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9  
10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 In re:  
14 NEWZOOM, INC.,  
15 Debtor.

Case No.: 15-31141 - HB

Chapter 11

**DISCLOSURE STATEMENT IN  
SUPPORT OF DEBTOR'S CHAPTER  
11 PLAN OF REORGANIZATION**

**Confirmation Hearing**

Date: November \_\_, 2015

Time:

Place: United States Bankruptcy Court  
235 Pine Street  
San Francisco, CA

Judge: Honorable Hannah L. Blumenstiel

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**Exhibits**

<b>Exhibit A</b>	<b>Plan</b>
<b>Exhibit B</b>	<b>Post Confirmation Budget</b>
<b>Exhibit C</b>	<b>Sources and Uses at Confirmation</b>
<b>Exhibit D</b>	<b>Liquidation Analysis</b>
<b>Exhibit E</b>	<b>Schedule of Approved Cure Obligations</b>

I.

**INTRODUCTION**

**A. Introduction**

On September 10, 2015 (the “Petition Date”), NewZoom, Inc. (the “Debtor”) commenced a proceeding under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor’s case is being administered in the United States Bankruptcy Court for the Northern District of California, San Francisco Division, before the Honorable Hannah Blumenstiel.

This Disclosure Statement (the “Disclosure Statement”) contains information with respect to the Debtor’s proposed plan of reorganization (the “Plan”). A copy of the Plan is attached hereto as **Exhibit A**. Except as otherwise provided herein, capitalized terms used in this Disclosure Statement shall have the meanings set forth in the Plan. *See* Plan, Glossary of Defined Terms.

Pursuant to section 1125 of the Bankruptcy Code, this Disclosure Statement is being distributed to you for the purpose of enabling you to make an informed judgment about the Plan. The Debtor has examined various alternatives and, based on information contained in this Disclosure Statement, and for the reasons set forth below, has concluded that the Plan provides the best recovery to creditors.

The Disclosure Statement describes the Plan and contains information concerning, among other matters: (1) the history, business, results of operations, management, properties and liabilities of the Debtor; (2) the proposed reorganization of the Debtor pursuant to the terms of the Plan, and (3) the proposed distribution to creditors and holders of Claims against the Debtor. The Debtor requests that you carefully review the contents of this Disclosure Statement and the Plan (including the exhibits) before making a decision to accept or reject the Plan. Particular attention should be paid to the provisions affecting or impairing your rights as a creditor.

Your vote on the Plan is important. In order for the Plan to be accepted by a class of Claims, the holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of Allowed Claims in such class who vote on the Plan must vote to accept it.

Non-acceptance of the Plan may lead to a liquidation under chapter 7 of the Bankruptcy Code, or to the confirmation of another plan. These alternatives may not provide for a distribution

1 of as much value to holders of Allowed Claims as the Plan will. Accordingly, the Debtor urges you  
2 to accept the Plan by completing and returning the enclosed ballot by no later than **November 6,**  
3 **2015 at 5:00 p.m. (Pacific Time).**

4 **B. Information Regarding the Plan**

5 1. Plan Governing Document.

6 Although the Debtor believes that this Disclosure Statement accurately describes the Plan, all  
7 summaries of the Plan contained in this Disclosure Statement are qualified by the Plan itself and the  
8 documents described therein which are controlling. You are urged to read the Plan and not just this  
9 Disclosure Statement.

10 2. Source of Information.

11 Factual information, including all financial information contained in this Disclosure  
12 Statement, has been provided by the Debtor, the Committee, or their professionals, or has been  
13 obtained from the Debtor's records, except where otherwise specifically noted. None of the  
14 Debtor's attorneys, accountants or other professionals make any representation regarding that  
15 information. The Debtor does not represent or warrant that the information contained in this  
16 Disclosure Statement is free from any inaccuracy. The Debtor has, however, attempted to present  
17 the information accurately and fairly, and the Debtor believes that the information is substantially  
18 accurate. The assumptions underlying the projections contained in this Disclosure Statement  
19 concerning the sources and amounts of payments to Creditors and Interest Holders represent the  
20 Debtor's best estimate as to what it expects will happen. Because they are only assumptions about  
21 or predictions of future events, many of which are beyond the Debtor's control, there can be no  
22 assurances that the assumptions will in fact materialize or that the projected realizations will in fact  
23 be met. Except as otherwise provided herein, this Disclosure Statement will not reflect any events  
24 that occurred after the hearing before the Bankruptcy Court to determine the adequacy of the  
25 Disclosure Statement.

26 3. Bankruptcy Court Approval.

27 Following a hearing held on October 15, 2015, the Bankruptcy Court approved this  
28 Disclosure Statement as containing information of a kind and in sufficient detail adequate to enable a



1 hypothetical, reasonable investor to make an informed judgment about the Plan. Under section 1125  
2 of the Bankruptcy Code, this approval enabled the Debtor to send you this Disclosure Statement and  
3 solicit your acceptance of the Plan. The Bankruptcy Court has not, however, approved the Plan  
4 itself, nor conducted a detailed investigation into the contents of this Disclosure Statement.

5 **C. Voting Instructions**

6 1. How to Vote.

7 A ballot is enclosed herewith for Creditors and Interest Holders to use in voting on the Plan.  
8 To vote on the Plan, indicate on the enclosed ballot that you accept or you reject the Plan and sign  
9 your name and mail the ballot in the envelope provided for this purpose.

10 **In order to be counted, ballots must be completed, signed and returned so that they are**  
11 **received no later than November 6, 2015 at 5:00 p.m. (Pacific Time) at the following address:**

12 NewZoom, Inc. Ballot Processing  
13 c/o Prime Clerk, LLC  
14 830 Third Avenue, 3rd Floor  
15 New York, NY 10022

16 **Do not send your ballot via facsimile or e-mail.**

17 If your ballot is not properly completed, signed and returned as described, it will not be  
18 counted. If your ballot is damaged or lost, you may request a replacement by sending a written  
19 request to the above address.

20 2. Who May Vote.

21 The Plan divides the Claims of creditors into four classes. There are also two classes of  
22 Interests. The classes are as follows: Class 1 (Priority Claims), Class 2 (Prepetition Facility Claims),  
23 Class 3 (Other Secured Claims), Class 4 (Unsecured Claims), Class 5 (Preferred Interests), Class 6  
(Common Interests).

24 Classes of creditors that are impaired by the Plan are entitled to vote, unless no compensation  
25 or payment is provided for such class, in which event such class is conclusively deemed to have  
26 rejected the Plan. Each holder of an Allowed Claim in an impaired class that will receive  
27 distributions under the Plan on account of such claims may vote to accept or reject the Plan. A class  
28

1 is impaired if the legal, equitable or contractual rights attaching to the claims or interests of the class  
2 are modified, other than by curing defaults and reinstating maturities.

3 **Classes 1 and 3 are Unimpaired and deemed to have accepted the Plan. Classes 2, 4, 5**  
4 **and 6 are impaired under the Plan; however only Classes 2 and 4 are entitled to vote on the**  
5 **Plan because Classes 5 and 6 are deemed to have rejected the Plan.**

6 In determining acceptances of the Plan, the vote of a creditor will only be counted if  
7 submitted by a creditor whose Claim is an Allowed Claim. Generally speaking, a creditor holds an  
8 Allowed Claim if such Claim is duly scheduled by the Debtor as other than disputed, contingent or  
9 unliquidated, or the Creditor has timely filed with the Bankruptcy Court a proof of Claim which has  
10 not been objected to or disallowed prior to computation of the votes on the Plan. The Ballot form  
11 which you received does not constitute a proof of Claim.

12 **D. Confirmation**

13 “Confirmation” is the technical phrase for the Bankruptcy Court’s approval of a plan of  
14 reorganization. At the Confirmation Hearing, in order to confirm the Plan, the Debtor must  
15 demonstrate that it has met the requirements of section 1129 of the Bankruptcy Code. If the  
16 Bankruptcy Court determines that all of the requirements of section 1129 have been satisfied, the  
17 Bankruptcy Court will enter an order confirming the Plan. The Debtor believes that the Plan  
18 satisfies all the statutory requirements of chapter 11 of the Bankruptcy Code for confirmation of the  
19 Plan.

20 Voting is tabulated by class. As discussed above, a class of creditors or interest holders has  
21 accepted a plan of reorganization if the plan has been accepted by two-thirds (2/3) in dollar amount  
22 and more than one-half (1/2) in number of creditors or interest holders holding allowed claims or  
23 interests in that class who actually vote to accept or reject such plan.

24 Even if a class of creditors or interests votes against a plan of reorganization, the plan may  
25 nevertheless be confirmed by the Bankruptcy Court, notwithstanding the rejection of the Plan by  
26 such class, so long as certain statutory requirements are met by the Plan. This procedure is called a  
27 “cram down.” The Debtor will request that the Bankruptcy Court confirm the Plan in accordance  
28 with section 1129(b) of the Bankruptcy Code if any class rejects the Plan.

1 The Bankruptcy Court has set [DATE] at [TIME], as the hearing date to determine whether  
2 the Plan has been accepted by the requisite number of creditors and whether the other requirements  
3 for confirmation of the Plan have been satisfied. The hearing on confirmation will be held at the  
4 United States Bankruptcy Court, 235 Pine Street, 23rd Floor, San Francisco, California, 94104. This  
5 hearing may be continued from time to time and day to day without further notice. If the  
6 Bankruptcy Court confirms the Plan, it will enter the Confirmation Order. Any objections to  
7 confirmation of the Plan must be in writing and must be filed with the Clerk of the Bankruptcy Court  
8 and served on the parties set forth below on or before the date set forth in the Notice of Confirmation  
9 Hearing sent to you with this Disclosure Statement and the Plan.

10 Objections must be served upon:

11 (1) The Debtor:

12 NewZoom, Inc.  
13 22 Fourth Street, 16<sup>th</sup> Floor  
14 San Francisco, CA 94103  
15 Attn: Jack Lawrence  
16 Telephone: (415) 400-8114  
17 Email: [jack.lawrence@zoomsystems.com](mailto:jack.lawrence@zoomsystems.com)

18 (2) Counsel for the Debtor:

19 John D. Fiero  
20 Pachulski Stang Ziehl & Jones LLP  
21 150 California Street, 15th Floor  
22 San Francisco, CA 94111  
23 Telephone: (415) 263-7000  
24 Email: [jfiero@pszjlaw.com](mailto:jfiero@pszjlaw.com)

25 (3) Counsel for the Committee:

26 Ori Katz  
27 Sheppard, Mullin, Richter & Hampton LLP  
28 Four Embarcadero Center, 17th Floor  
San Francisco, CA 94111  
Telephone: (415) 774-3238  
Email: [okatz@sheppardmullin.com](mailto:okatz@sheppardmullin.com)

and

1 (4) The Office of the United States Trustee

2 Julie Glosson  
3 Office of the United States Trustee  
4 235 Pine Street, 7th Floor  
5 San Francisco, CA 94104  
6 Telephone: (415) 705-3349  
7 Email: [julie.m.glosson@usdoj.com](mailto:julie.m.glosson@usdoj.com)

8 **E. Disclaimers**

9 THIS DISCLOSURE STATEMENT CONTAINS INFORMATION WHICH MAY BEAR  
10 UPON YOUR DECISION TO ACCEPT OR REJECT THE DEBTOR'S PROPOSED PLAN.  
11 PLEASE READ THIS DOCUMENT WITH CARE. THE PURPOSE OF THIS DISCLOSURE  
12 STATEMENT IS TO PROVIDE "ADEQUATE INFORMATION" OF A KIND, AND IN  
13 SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE  
14 NATURE AND HISTORY OF THE DEBTOR AND THE CONDITION OF THE DEBTOR'S  
15 BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL REASONABLE  
16 INVESTOR TYPICAL OF HOLDERS OF CLAIMS OR INTERESTS OF THE RELEVANT  
17 CLASS TO MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN. SEE 11 U.S.C.  
18 § 1125(a).

