaghy
22 John H. MacConaghy
23 Attorneys for Debtor-in-possession

/s/ Donald F. Gaube
Donald F. Gaube