19 FOR THE CONVENIENCE OF CREDITORS, THIS DISCLOSURE STATEMENT  
20 SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ANY  
21 SUMMARY. ***IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THIS  
22 DISCLOSURE STATEMENT, THE TERMS OF THE PLAN WILL CONTROL.***

23 THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE  
24 CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH CREDITOR OR INTEREST  
25 HOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT  
26 AS TO LEGAL, TAX AND OTHER MATTERS CONCERNING HIS OR HER CLAIM OR  
27 INTEREST.  
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II.

**PLAN OVERVIEW**

**A. Introduction**

The Plan provides for a reorganization of the Debtor’s business funded by the Debtor’s Prepetition Lenders. Using a new Exit Facility, the Debtor intends to repay its obligations under the DIP Facility and exit bankruptcy as a going concern in which 100% of the equity interests in the Reorganized Debtor will be issued to the Prepetition Lenders (because the existing Preferred Interests and Common Interests will all be cancelled under the Plan). Funds from the Exit Facility and the Debtor’s operations will allow the Debtor to pay the Allowed Administrative, Tax, and Fee Claims as provided in the Plan. Unsecured creditors in Class 4 shall receive beneficial interests in the Exempt Assets Trust created by the Plan. The Exempt Assets Trust will be populated with property to be determined in consultation with the Committee, but at the sole discretion of the Debtor, known as the “Exempt Assets Trust Property.” That property, in turn will be administered by an Exempt Assets Trustee who will ultimately make one or more distributions to the holders of Class 4 Claims. Payments to holders of Administrative Claims, Priority Claims, Tax Claims and Fee Claims shall be paid by the Disbursing Agent, which shall be the Reorganized Debtor.

**B. Treatment of Claims**

1. Classification Generally

The categories of Claims and Interests listed below classify Claims and Interests that are required to be designated in classes pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class only to the extent that any portion of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid, released, or otherwise settled prior to the Effective Date. Notwithstanding any Distribution provided for in the Plan, no Distribution on account of any Claim or Interest is required or permitted unless and until

1 such Claim or Interest becomes an Allowed Claim or Allowed Interest, as the case may be, which  
 2 might not occur, if at all, until after the Effective Date.

3 2. Unclassified Claims

4 In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Fee  
 5 Claims, DIP Facility Claims, and Priority Tax Claims have not been classified and are excluded  
 6 from the Classes of Claims set forth in Article II of the Plan. Article IV of the Plan governs the  
 7 treatment and payment of all such unclassified Claims.

8 3. Classified Claims

9 The Plan divides the Claims against and Interests in the Debtor into six (6) separate Classes  
 10 and identifies which Classes are entitled to vote on the Plan. All of the potential Classes for the  
 11 Debtor are set forth therein.

12 The following table designates the Classes of Claims against and Interests in the Debtor, and  
 13 specifies which Classes are (i) impaired or unimpaired by the Plan, (ii) entitled to vote to accept or  
 14 reject the Plan in accordance with section 1126 of the Bankruptcy Code, or (iii) deemed to accept or  
 15 reject the Plan. Amounts listed below are estimated.

TREATMENT OF CLAIMS CHART			
Class	Description	Estimate of Claims and Recoveries	Plan Treatment
N/A	Allowed Administrative Claims	Estimated Recovery on Allowed Claims in this category: 100%	On the applicable Plan Distribution Date, each holder of an Allowed Administrative Claim shall receive (i) the amount of such holder's Allowed Claim in Cash; or (ii) such other treatment as may be agreed upon in writing by such holder and the Debtor (or, if after the Effective Date, the Disbursing Agent); provided, that such treatment shall not provide a return to such holder having a present value as of the Effective Date in excess of such holder's Allowed Administrative Claim; and provided, further that an Administrative Claim representing a liability incurred and payable in the ordinary course of business of the Estate shall be paid by the Debtor in the ordinary course of business.

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<b>TREATMENT OF CLAIMS CHART</b>			
<b>Class</b>	<b>Description</b>	<b>Estimate of Claims and Recoveries</b>	<b>Plan Treatment</b>
1	Other Priority Claims	Estimated Recovery on Allowed Claims in this Class: 100%  <b>UNIMPAIRED</b>  <b>NOT ENTITLED TO VOTE</b>	Each holder of an Allowed Priority Claim against the Debtor shall receive, in full satisfaction of such Allowed Priority Claim, on the applicable Plan Distribution Date, Cash in the amount of such holder's Allowed Priority Claim.
2	Prepetition Facility Claims	Estimated Recovery on Allowed Claims in this Class: Debt for Equity  <b>IMPAIRED</b>  <b>ENTITLED TO VOTE</b>	On the Effective Date, the Prepetition Facility Claims shall receive 100% of the Interests in the Reorganized Debtor.
3	Other Secured Claims	Estimated Recovery on Allowed Claims in this Class: Reinstatement or 100%  <b>UNIMPAIRED</b>  <b>NOT ENTITLED TO VOTE</b>	Except to the extent that a holder of an Allowed Other Secured Claim agrees to a different treatment, on the applicable Plan Distribution Date, each Allowed Other Secured Claim shall, at the option of the Disbursing Agent, (i) be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code; (ii) receive Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code; or (iii) receive the collateral securing its Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, in each case, in full and complete satisfaction of such Allowed Other Secured Claim.
4	Unsecured Claims	Estimated Recovery on Allowed Claims in this Class: Unknown at this time; dependent on success of Exempt Assets Trustee.  <b>IMPAIRED</b>  <b>ENTITLED TO VOTE</b>	Each holder of an Allowed Unsecured Claim shall receive, on the applicable Plan Distribution Date, its Pro Rata Share of the Exempt Assets Trust Beneficial Interests.

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TREATMENT OF CLAIMS CHART			
Class	Description	Estimate of Claims and Recoveries	Plan Treatment
5	Preferred Interests	Estimated Recovery on Allowed Claims in this Class: Zero  <b>IMPAIRED</b>  <b>DEEMED TO REJECT</b>	On the Effective Date, Preferred Interests shall be cancelled.
6	Common Interests	Estimated Recovery on Allowed Claims in this Class: Zero  <b>IMPAIRED</b>  <b>DEEMED TO REJECT</b>	On the Effective Date, Common Interests shall be cancelled.

**III.**

**OVERVIEW OF CHAPTER 11 CASE**

This section of the Disclosure Statement discusses the significant events in the Chapter 11 Case to date, including events leading up to the commencement of this case. Copies of all relevant court papers are on file with the Bankruptcy Court.

**A. Events Leading Up to the Filing of the Chapter 11 Case**

1. Overview of the Debtor’s Business.

The Debtor offers an end-to-end technology and services solution that allows its customers – major brands and retailers – to sell its products to consumers through automated kiosks called “ZoomShops,” which are installed and operated by the Debtor in high-traffic locations such as airports and malls. The Debtor derives revenue from its customers through a combination of the following: (a) a one-time up-front development fee, (b) the sale or lease of the ZoomShops, and (c) a recurring monthly service fee for each installed ZoomShop, which is either a fixed fee or a percentage of sales from the ZoomShop. The recurring monthly fees are the most significant component of the Debtor’s revenue model, and these in turn are dependent on the number of ZoomShops deployed and the level of product sales through the ZoomShops (for customers who pay the Debtor a percentage of sales). Most new customers will contract for 25 or more ZoomShops,



1 with the goal of deploying more ZoomShops if sales and profitability from the initial stores support  
2 the business case for expansion.

3 The Debtor was formed in 2002. 2014 revenues and expenses were \$34.4 million and \$38.1  
4 million, respectively. Based on the Debtor's June 2015 balance sheet, the Debtor had assets worth  
5 \$17,009,945 and liabilities of \$32,778,419.

6 **B. Corporate Organization and Ownership**

7 The Company is a California corporation. The current members of the Debtor's board of  
8 directors are: John Anderson, John Lawrence, and Tom Naughton.

9 The Company owns 100% of the capital stock of five foreign subsidiaries: ZoomSystems  
10 GmbH (a German GmbH); ZoomSystems Japan K.K. (a Japanese corporation); ZoomSystems  
11 Australia Pty Ltd (an Australian corporation); ZoomSystems Limited (a Hong Kong corporation);  
12 and ZoomSystems UK Limited (a UK corporation).

13 **C. Summary of Prepetition Debt**

14 The Debtor is party to a secured financing arrangement that features Wells Fargo Bank, N.A.  
15 as the administrative agent for MIHI LLC. MIHI LLC is affiliated with Macquarie Capital (USA),  
16 Inc. The operative loan documents include: a Note Purchase Agreement, dated as of May 26, 2011;  
17 a First Amendment to Note Purchase Agreement dated as of May 21, 2012; a Second Amendment to  
18 Note Purchase Agreement dated as of May 15, 2013; a Third Amendment to Note Purchase  
19 Agreement dated as of June 11, 2014; a Fourth Amendment to Note Purchase Agreement dated as of  
20 September 19, 2014; a Fifth Amendment to Note Purchase Agreement dated as of February 11,  
21 2015; and a Sixth Amendment to Note Purchase Agreement and Waiver dated as of August 13, 2015  
22 (collectively, the "Prepetition Facility").

23 The balance owed on the Prepetition Facility as of the bankruptcy filing was approximately  
24 \$24,147,371 (the "Prepetition Facility Claims"). The obligation to repay the Prepetition Facility  
25 Claims is secured by the Debtor's personal property pursuant to the terms of a Pledge and Security  
26 Agreement dated May 26, 2011 as well as a Collateral Assignment of Patents dated May 26, 2011  
27 and a Collateral Assignment of Trademarks dated May 26, 2011. There are no guarantors of the  
28 Prepetition Facility Claims.

1 The Debtor incurs trade debt in the ordinary course of its business. As of the Petition Date,  
2 approximately \$10.7 million was owing to third party vendors and lessors on account of unsecured  
3 obligations.

4 **D. Events Leading to Chapter 11 Filing**

5 Entering 2015, the Debtor was forecasting growth in revenue and EBITDA, and the ability to  
6 maintain sufficient cash resources to fund ongoing operations. It was not, however, forecasting  
7 sufficient cash generation to repay the Prepetition Facility in May 2016 when it was scheduled to  
8 mature. So in January 2015 the Debtor began exploring strategic alternatives, primarily focused on a  
9 potential sale of the Debtor but also evaluating a private equity raise from new investors and/or a  
10 refinancing of the Prepetition Facility. To date, none of these strategic alternatives have come to  
11 fruition.

12 At the same time, the Debtor's financial performance in 2015 has fallen short of forecasts  
13 due to a number of factors, including:

- 14 \* A shortfall in revenue and EBITDA from the Debtor's largest customer, caused by a  
15 change in product lines by the customer, the Debtor's lack of access to such new  
16 product line until June 2015, and a reduction in marketing spend by the product  
17 manufacturer (approximately \$1.3 million impact to cash relative to forecast through  
18 June 2015);
- 19 \* A shortfall in revenue and EBITDA from a key customer in Europe, caused by (i)  
20 delays in new store deployments due to disagreements between the customer and its  
21 third-party hardware contract manufacturers and (ii) higher than anticipated costs  
22 incurred by the Debtor in supporting the customer's existing store deployments  
23 (approximately \$800,000 impact to cash relative to forecast through June 2015);
- 24 \* A shortfall in revenue and EBITDA from six domestic and international customers,  
25 caused by delays in securing lease agreements with the locations partners where new  
26 stores were forecasted to be opened (approximately \$925,000 impact to cash relative  
27 to forecast through June 2015); and  
28

1 \* A shortfall in cash caused by a delay in the launch of a large new domestic customer  
2 (approximately \$460,000 impact to cash relative to forecast through June 2015).

3 As a result of the above shortfalls, combined with the Debtor's low cash balance entering the  
4 year, the Debtor no longer had sufficient working capital to fund ongoing operations, and had no  
5 additional sources of capital readily available. Thus, the Debtor commenced its bankruptcy in order  
6 to obtain necessary financing and maximize the value of its assets via a reorganization funded by the  
7 Prepetition Lenders.

8 **E. Postpetition Events**

9 On September 11, 2015, the Bankruptcy Court heard and granted the following motions:

- 10 a. Motion for Order Authorizing Debtor to (A) Maintain Existing Bank  
11 Accounts and (B) Continue Use of Cash Management System (the "Cash  
Management Motion") [Docket No 3];
- 12 b. Motion for Order Authorizing the Debtor to (i) Pay Pre-Petition Employee  
13 Wages, Obligations and Contributions to Employee Benefit Plans; and (ii)  
14 for the Debtor and Banks and Other Financial Institutions to Comply with  
Procedures Relating Thereto (the "Wage Motion") [Docket No 4];
- 15 c. Motion of Debtor for Order (i) Prohibiting Utilities from Altering,  
16 Refusing, or Discontinuing Service; (ii) Deeming Utilities Adequately  
17 Assured of Payment; and (iii) Establishing Procedures for Determining  
Requests for Additional Adequate Assurance of Payment (the "Utility  
Motion") [Docket No 5];
- 18 d. Debtor's Motion for Authority to Pay in the Ordinary Course of Business  
19 Prepetition Claims Related to Shipping and Warehousing Charges and  
Related Relief (the "Shippers Motion") [Docket No 6];
- 20 e. Motion of Debtor for Order (A) Fixing Deadline for Filing Requests for  
21 Payment of 503(b)(9) Claims and (B) Approving Form and Manner of  
Notice (the "503(b)(9) Motion") [Docket No 7],
- 22 f. Application for Order Approving Designation of Andrew Hinkelman as  
23 Responsible Individual Pursuant to Bankruptcy Local Rule 4002-1 (the  
"Responsible Individual Application") [Docket No 8];
- 24 g. Application for Order Under 28 U.S.C. § 156(c) Authorizing the Retention  
25 of Prime Clerk as Noticing, Claims and Balloting Agent for Clerk of the  
26 Bankruptcy Court Nunc Pro Tunc to the Petition Date (the "Claims Agent  
Application") [Docket No. 9]; and
- 27 h. Motion for Interim and Final Orders (1) Authorizing Postpetition  
28 Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364(c)(1),  
364(c)(2), 364(c)(3) and 364(d)(1); (2) Authorizing the Use of Cash

1 Collateral; (3) Granting Security Interests and Superpriority Claims; (4)  
2 Providing Adequate Protection; (5) Modifying the Automatic Stay; and (6)  
3 Granting Related Relief (the "DIP Financing Motion") [Docket No 10].

4 Approval of the DIP Financing Motion was on an interim basis only and a final hearing is set  
5 for October 2, 2015 at 10:00 a.m. (Pacific Time).

6 On September 21, 2015, the Office of the United States Trustee appointed an Official  
7 Committee of Unsecured Creditors comprised of (i) FUJIFILM North America, Corp.; (ii) GGP  
8 Limited Partnership; (iii) Simon Property Group, Inc.; (iv) Suddath Relocation Systems of  
9 Milwaukee, LLC; and (v) UMC Global, Inc. The Committee promptly hired Sheppard, Mullin,  
10 Richter & Hampton LLP to serve as its chapter 11 counsel.

#### 11 IV.

#### 12 SUMMARY DESCRIPTION OF THE PLAN

13 A discussion of the principal provisions of the Plan as they relate to the treatment of classes  
14 of Allowed Claims is set forth below. The discussion of the Plan which follows constitutes a  
15 summary only and should not be relied upon for voting purposes. You are urged to read the Plan in  
16 full in evaluating whether to accept or reject the Plan proposed by the Debtor. If any inconsistency  
17 exists between this summary and the Plan, the terms of the Plan shall control.

#### 18 A. Description of Classes

19 The Plan divides creditors and Interest holders into classes. Creditors with similar Claims  
20 are placed in the same class. There are four classes of Claims and two classes of Interests under the  
21 Plan as follows:

- 22 1. Class 1 Claims. Class 1 shall consist of all Priority Claims.
- 23 2. Class 2 Claims. Class 2 shall consist of the Prepetition Facility Claims.
- 24 3. Class 3 Claims. Class 3 shall consist of all Other Secured Claims.
- 25 4. Class 4 Claims. Class 4 shall consist of all Unsecured Claims.
- 26 5. Class 5 Claims. Class 5 shall consist of the Preferred Interests in the Debtor.
- 27 6. Class 6 Claims. Class 6 shall consist of the Common Interests in the Debtor.

1           **B. Separate Classification of Other Secured Claims**

2           Although Other Secured Claims against the Debtor have been placed in one category for ease  
3 of reference, each Other Secured Claim shall be treated as a separate class for purposes of voting on  
4 the Plan and receiving Plan Distributions. Such classes comprised of individual Other Secured  
5 Claims shall be designated as Class 3A, Class 3B, Class 3C, etc.

6           **C. Treatment Of Unclassified Claims**

7           Article V of the Plan provides for the treatment of unclassified claims. The Plan sets forth  
8 the treatment of Administrative Claims (including Fee Claims) and Priority Tax Claims, which are  
9 not classified under the Plan.

10           1.       Administrative Claims. The Plan contemplates that Allowed Administrative  
11 Claims will be paid in full by the Disbursing Agent. Specifically, on the applicable Plan Distribution  
12 Date, each holder of an Allowed Administrative Claim shall receive (i) the amount of such holder's  
13 Allowed Claim in Cash; or (ii) such other treatment as may be agreed upon in writing by such holder  
14 and the Debtor (or, if after the Effective Date, the Disbursing Agent); provided, that such treatment  
15 shall not provide a return to such holder having a present value as of the Effective Date in excess of  
16 such holder's Allowed Administrative Claim; and provided, further that an Administrative Claim  
17 representing a liability incurred and payable in the ordinary course of business of the Estate shall be  
18 paid by the Debtor in the ordinary course of business.

19           2.       Fee Claims (Professionals). The Plan contemplates that Allowed Fee Claims  
20 will be paid in full by the Disbursing Agent. Specifically, on the applicable Plan Distribution Date,  
21 each holder of an Allowed Administrative Claim shall receive (i) the amount of such holder's  
22 Allowed Claim in Cash; or (ii) such other treatment as may be agreed upon in writing by such holder  
23 and the Debtor (or, if after the Effective Date, the Disbursing Agent); provided, that such treatment  
24 shall not provide a return to such holder having a present value as of the Effective Date in excess of  
25 such holder's Allowed Administrative Claim; and provided, further that an Administrative Claim  
26 representing a liability incurred and payable in the ordinary course of business of the Estate shall be  
27 paid by the Debtor in the ordinary course of business.

1                   3.     Priority Tax Claims. The Debtor anticipates that the estate will be obligated  
2 to satisfy certain tax claims entitled to priority under section 507(a)(8) of the Bankruptcy Code.  
3 Allowed Priority Tax Claims will be accorded the treatment specified in Article 5.3 of the Plan.  
4 Specifically, each Allowed Tax Claim shall, unless the holder of such Claim shall have agreed to  
5 different treatment of such Claim, receive deferred cash payments to the fullest extent permitted by  
6 section 1129(a)(9)(C) of the Bankruptcy Code with interest on the unpaid portion of such Claim at  
7 the statutory rate under applicable non-bankruptcy law or at a rate to be agreed upon by the Debtor  
8 and the appropriate governmental unit or, if they are unable to agree, to be determined by the  
9 Bankruptcy Court; provided, however, that the Debtor may elect in its sole discretion to pay any or  
10 all such Claims at any time, without premium or penalty, in which case the payment shall not  
11 include interest if paid on the Effective Date. The payment of each Allowed Tax Claim shall be  
12 made in equal quarterly installments with the first installment due on the latest of: (i) the first day  
13 following the end of the first full calendar quarter following the Effective Date, (ii) the first day  
14 following the end of the first full calendar quarter following the date an order allowing such Claim  
15 becomes a Final Order, and (iii) such other time or times as may be agreed with the holder of such  
16 Claim. Each installment shall include interest in accordance with section 511 of the Bankruptcy  
17 Code on the unpaid balance of the Allowed Tax Claim, without penalty of any kind, at the non-  
18 default rate of interest prescribed, agreed to or determined in accordance with the foregoing.

19                   **D. Treatment of Classified Claims and Interests**

20                   Article IV of the Plan sets forth the treatment of classified Claims and Interests. A summary  
21 of the treatment of classified Claims and Interests is also provided in the chart set forth above. As  
22 set forth in the Plan and previously herein, Classes 2 and 4 are impaired and are entitled to vote on  
23 the Plan. The classes of Claims against and Interests in the Debtor shall be treated under the Plan as  
24 follows:

25                   1.     Class 1 – Priority Claims.

26                   Each holder of an Allowed Priority Claim against the Debtor shall receive, in full satisfaction  
27 of such Allowed Priority Claim, on the applicable Plan Distribution Date, Cash in the amount of  
28 such holder's Allowed Priority Claim.

1                   2.       Class 2 – Prepetition Facility Claims.

2                   On the Effective Date, the Prepetition Facility Claims shall receive 100% of the Interests in  
3 the Reorganized Debtor.

4                   3.       Class 3 – Other Secured Claims.

5                   Except to the extent that a holder of an Allowed Other Secured Claim agrees to a different  
6 treatment, on the applicable Plan Distribution Date, each Allowed Other Secured Claim shall, at the  
7 option of the Disbursing Agent, (i) be reinstated and rendered unimpaired in accordance with section  
8 1124(2) of the Bankruptcy Code; (ii) receive Cash in an amount equal to such Allowed Other  
9 Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid  
10 pursuant to section 506(b) of the Bankruptcy Code; or (iii) receive the collateral securing its  
11 Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be  
12 paid pursuant to section 506(b) of the Bankruptcy Code, in each case, in full and complete  
13 satisfaction of such Allowed Other Secured Claim.

14                   4.       Class 4 – Unsecured Claims.

15                   Each holder of an Allowed Unsecured Claim shall receive, on the applicable Plan  
16 Distribution Date, its Pro Rata Share of the Exempt Assets Trust Beneficial Interests.

17                   5.       Class 5 – Preferred Interests.

18                   On the Effective Date, Preferred Interests shall be cancelled.

19                   6.       Class 6 – Common Interests.

20                   On the Effective Date, Common Interests shall be cancelled.

21       **E. Implementation of the Plan.**

22                   Article VII of the Plan provides the principal means for the implementation of the Plan. The  
23 Plan shall be implemented on the Effective Date as set forth in the Plan.

24                   1.       Operations Between the Confirmation Date and the Effective Date.

25                   During the period from the Confirmation Date through and until the Effective Date, the  
26 Debtor shall continue to operate its business as debtor in possession, subject to the oversight of the  
27 Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules and all orders of the  
28 Bankruptcy Court that are then in full force and effect.



1                   2.     The Reorganized Debtor.

2                   (a)     On the Effective Date, each of the following shall occur or shall be deemed to have  
3 occurred, as applicable, in the following order:

4                   (i)     The Exempt Assets Trust shall be formed in accordance with Section 7.3 of  
5 the Plan.

6                   (ii)    All of the Interests in the Debtor shall be cancelled and new Interests in the  
7 Reorganized Debtor shall be issued to the holders of the Prepetition Facility Claims free and clear of  
8 any and all Liens, Claims, and interests.

9                   (iii)   Except as otherwise set forth in the Plan, all of the Assets of the Debtor's  
10 Estate, other than Exempt Assets, shall revert in each such Debtor free and clear of any and all  
11 Liens, Claims, and interests other than the Liens granted in connection with the Exit Facility.

12                   (iv)    The Exit Facility shall become effective in accordance with its terms and shall  
13 grant the Exit Facility Agent the Exit Facility Liens in the Exit Facility Collateral; and

14                   (v)    The Reorganized Debtor shall draw on the Exit Facility an amount sufficient  
15 to satisfy all DIP Facility Claims and shall pay the proceeds of such draw to the DIP Agent in full  
16 satisfaction of the DIP Facility Claims. Upon full payment and satisfaction of all DIP Facility  
17 Claims, the DIP Liens shall be discharged.

18                   (b)    The Reorganized Debtor shall be deemed a Disbursing Agent under the Plan when  
19 making distributions to holders of Allowed Administrative Claims, Cure Claims, Allowed Priority  
20 Claims, Allowed Tax Claims, and Allowed Other Secured Claims.

21                   3.     Identification of Post-Effective Date Directors of the Reorganized Debtor.

22                   The identity of the directors of Reorganized Debtor will be provided in the Plan Supplement.

23                   4.     Exempt Assets Trust.

24                   (a)    Formation. Pursuant to section 1123(a)(5) of the Bankruptcy Code, on the Effective  
25 Date the Exempt Assets Trust shall be created pursuant to the Exempt Assets Trust Declaration. The  
26 Exempt Assets Trust Declaration shall constitute a Plan Document and shall only contain terms and  
27 conditions consistent with the Plan. Without limiting the generality of the foregoing, the Exempt  
28



1 Assets Trust Declaration shall require that all Cash Exempt Assets Trust Property, including the  
2 proceeds of the Exempt Assets, be applied in the following order:

- 3 i. First, paid in full satisfaction of any outstanding expenses arising from the  
4 administration of the Exempt Assets Trust;
- 5 ii. Second, retained as a reasonable reserve for the winding up of the affairs of  
6 the Exempt Assets Trust; and
- 7 iii. Third, ratably, paid to the holders of the Exempt Assets Trust Beneficial  
8 Interests.

9 (b) Exempt Assets Trustee. The Exempt Assets Trust shall be administered by the  
10 Exempt Assets Trustee. The terms of the compensation of the Exempt Assets Trustee shall be  
11 disclosed in the Plan Supplement. The Exempt Assets Trustee shall have the power to administer  
12 the assets of the Exempt Assets Trust in a manner consistent with the Exempt Assets Trust  
13 Declaration and the Plan and the Exempt Assets Trustee shall be the Estate representative designated  
14 to prosecute any and all Transferred Causes of Action. Without limiting the generality of the  
15 foregoing, the Exempt Assets Trustee shall (i) hold and administer the assets of the Exempt Assets  
16 Trust; (ii) have the sole power and authority to evaluate and determine strategy with respect to the  
17 Transferred Causes of Action and to litigate, settle, transfer, release or abandon any such Transferred  
18 Causes of Action on behalf of the Exempt Assets Trust; (iii) have authority to pay all out of pocket  
19 expenses incurred in connection with the prosecution of the Transferred Causes of Action from  
20 assets of the Exempt Assets Trust; (iv) have the power and authority to retain, as an expense of the  
21 Exempt Assets Trust, such attorneys, advisors, other professionals and employees as may be  
22 appropriate to perform the duties required of the Exempt Assets Trustee hereunder or in the Exempt  
23 Assets Trust Declaration; (vi) make distributions as provided in the Exempt Assets Trust Declaration  
24 and this Plan; and (vii) provide periodic reports and updates regarding the status of the  
25 administration of the Exempt Assets Trust. The Exempt Assets Trustee shall be deemed a  
26 Disbursing Agent under the Plan when making distributions to holders of Exempt Assets Trust  
27 Beneficial Interests pursuant to the Exempt Assets Trust Declaration.  
28

1 (c) Certain Amounts. During the period from the Confirmation Date to the Effective  
2 Date, the Debtor shall reimburse the Exempt Assets Trustee for the actual and necessary out-of-  
3 pocket expenses incurred by it (whether before or after the Confirmation Date) in preparing to  
4 assume its responsibilities under the Exempt Assets Trust Declaration in an aggregate amount not to  
5 exceed \$25,000.00.

6 (d) Transfer of Assets. On the Effective Date, the Exempt Assets and the Exempt Assets  
7 Trust Advance shall vest in the Exempt Assets Trust, free and clear of any and all Liens, Claims and  
8 other interests, exclusively for the benefit of the holders of Exempt Assets Trust Beneficial Interests  
9 on the terms and conditions set forth in the Plan and the Exempt Assets Trust Declaration.

10 (e) Purpose of the Exempt Assets Trust. The Exempt Assets Trust shall be established  
11 for the primary purpose of liquidating its assets in accordance with Treas. Reg. § 301.7701-4(d) with  
12 no objective to continue or engage in the conduct of a trade or business, except to the extent  
13 reasonably necessary to, and consistent with, the liquidating purpose of the Exempt Assets Trust.  
14 Accordingly, the Exempt Assets Trustee shall, in an expeditious but orderly manner, liquidate and  
15 convert to Cash the non-Cash Exempt Assets Trust Property, including the Transferred Causes of  
16 Action, make timely distributions to the holders of Exempt Assets Trust Beneficial Interests, and not  
17 unduly prolong the duration of the Exempt Assets Trust. The Exempt Assets Trust shall not be  
18 deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth  
19 herein or in the Exempt Assets Trust Declaration. The Exempt Assets Trust is intended to qualify as  
20 a “grantor trust” for federal income tax purposes with the holders of Exempt Assets Trust Interests  
21 treated as grantors and owners of the Exempt Assets Trust. As soon as practicable after the Effective  
22 Date, the Exempt Assets Trustee shall value the assets of the Exempt Assets Trust based on the good  
23 faith determination of the Exempt Assets Trustee. The valuation shall be used consistently by all  
24 parties for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute  
25 regarding such valuation.

26 (f) Termination of Exempt Assets Trust. The Exempt Assets Trust will terminate as  
27 soon as practicable, but not later than the fifth (5th) anniversary of the Effective Date; provided,  
28 however, that, within six months prior to the fifth (5th) anniversary of the Effective Date (or such

1 later date as may be permitted by order of the Bankruptcy Court as described in Subsection 7.3(f) of  
2 the Plan, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the  
3 Exempt Assets Trust for a finite period, if such an extension is necessary to liquidate the assets of  
4 the Exempt Assets Trust or for other good cause. Multiple extensions of the termination of the  
5 Exempt Assets Trust may be obtained so long as Bankruptcy Court approval is sought prior to the  
6 expiration of each extended term and the Exempt Assets Trustee receives an opinion of counsel or a  
7 favorable ruling from the Internal Revenue Service that any further extension would not adversely  
8 affect the status of the Exempt Assets Trust as a grantor trust for federal income tax purposes.

9 (g) Certain Obligations of the Debtor. The Reorganized Debtor shall cooperate in a  
10 commercially reasonable manner and in good faith with the Exempt Assets Trustee to assure that the  
11 Exempt Assets Trust has full and complete access to the Debtor's books and records in connection  
12 with its duty to prosecute the Transferred Causes of Action and object to Unsecured Claims.  
13 Without limiting the generality of the foregoing, the Reorganized Debtor shall (i) preserve all  
14 records and documents (including any electronic records and documents) related to the Transferred  
15 Causes of Action until the second (2nd) anniversary of the Effective Date, or if actions related to the  
16 Transferred Causes of Action remain pending as of such date, until the Exempt Assets Trustee  
17 notifies the Reorganized Debtor that such records are no longer required to be preserved; and (ii)  
18 provide the Exempt Assets Trustee with reasonable access to review and copy such records and  
19 documents.

20 (h) Certain Exculpations. The Exempt Assets Trustee, together with its agents and  
21 representatives, are exculpated pursuant to the Plan by all Persons, holders of Claims and other  
22 parties in interest, from any and all Causes of Action, arising out of the discharge of the powers and  
23 duties conferred upon the Exempt Assets Trustee by the Exempt Assets Trust Declaration, the Plan,  
24 any Final Order of the Bankruptcy Court entered pursuant to or in the furtherance of the Plan, or  
25 applicable law, except solely for actions or omissions arising out of the Exempt Assets Trustee's  
26 gross negligence or willful misconduct.

1                   5.       Corporate Action.

2                   Pursuant to section 1142 of the Bankruptcy Code, and any applicable provision of the  
3 business corporation law of the State of California or any other applicable state, the entry of the  
4 Confirmation Order shall constitute authorization for the Debtor and the Reorganized Debtor to take  
5 or cause to be taken all corporate and limited liability company actions necessary or appropriate to  
6 consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and  
7 all such actions taken or caused to be taken shall be deemed to have been authorized and approved  
8 by the Bankruptcy Court, including, without limitation: (a) the appointment of directors and officers  
9 in accordance with the Plan; and (b) the adoption of the Reorganized Debtor's Operating  
10 Agreements, which shall supersede the prior certificates of incorporation, articles of organization,  
11 limited liability company agreements, by-laws or other organizational documents, as appropriate, of  
12 the Reorganized Debtor. All such actions shall be deemed to have occurred and shall be in effect  
13 pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of  
14 further action by the members, stockholders, directors or managers of the Debtor, the Reorganized  
15 Debtor or any of its Affiliates. On the Effective Date, the appropriate officers, directors, members  
16 and managers of the Debtor and the Reorganized Debtor are authorized and directed to execute,  
17 deliver, record, or take such other action as is necessary to give effect to or otherwise implement the  
18 agreements, documents and instruments contemplated by the Plan in the name of and on behalf of  
19 the Debtor and/or the Reorganized Debtor, as applicable.

20                   6.       Exit Facility.

21                   On the Effective Date, the Reorganized Debtor shall enter into the Exit Facility, which shall  
22 provide, subject to the terms set forth in the Exit Facility Loan Documents, financing to the  
23 Reorganized Debtor for general corporate purposes, including but not limited to the Plan  
24 Distributions, and to pay any amounts then due under the DIP Facility.

25                   7.       Transferred Causes of Action.

26                   Nothing in the Plan or otherwise shall impair, modify, impede, compromise or limit the  
27 ability of the Exempt Assets Trust to investigate and prosecute the Transferred Causes of Action and  
28 all such Causes of Action are expressly preserved notwithstanding the occurrence of the Effective

1 Date. No Person may rely on the absence of a specific reference in the Plan or the Disclosure  
2 Statement to any Transferred Cause of Action against them as any indication that the Exempt Assets  
3 Trust will not pursue any and all available Causes of Action against them. The Exempt Assets Trust  
4 expressly reserves all rights to prosecute any and all Transferred Causes of Action against any  
5 Person at any time and for any reason. The Exempt Assets Trust reserves all Transferred Causes of  
6 Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res  
7 judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or  
8 otherwise) or laches, shall apply to such Causes of Action upon or after the confirmation or  
9 consummation of the Plan.

10 8. Other Causes of Action.

11 Except for the Transferred Causes of Action, the Released Causes of Action, and as  
12 otherwise specifically provided in the Plan or in a Final Order of the Bankruptcy Court, all Causes of  
13 Action of the Debtor and its Estate shall, upon the occurrence of the Effective Date, be vested in the  
14 Reorganized Debtor. Except as otherwise provided in the Plan, the rights of the Reorganized Debtor  
15 to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the  
16 occurrence of the Effective Date.

17 No Person may rely on the absence of a specific reference in the Plan or the  
18 Disclosure Statement to any Cause of Action against them as any indication that the Reorganized  
19 Debtor will not pursue any and all available Causes of Action against them. The Reorganized  
20 Debtor expressly reserves all rights to prosecute any and all Causes of Action (other than the  
21 Transferred Causes of Action and Released Causes of Action) against any Person. Other than  
22 Causes of Action expressly waived, relinquished, exculpated, released, compromised or settled in the  
23 Plan or a Final Order, the Debtor expressly reserves all Causes of Action (other than the Transferred  
24 Causes of Action), for later adjudication, and, therefore, no preclusion doctrine, including the  
25 doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial,  
26 equitable or otherwise) or laches, shall apply to such Causes of Action upon or after the confirmation  
27 or consummation of the Plan.  
28

1                   9.       Sources of Cash for Plan Distributions.

2                   All Cash necessary for the Reorganized Debtor to make Plan Distributions in the  
3 Reorganized Debtor's capacity as Disbursing Agent in respect of Allowed Administrative Claims,  
4 Allowed Cure Claims, Allowed Priority Claims, Allowed Tax Claims, and Allowed Other Secured  
5 Claims shall be obtained from Cash on hand or from the Exit Facility. All Cash necessary for the  
6 Exempt Assets Trustee to make payments and Plan Distributions in its capacity as Disbursing Agent  
7 to holders of Exempt Assets Trust Beneficial Interests shall be obtained from the Exempt Assets  
8 Trust Property in accordance with the terms of the Exempt Assets Trust Declaration.

9                   All liabilities and expenses accrued by the Reorganized Debtor on and after 12:00 a.m.  
10 Pacific Time on the Effective Date shall be the obligations of the Reorganized Debtor and  
11 enforceable in accordance with applicable law.

12                   10.       Reinstatement and Continuation of Insurance Policies.

13                   From and after the Effective Date, each of the Debtor's insurance policies in existence  
14 immediately prior to the Effective Date shall be reinstated (or replaced by a like policy) and  
15 continued in accordance with its terms and shall, to the extent applicable, be deemed assumed by the  
16 Reorganized Debtor pursuant to section 365 of the Bankruptcy Code.

17                   **F.       Executory Contracts.**

18                   Article XII of the Plan sets forth procedures governing the assumption and rejection of the  
19 Debtor's executory contracts and unexpired leases.

20                   1.       Assumption and Rejection of Executory Contracts and Unexpired Leases.

21                   (a)       On the Effective Date, all executory contracts and unexpired leases of the Debtor  
22 shall be treated pursuant to the provisions of section 365 of the Bankruptcy Code, as follows: (i)  
23 each contract and lease listed in the schedule of Rejected Executory Contracts and Unexpired  
24 Leases, which schedule shall be in form and substance satisfactory to the Debtor, the Prepetition  
25 Agent and the Exit Facility Agent, shall be rejected; (ii) each contract and lease listed in the schedule  
26 of Assumed Executory Contracts and Unexpired Leases, which schedule shall be in form and  
27 substance satisfactory to the Debtor, the Prepetition Agent and the Exit Facility Lenders, shall be  
28 assumed. The Debtor shall file the schedule of Assumed Executory Contracts and Unexpired Leases

1 and the schedule of Rejected Executory Contracts and Unexpired Leases with the Plan Supplement.  
2 The Debtor shall use commercially reasonable good faith efforts to identify all executory contracts  
3 and unexpired leases subject to rejection in the schedule of Rejected Executory Contracts and  
4 Unexpired Leases. If an executory contract or unexpired lease is omitted from the schedule of  
5 Rejected Executory Contracts and Unexpired Leases and is not included in the schedule of Assumed  
6 Executory Contracts and Unexpired Leases, such executory contract or unexpired lease shall,  
7 nonetheless be deemed rejected pursuant to the terms of Plan Article XII, except for any executory  
8 contract or unexpired lease that (i) has previously been assumed or rejected pursuant to order of the  
9 Bankruptcy Court; (ii) is the subject of a separate motion to assume or reject filed by the Debtor  
10 pursuant to section 365 of the Bankruptcy Code before the Confirmation Date; or (iii) is the subject  
11 of a dispute over the amount or manner of cure pursuant to Section 12.2 of the Plan and for which  
12 the Debtor makes a motion to reject such contract or lease based upon the existence of such dispute  
13 filed at any time.

14 (b) Any non-Debtor counterparty to an agreement being assumed hereunder that disputes  
15 (i) the amount of any cure payments; (ii) the Reorganized Debtor's ability to provide adequate  
16 assurance of future performance; or (iii) any other matter pertaining to the assumption or assignment  
17 of such agreement must file with the Bankruptcy Court, and serve upon the Debtor, a written  
18 objection (an "Assumption Objection"), which objection shall set forth the basis for the dispute by  
19 no later than 14 days prior to the Confirmation Hearing. If a non-Debtor counterparty fails to file  
20 and serve an Assumption Objection, the non-Debtor counterparty shall be deemed to have waived  
21 any and all objections to the assumption of the relevant agreement as proposed by the Debtor,  
22 including the lack of any cure obligations.

23 (c) The Plan shall constitute a motion to assume or reject such executory contracts and  
24 unexpired leases set forth in 12.1(a), and the Debtor shall have no liability thereunder except as is  
25 specifically provided in the Plan. The Debtor reserves the right to amend, with the consent of the  
26 Prepetition Agent and the Exit Facility Agent, the schedule of Rejected Executory Contracts and  
27 Unexpired Leases and the schedule of Assumed Executory Contracts and Unexpired Leases on or  
28 prior to the Confirmation Date to delete any executory contract or unexpired lease therefrom or add



1 any executory contract or unexpired lease thereto, in which event such executory contract(s) and  
2 unexpired lease(s) shall be deemed to be, respectively, assumed or rejected by the Debtor pursuant to  
3 Plan Article XII. The Debtor shall provide notice of any amendments to the schedule of Rejected  
4 Executory Contracts and Unexpired Leases or the schedule of Assumed Executory Contracts and  
5 Unexpired Leases to (i) the Prepetition Agent and the Exit Facility Agent; and (ii) the non-Debtor  
6 parties to the executory contracts or unexpired lease affected thereby. The listing of a document on  
7 the schedule of Rejected Executory Contracts and Unexpired Leases or the schedule of Assumed  
8 Executory Contracts and Unexpired Leases shall not constitute an admission by the Debtor that such  
9 document is an executory contract or that the Debtor has any liability thereunder. Entry of the  
10 Confirmation Order by the clerk of the Bankruptcy Court shall constitute approval of the  
11 assumptions or rejections under Section 12.1 of the Plan pursuant to sections 365(a) and (b) of the  
12 Bankruptcy Code without further order of the Bankruptcy Court and a finding by the Bankruptcy  
13 Court that each such rejection or assumption is in the best interests of the Debtor and its Estate.

14 (d) Inclusion of a contract, lease or other agreement on the schedule of Rejected  
15 Executory Contracts and Unexpired Leases shall constitute adequate and sufficient notice that (i) any  
16 Claims arising thereunder or related thereto shall be treated as Unsecured Claims under the Plan; and  
17 (ii) the Debtor is no longer bound by, or otherwise obligated to perform, any such obligations,  
18 transactions, or undertakings relating thereto or arising thereunder.

19 2. Cure Claims.

20 To the extent that such Claims constitute monetary defaults, the Cure Claims associated with  
21 each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied,  
22 pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Claim in Cash on  
23 or after the Effective Date; or (2) on such other terms as are agreed to by the parties to such  
24 Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code,  
25 no Cure Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is  
26 an unresolved dispute regarding: (1) the amount of any Cure Claim; (2) the ability of the  
27 Reorganized Debtor or any assignee to provide “adequate assurance of future performance” (within  
28 the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3)



1 any other matter pertaining to assumption of such contract or lease, the payment of any Cure Claim  
2 required by section 365(b)(1) of the Bankruptcy Code shall be made following the resolution of such  
3 dispute by the parties or the entry of a Final Order resolving the dispute and approving the  
4 assumption. No sections or provisions of any Executory Contract or Unexpired Lease that purport to  
5 provide for additional payments, penalties, charges, rent acceleration or other financial  
6 accommodations in favor of the non-debtor third party thereto shall have any force and effect, and  
7 such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the  
8 Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code  
9 and/or applicable case law. Any Cure Claims under each executory contract and unexpired lease to  
10 be assumed under the Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code:  
11 (a) by payment of the cure amount listed on the schedule of Assumed Executory Contracts and  
12 Unexpired Leases in Cash on the Effective Date by the Disbursing Agent; or (b) on such other terms  
13 as agreed to by the Disbursing Agent and the non-Debtor counterparty to such executory contract or  
14 unexpired lease. In the event a non-Debtor counterparty files an Assumption Objection, the cure  
15 payments required by section 365(b)(1) of the Bankruptcy Code to such non-Debtor counterparty  
16 shall be made following the entry of a Final Order resolving the dispute and approving assumption  
17 or assignment, as applicable.

18 3. Claims Arising from Rejection, Expiration or Termination.

19 Claims created by the rejection of executory contracts and unexpired leases or the expiration  
20 or termination of any executory contract or unexpired lease prior to the Confirmation Date shall be  
21 Unsecured Claims and must be filed with the Bankruptcy Court and served on the Debtor or, if after  
22 the Effective Date, the Reorganized Debtor and the Exempt Assets Trustee: (a) in the case of an  
23 executory contract or unexpired lease rejected by the Debtor prior to the Confirmation Date, in  
24 accordance with the order rejecting such executory contract or unexpired lease; or (b) in the case of  
25 an executory contract or unexpired lease that (i) was terminated or expired by its terms prior to the  
26 Confirmation Date; or (ii) is rejected pursuant to the Plan, no later than thirty (30) days after the  
27 Confirmation Date. Any such Claims for which a proof of claim is not filed and served by the  
28 deadlines set forth herein will be forever barred from assertion and shall not be enforceable against

1 the Debtor or the Estate. Except as otherwise ordered by the Bankruptcy Court, all such Claims that  
2 are timely filed as provided herein shall be treated as Unsecured Claims under the Plan subject to  
3 objection by the Disbursing Agent. The Debtor will reject each of the Rejected Contracts except for  
4 any Assumed Contracts identified on Exhibit A to the Plan. The Debtor reserves the right to make  
5 additions to Exhibit A to the Plan up to 10 days prior to the date on which objections must be filed to  
6 the Plan with respect to the Confirmation Hearing. The Reorganized Debtor shall satisfy any Cure  
7 Obligations for the Assumed Contracts by making a Cash payment equal to the lesser of the amount:  
8 (a) set forth on Exhibit A to the Plan, (b) set forth in any other notice, motion or supplement to the  
9 Plan filed and served in connection with the Confirmation Hearing or as may be determined in an  
10 Assumption and Cure Order, or (c) agreed to in writing between the Reorganized Debtor and the  
11 non-debtor parties to such contracts or leases. Attached hereto as **Exhibit E** is a schedule of  
12 approved Cure Obligations. The Reorganized Debtor shall satisfy the Cure Obligations within ten  
13 (10) days from the date from which an Assumed Contract is assumed pursuant to section 365(b) of  
14 the Bankruptcy Code.

15 **G. Conditions to Confirmation and Effectiveness of the Plan.**

16 Article XI of the Plan identifies the conditions precedent to the confirmation and  
17 effectiveness of the Plan. For confirmation, they include:

18 (a) The clerk of the Bankruptcy Court shall have entered an order or orders in form and  
19 substance satisfactory to Debtor, the Exit Facility Agent and the Prepetition Agent (i) determining  
20 that all votes are binding and have been properly tabulated as acceptances or rejections of the Plan;  
21 (ii) confirming and giving effect to the terms and provisions of the Plan; (iii) determining that all  
22 applicable tests, standards and burdens in connection with the Plan have been duly satisfied and met  
23 by the Debtor and the Plan; (iv) approving the Plan Documents; and (v) authorizing the Debtor to  
24 (A) execute, enter into, and deliver the Plan Documents and (B) execute, implement, and take all  
25 actions otherwise necessary or appropriate to give effect to the transactions and transfers of Assets  
26 contemplated by the Plan and the Plan Documents; and  
27  
28

1 (b) The Exempt Assets Trust Declaration and all Plan and Confirmation Order provisions  
2 governing the Exempt Assets Trust Declaration are in a form and substance reasonably satisfactory  
3 to the Debtor and the Committee.

4 1. Conditions Precedent to the Effective Date.

5 The following are conditions precedent to the Effective Date, the satisfaction of which shall  
6 be determined in the discretion of the Prepetition Agent and the Exit Facility Agent:

7 (a) The Confirmation Order shall have been entered by the clerk of the  
8 Bankruptcy Court, in a form acceptable to the Debtor, the Prepetition Agent and the Exit  
9 Facility Agent, and the Confirmation Order shall be in full force and effect and not subject to  
10 any stay or injunction;

11 (b) The provisions of the Confirmation Order governing the Exempt Assets Trust  
12 Declaration are in a form and substance reasonably satisfactory to the Debtor and the  
13 Committee;

14 (c) All necessary consents, authorizations and approvals shall have been given for  
15 the transfers of property and the payments provided for or contemplated by the Plan,  
16 including satisfaction or waiver of all conditions to the obligations of the Debtor under the  
17 Plan and the Plan Documents;

18 (d) The Exit Facility shall have been approved by the Exit Facility Lender and all  
19 conditions to the availability of the Exit Facility other than the occurrence of the Effective  
20 Date have been satisfied or waived in accordance with the terms of the Exit Facility Credit  
21 Agreement;

22 (e) The Plan Documents, in each case in a form and substance acceptable to the  
23 Debtor, the Prepetition Agent and the Exit Facility Agent, shall be executed by the relevant  
24 parties thereto;

25 (f) All conditions to the effectiveness of the Exempt Assets Trust Declaration  
26 other than the occurrence of the Effective Date shall have been satisfied or waived;

27 (g) The Debtor shall have sufficient funds or the ability to obtain sufficient funds  
28 to make all the payments required to be made under the Plan as of the Effective Date; and

1 (h) All of the conditions in Section 11.2(a) through (g) of the Plan shall have  
2 occurred or otherwise be satisfied on or prior to December 1, 2015.

3 2. Waiver of Conditions.

4 The Debtor, with the consent of the Prepetition Agent and the Exit Facility Agent, may waive  
5 any one or more of the conditions set forth in Sections 11.1 or 11.2 of the Plan in a writing executed  
6 by it without notice or order of the Bankruptcy Court and without notice to any parties in interest;  
7 provided that the conditions precedent set forth in Section 11.1(b) and Section 11.2(b) of the Plan  
8 shall not be waived without the consent of the Committee.

9 3. Effect of Non-Occurrence of the Effective Date.

10 If the Effective Date shall not occur on or prior to December 1, 2015, absent the written  
11 consent of the Prepetition Agent and the Exit Facility Agent, the Plan shall be null and void and  
12 nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against the  
13 Debtor; (b) prejudice in any manner the rights of the Debtor, including any right to seek a further  
14 extension of the exclusivity periods under section 1121(d) of the Bankruptcy Code to the extent such  
15 rights have not otherwise been terminated; or (c) constitute an admission, acknowledgement, offer or  
16 undertaking by the Reorganized Debtor or any other party in interest.

17 Article VII of the Plan provides a list of conditions that must occur in order for the Plan to be  
18 confirmed. In addition, the Plan identifies conditions to the effectiveness of the Plan.

19 **H. Acceptance or Rejection of the Plan.**

20 Article VI of the Plan explains the process of accepting or rejecting the Plan.

21 1. Classes Entitled to Vote.

22 Except for Class 1 (Priority Claims) and Class 3 (Other Secured Claims) that are to be  
23 reinstated, all classes of Claims and Interests are entitled to vote on the Plan.

24 2. Presumed Acceptance or Rejection of the Plan.

25 Class 1 (Priority Claims) and Class 3 (Other Secured Claims) that are to be reinstated are  
26 unimpaired. Each holder of a Claim in such classes is presumed to have accepted the Plan pursuant  
27 to section 1126(f) of the Bankruptcy Code and is not entitled to vote to accept or reject the Plan.  
28

1 Class 5 – Preferred Interests and Class 6 – Common Interests are impaired but are deemed to have  
2 rejected the Plan.

3 3. Class Acceptance Requirement.

4 A class of Claims entitled to vote shall have accepted the Plan if it is accepted by at least  
5 two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims in such  
6 class that have voted on the Plan.

7 4. Cramdown.

8 The Plan shall be treated as a request that the Bankruptcy Court confirm the Plan in  
9 accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the  
10 requirements of section 1129(a)(8), on the basis that the Plan is fair and equitable and does not  
11 discriminate unfairly with respect to each class of Claims and Interests that is impaired under, and  
12 has not accepted, the Plan.

13 **I. Disbursing Agent**

14 Article VIII of the Plan describes the duties of the Disbursing Agent.

15 Upon the occurrence of the Effective Date, (a) the Reorganized Debtor shall be appointed to  
16 serve as the Disbursing Agent with respect to all Administrative Claims, Tax Claims, Priority  
17 Claims, Claims for cure of an executory contract or unexpired lease assumed pursuant to Article XII  
18 of the Plan, and Other Secured Claims; and (b) the Exempt Assets Trustee shall be appointed to  
19 serve as the Disbursing Agent with respect to holders of Exempt Assets Trust Beneficial Interests.  
20 Each of the Reorganized Debtor and the Exempt Assets Trustee, in their respective capacities as a  
21 Disbursing Agent, shall have all powers, rights, protections, obligations, and duties afforded or  
22 imposed upon the Disbursing Agent under the Plan, but solely with respect to those Claims and  
23 Interests on account of which the applicable Disbursing Agent is designated to make Plan  
24 Distributions under the Plan and Plan Documents.

25 1. Powers and Duties of the Disbursing Agent.

26 Pursuant to the terms and provisions of the Plan, each respective Disbursing Agent shall be  
27 empowered and directed to (a) take all steps and execute all instruments and documents necessary to  
28 make Plan Distributions on account of Allowed Claims and Interests; (b) comply with the Plan and

1 the obligations thereunder; (c) employ, retain, or replace professionals to represent it with respect to  
2 its responsibilities; (d) object to Claims and Interests as specified in the Plan, and prosecute such  
3 objections; (e) compromise and settle any issue or dispute regarding the amount, validity, priority,  
4 treatment, or Allowance of any Claim or Interest as provided in the Plan; (f) make annual and other  
5 periodic reports regarding the status of distributions under the Plan to the holders of Allowed Claims  
6 and Interests that are outstanding at such time, with such reports to be made available upon request  
7 to the holder of any Contested Claim or Interest; and (g) exercise such other powers as may be  
8 vested in the Disbursing Agent pursuant to the Plan, the Plan Documents or order of the Bankruptcy  
9 Court.

10 2. Exculpation of Disbursing Agent.

11 Except as otherwise provided in Section 8.2 of the Plan, the Disbursing Agent, together with  
12 its officers, directors, employees, agents, and representatives, are exculpated pursuant to the Plan by  
13 all Persons, holders of Claims and all other parties in interest, from any and all Causes of Action  
14 arising out of the discharge of the powers and duties conferred upon the Disbursing Agent (and each  
15 of its respective paying agents), by the Plan, any Final Order of the Bankruptcy Court entered  
16 pursuant to or in the furtherance of the Plan, or applicable law, except solely for actions or omissions  
17 arising out of the Disbursing Agent's willful misconduct or gross negligence. No holder of a Claim  
18 or representative thereof, shall have or pursue any Cause of Action (a) against the Disbursing Agent  
19 or its respective officers, directors, employees, agents, and representatives for making Plan  
20 Distributions in accordance with the Plan; or (b) against any holder of a Claim for receiving or  
21 retaining Plan Distributions as provided for by the Plan. Nothing contained in Section 8.2 of the  
22 Plan shall preclude or impair any holder of an Allowed Claim from bringing an action in the  
23 Bankruptcy Court against the Disbursing Agent to compel the making of Plan Distributions  
24 contemplated by the Plan on account of such Claim.

25 **J. Plan Distributions.**

26 As explained in Article IX of the Plan, the Disbursing Agent shall make all Plan  
27 Distributions in accordance with the terms of the Plan. In the event a Plan Distribution shall be  
28 payable on a day other than a Business Day, such Plan Distribution shall instead be paid on the

1 immediately succeeding Business Day, but shall be deemed to have been made on the date otherwise  
2 due. For federal income tax purposes, except to the extent a Plan Distribution is made in connection  
3 with reinstatement of an obligation pursuant to section 1124 of the Bankruptcy Code (including the  
4 Prepetition Facility Claims), a Plan Distribution will be allocated first to the principal amount of a  
5 Claim and then, to the extent the Plan Distribution exceeds the principal amount of the Claim, to the  
6 portion of the Claim representing accrued but unpaid interest.

7 1. Address for Delivery of Plan Distributions/Unclaimed Plan Distributions.

8 Subject to Bankruptcy Rule 9010, any Plan Distribution or delivery to a holder of an  
9 Allowed Claim shall be made at the address of such holder as set forth on the latest date of the  
10 following documents: (a) the Schedules; (b) the proof of Claim filed by such holder; (c) any notice  
11 of assignment filed with the Bankruptcy Court with respect to such Claim pursuant to Bankruptcy  
12 Rule 3001(e); and (d) any notice served on the Disbursing Agent by such holder giving details of a  
13 change of address. If any Plan Distribution is returned to the Disbursing Agent as undeliverable, no  
14 Plan Distributions shall be made to such holder unless the Disbursing Agent is notified of such  
15 holder's then current address within ninety (90) days after such Plan Distribution was returned.  
16 After such date, if such notice was not provided, a holder shall have forfeited its right to receive such  
17 Plan Distribution and the undeliverable distribution shall automatically revert without restriction to  
18 the Disbursing Agent for distribution or other application in accordance with the provision of the  
19 Plan.

20 2. Distribution Record Date.

21 Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of any  
22 Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record  
23 Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period  
24 provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution  
25 Record Date. The Disbursing Agent will have no obligation to recognize the transfer or sale of any  
26 Claim that occurs after 4:00 p.m. (Pacific Time) on the Distribution Record Date and will be entitled  
27 for all purposes herein to recognize and make distributions only to those holders who are holders of  
28 such Claims as of the close of business on the Distribution Record Date.



1                   3.       De Minimis Plan Distributions.

2                   No Plan Distribution of less than twenty-five dollars (\$25.00) shall be made by the  
3 Disbursing Agent to the holder of any Claim unless a request therefor is made in writing to the  
4 Disbursing Agent within ninety (90) days of the Effective Date. Each Plan Distribution of less than  
5 twenty-five dollars (\$25.00) as to which no request is made as provided in Section 9.4 of the Plan  
6 shall automatically revert without restriction to the Disbursing Agent on the ninety-first (91st) day  
7 after the Effective Date for distribution or other application in accordance with the terms of the Plan.

8                   4.       Time Bar to Cash Payments.

9                   Checks issued in respect of Allowed Claims shall be null and void if not negotiated within  
10 one hundred and eighty (180) days after the date of issuance thereof. Requests for reissuance of any  
11 voided check shall be made directly to the Disbursing Agent by the Person to whom such check was  
12 originally issued. Any claim in respect of such a voided check shall be made within thirty days (30)  
13 days after the date upon which such check was deemed void. If no request is made as provided in  
14 the preceding sentence, any claims in respect of such voided check shall be discharged and forever  
15 barred and such unclaimed Plan Distribution shall revert without restriction to the Disbursing Agent  
16 for distribution or other application in accordance with the terms of the Plan.

17                   5.       Manner of Payment Under the Plan.

18                   Unless the Person receiving a Plan Distribution agrees otherwise, any Plan Distribution to be  
19 made in Cash under the Plan shall be made, at the election of the Disbursing Agent, by check drawn  
20 on a domestic bank or by wire transfer from a domestic bank. Cash payments to foreign creditors  
21 may, in addition to the foregoing, be made at the option of the Disbursing Agent in such funds and  
22 by such means as are necessary or customary in a particular foreign jurisdiction.

23                   6.       Special Provisions Regarding Insured Claims.

24                   Distributions under the Plan to each holder of an Allowed Insured Claim shall be in  
25 accordance with the treatment provided under the Plan for the Class in which such Allowed Insured  
26 Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from  
27 proceeds payable to the holder thereof under any pertinent insurance policies and applicable law.  
28 Nothing in Section 9.8 of the Plan shall constitute a waiver of any Claims, obligations, suits,



1 judgments, damages, demands, debts, rights, Causes of Action or liabilities that any Person may hold  
2 against any other Person, including the Debtor's insurance carriers.

3 **K. Procedures for Resolving and Treating Contested Claims.**

4 1. Objection Deadline.

5 The Disbursing Agent and Exempt Assets Trustee, as applicable, shall file objections to  
6 Claims with the Bankruptcy Court as soon as practicable but in any event not later than (a) the date  
7 that is one hundred and eighty (180) days after the Effective Date; or (b) such later date as may be  
8 established by order of the Bankruptcy Court upon motion of the Disbursing Agent or Exempt  
9 Assets Trustee, as applicable, provided that the Exempt Assets Trustee shall be permitted in his  
10 discretion to allow Unsecured Claims prior to the Objection Deadline. The Disbursing Agent and  
11 Exempt Assets Trustee, as applicable, shall serve any objection to a Claim upon the holder of the  
12 Claim to which the Disbursing Agent or Exempt Assets Trustee, as applicable, objects. For the  
13 avoidance of doubt, except as provided in Section 4.1(c) and Section 7.3 of the Plan, the Exempt  
14 Assets Trustee shall have the sole and exclusive authority to object to Unsecured Claims.

15 2. Tort Claims.

16 After the Effective Date, at the Exempt Assets Trustee's option, any unliquidated Tort  
17 Claim (as to which a proof of Claim was timely filed) not resolved through Final Order of the  
18 Bankruptcy Court or as agreed to by the holder of such unliquidated Tort Claim and the Exempt  
19 Assets Trustee, shall be (a) determined and liquidated in the administrative or judicial tribunal(s) in  
20 which it is pending on the Effective Date or, if no action was pending on the Effective Date, in any  
21 administrative or judicial tribunal of appropriate jurisdiction; (b) estimated, pursuant to section  
22 502(c) of the Bankruptcy Code, in a proceeding before the United States District Court for the  
23 Northern District of California; or (c) resolved through an alternative dispute resolution program  
24 approved by the Bankruptcy Court after notice and a hearing. The Exempt Assets Trustee may  
25 exercise any of the above options by service upon the holder of the applicable Tort Claim of a notice  
26 informing the holder of such Tort Claim that the Exempt Assets Trustee has exercised such option.  
27 Upon the Exempt Assets Trustee's service of such notice, the injunction set forth in Section 14.7 and  
28 the automatic stay imposed by operation of section 362 of the Bankruptcy Code, shall be deemed

1 modified, without the necessity for further Bankruptcy Court approval, solely to the extent necessary  
2 to allow the parties to determine or liquidate the Tort Claim in the applicable administrative or  
3 judicial tribunal(s). Notwithstanding the foregoing, at all times prior to or after the Effective Date,  
4 the Bankruptcy Court shall retain jurisdiction relating to Tort Claims, including the Exempt Assets  
5 Trustee's rights to have such Claims determined and/or liquidated in the Bankruptcy Court (or the  
6 United States District Court having jurisdiction over the Chapter 11 Case) pursuant to section  
7 157(b)(2)(B) of title 28 of the United States Code, as may be applicable. Any Tort Claim  
8 determined and liquidated pursuant to a judgment obtained in accordance with Section 10.2 of the  
9 Plan and applicable non-bankruptcy law that is no longer appealable or subject to review shall be  
10 deemed an Allowed Claim, as applicable, in Class 5 in such liquidated amount, provided that only  
11 the amount of such Allowed Claim that is less than or equal to the Debtor's self-insured retention or  
12 deductible in connection with any applicable insurance policy and that cannot be satisfied from  
13 proceeds of insurance payable to the holder of such Allowed Claim under the Debtor's insurance  
14 policies shall be treated as an Allowed Claim for the purposes of distributions under the Plan. In the  
15 event a Tort Claim is determined and liquidated pursuant to a judgment or order that is obtained in  
16 accordance with Section 10.2 of the Plan and is no longer appealable or subject to review, and  
17 applicable non-bankruptcy law provides for no recovery against the Debtor, such Tort Claim shall be  
18 deemed expunged without the necessity for further Bankruptcy Court approval upon the Exempt  
19 Assets Trustee's service of a copy of such judgment or order upon the holder of such Tort Claim.  
20 Nothing contained in this section shall constitute or be deemed a waiver of any Claim, right or Cause  
21 of Action that the Debtor or the Exempt Assets Trust may have against any Person in connection  
22 with or arising out of any Tort Claim, including but not limited to any rights under section 157(b)(5)  
23 of title 28 of the United States Code. All Claims, demands, rights, defenses and Causes of Action  
24 that the Debtor or the Exempt Assets Trust may have against any Person in connection with or  
25 arising out of any Tort Claim are expressly retained and preserved.

26 3. Prosecution of Contested Claims.

27 Subject to other provisions of the Plan governing authority and standing to object to Claims  
28 and Interests, the Disbursing Agent may object to the Allowance of Claims and Interests filed with

1 the Bankruptcy Court with respect to which liability is disputed in whole or in part. All objections  
2 that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and  
3 settled in accordance with Section 10.5 of the Plan.

4 4. Authority to Amend Schedules.

5 After the Effective Date, without approval of the Bankruptcy Court, (a) the Reorganized  
6 Debtor will have authority to amend the Schedules with respect to any Other Secured Claim, Tax  
7 Claim or Priority Claim and (b) the Exempt Assets Trustee will have the authority to amend the  
8 Schedules with respect to any Unsecured Claim. The Disbursing Agents will have authority to make  
9 distributions based on such amended Schedules without approval of the Bankruptcy Court. If any  
10 such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of  
11 a Claim, the holder of such Claim shall be provided with notice of such amendment and such holder  
12 shall have 21 days to file an objection to such amendment with the Bankruptcy Court. If no such  
13 objection is filed, the Disbursing Agents may proceed with distributions based on such amended  
14 Schedules without approval of the Bankruptcy Court.

15 5. Claims Settlement.

16 Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019,  
17 from and after the Effective Date, the Disbursing Agent shall have authority to settle or compromise  
18 all Claims and Causes of Action, subject to the other provisions of the Plan, without further review  
19 or approval of the Bankruptcy Court.

20 6. Entitlement to Plan Distributions upon Allowance.

21 Notwithstanding any other provision of the Plan, no Plan Distribution shall be made with  
22 respect to any Claim to the extent it is a Contested Claim, unless and until such Contested Claim  
23 becomes an Allowed Claim. When a Claim that is not an Allowed Claim as of the Effective Date  
24 becomes an Allowed Claim (regardless of when) the holder of such Allowed Claim shall thereupon  
25 become entitled to receive the Plan Distributions in respect of such Claim, the same as though such  
26 Claim had been an Allowed Claim on the Effective Date.

1           **L.     Retention of Jurisdiction**

2           Article XIII of the Plan sets forth the rules for the Bankruptcy Court’s retention of  
3 jurisdiction.

4                   1.     Scope of Retention of Jurisdiction.

5           Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall  
6 retain and shall have exclusive jurisdiction over any matter (a) arising under the Bankruptcy Code;  
7 or (b) arising in or related to the Chapter 11 Case or the Plan, including the following:

- 8                   (i)     To hear and determine any and all motions or applications pending on the  
9 Confirmation Date or thereafter brought in accordance with Article XII hereof  
10 for the assumption, assumption and assignment or rejection of executory  
11 contracts or unexpired leases to which the Debtor is a party or with respect to  
12 which the Debtor may be liable, and to hear and determine any and all Claims  
13 and any related disputes (including the exercise or enforcement of setoff or  
14 recoupment rights, or rights against any third party or the property of any third  
15 party resulting therefrom or from the expiration, termination or liquidation of  
16 any executory contract or unexpired lease);
- 17                   (ii)    To determine any and all adversary proceedings, applications, motions, and  
18 contested or litigated matters that may be pending on the Effective Date or  
19 that, pursuant to the Plan, may be instituted by the Prepetition Agent, the Exit  
20 Facility Agent, the Disbursing Agent, the Exempt Assets Trustee or the  
21 Reorganized Debtor, as applicable, after the Effective Date;
- 22                   (iii)   To hear and determine any objections to the Allowance of Claims, whether  
23 filed, asserted, or made before or after the Effective Date, including to hear  
24 and determine any objections to the classification of any Claim and to allow,  
25 disallow or estimate any Contested Claim in whole or in part;
- 26                   (iv)   To issue such orders in aid of execution of the Plan to the extent authorized or  
27 contemplated by section 1142 of the Bankruptcy Code;
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- (v) To consider any modifications of the Plan, remedy any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
- (vi) To hear and determine all Fee Applications and applications for allowances of compensation and reimbursement of any other fees and expenses authorized to be paid or reimbursed under the Plan or the Bankruptcy Code;
- (vii) To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with the Chapter 11 Case, the Plan, the Plan Documents or their interpretation, implementation, enforcement, or consummation, including any disputes that may arise under Article VII of the Plan;
- (viii) To hear and determine all controversies, suits, and disputes that may relate to, impact upon, or arise in connection with the Confirmation Order (and all exhibits to the Plan) or its interpretation, implementation, enforcement, or consummation;
- (ix) To the extent that Bankruptcy Court approval is required, to consider and act on the compromise and settlement of any Claim or Cause of Action by, on behalf of, or against the Estate;
- (x) To determine such other matters that may be set forth in the Plan, or the Confirmation Order, or that may arise in connection with the Plan, or the Confirmation Order;
- (xi) To hear and determine matters concerning state, local, or federal taxes, fines, or penalties, or additions to taxes or other obligations for which the Debtor, the Exempt Assets Trustee, or the Disbursing Agent may be liable, directly or indirectly, in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

- 1 (xii) To hear and determine all controversies, suits, and disputes that may relate to,  
2 impact upon, or arise in connection with any setoff and/or recoupment rights  
3 of the Debtor or any Person under the Plan;
- 4 (xiii) To hear and determine all controversies, suits, and disputes that may relate to,  
5 impact upon, or arise in connection with Causes of Action of the Debtor  
6 (including Avoidance Actions and Transferred Causes of Action) commenced  
7 by the Debtor, the Exempt Assets Trustee, or the Disbursing Agent, or any  
8 third parties, as applicable, before or after the Effective Date;
- 9 (xiv) To enter an order or final decree closing the Chapter 11 Case;
- 10 (xv) To issue injunctions, enter and implement other orders or take such other  
11 actions as may be necessary or appropriate to restrain interference by any  
12 Person with consummation, implementation or enforcement of the Plan or the  
13 Confirmation Order; and
- 14 (xvi) To hear and determine any other matters related hereto and not inconsistent  
15 with chapter 11 of the Bankruptcy Code.

16 2. Failure of the Bankruptcy Court to Exercise Jurisdiction.

17 If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is  
18 otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11  
19 Case, including the matters set forth in Section 13.1 of the Plan, the provisions of Plan Article XIII  
20 shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any  
21 other court having jurisdiction with respect to such matter.

22 **M. Settlement, Release, Injunction and Related Provisions**

23 1. Satisfaction of Claims.

24 Except as set forth in Section 4.1(b) of the Plan, (1) the rights afforded in the Plan and the  
25 treatment of all Claims herein shall be in exchange for and in complete satisfaction, discharge, and  
26 release of all Claims of any nature whatsoever against the Debtor, the Estate or any of their  
27 respective Assets and (2) on the Effective Date, all Claims against the Debtor and the Estate shall be  
28 satisfied, discharged and released in full. Except as set forth in Section 4.1(b) of the Plan, all

1 Persons shall be precluded and forever barred from asserting against the Reorganized Debtor, the  
2 Debtor, the Estate and any of their Assets any Claims or Causes of Action arising from any event,  
3 occurrence, condition, thing, act, omission, transaction, or other activity of any kind or nature that  
4 occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases  
5 therefor were known or existed prior to the Effective Date.

6 2. Release of Liens.

7 Except as set forth in Section 4.1(b) of the Plan, or in any contract, instrument, release, or  
8 other agreement or document created pursuant to the Plan, on the Effective Date and concurrently  
9 with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim,  
10 satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, Liens  
11 against any property of the Estate shall be fully released and discharged, and all of the right, title,  
12 and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security  
13 interests shall revert to the Reorganized Debtor and their successors and assigns.

14 3. Exculpation.

15 From and after the Effective Date, the Exculpated Parties will neither have nor incur any  
16 liability to any Person, and no holder of a Claim or Interest, no other party in interest and none of  
17 their respective Representatives, shall have any right of action against any Exculpated Party, for any  
18 act taken or omitted to be taken in connection with, related to, arising out of, or in any manner in  
19 contemplation of the Chapter 11 Case, or the events leading thereto, or the consideration,  
20 formulation, preparation, dissemination, implementation, confirmation or consummation of the  
21 Chapter 11 Case, any document or agreement related thereto, the Plan, the exhibits to the Plan, the  
22 Disclosure Statement, any transaction proposed in connection with or in contemplation of the  
23 Chapter 11 Case or the events leading thereto, or any contract, instrument, release or other  
24 agreement or document created or entered into or any other act taken or omitted to be taken, in  
25 connection therewith; provided, however, that the foregoing provisions will have no effect on: (a)  
26 the liability of any Person that would otherwise result from the failure to perform or pay any  
27 obligation or liability under the Plan or any contract, instrument, release or other agreement or  
28 document to be entered into or delivered in connection with the Plan or (b) the liability of any Person

1 that would otherwise result from any such act or omission to the extent that such act or omission is  
2 determined in a Final Order to have constituted gross negligence or willful misconduct.

3 4. Discharge of Claims and Termination of Interests.

4 Pursuant to section 1141(d) of the Bankruptcy Code, and, except as set forth in Section 4.1(b)  
5 of the Plan or in any contract, instrument, or other agreement or document created pursuant to the  
6 Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete  
7 satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests, and  
8 Causes of Action of any nature whatsoever, including any interest accrued from and after the  
9 Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights  
10 against, and interests in, the Debtor or any of its assets or properties, regardless of whether any  
11 property shall have been distributed or retained pursuant to the Plan on account of such Claims and  
12 Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date,  
13 any contingent or non-contingent liability on account of representations or warranties issued on or  
14 before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of  
15 the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of  
16 all Claims and Interests subject to the Effective Date occurring.

17 5. Release by Debtor.

18 As of the Effective Date, for good and valuable consideration, the Debtor and the  
19 Reorganized Debtor, on behalf of themselves and their Affiliates, the Estate and their respective  
20 successors, assigns and any and all entities who may purport to claim by, through, for or because of  
21 them will forever release, waive and discharge all Claims that they have, or had against any Released  
22 Party except with respect to any obligations arising under or in connection with the Plan, including  
23 in connection with any agreement, document, or contract entered into or delivered in connection  
24 with the Plan; provided that the foregoing provisions will have no effect on the liability of any  
25 Person that would otherwise result from any act or omission since the Petition Date to the extent that  
26 such act or omission is determined in a Final Order to have constituted willful misconduct.



1                   6.     Plan Injunction.

2                   On the Effective Date, all Persons who have been, are, or may be holders of Claims against  
3 or Interests in the Debtor shall be permanently enjoined from taking any of the following actions  
4 against or affecting the Reorganized Debtor, the Debtor, the Estate, the Assets, the Disbursing  
5 Agent, the Exempt Assets Trust, or any of their respective current or former members, directors,  
6 managers, officers, employees, agents, trustees, professionals or successors and assigns or their  
7 respective assets and property with respect to such Claims or Interests (other than actions brought to  
8 enforce any rights or obligations under the Plan):

- 9                   (i)     commencing, conducting or continuing in any manner, directly or indirectly,  
10                   any suit, action or other proceeding of any kind (including all suits, actions,  
11                   and proceedings that are pending as of the Effective Date, which must be  
12                   withdrawn or dismissed with prejudice);
- 13                   (ii)    enforcing, levying, attaching, collecting or otherwise recovering by any  
14                   manner or means, whether directly or indirectly, any judgment, award, decree  
15                   or order;
- 16                   (iii)   creating, perfecting or otherwise enforcing in any manner, directly or  
17                   indirectly, any encumbrance; and
- 18                   (iv)    asserting any setoff, right of subrogation or recoupment of any kind; provided,  
19                   that any defenses, offsets or counterclaims which the Debtor may have or  
20                   assert in respect of the above referenced Claims are fully preserved in  
21                   accordance with Section 15.11 of the Plan.

22                   In addition, the Confirmation Order will enjoin permanently the commencement or  
23 prosecution by any Person, whether directly, derivatively or otherwise, of any Claims released  
24 pursuant to the Plan.

1           **N. Miscellaneous Plan Provisions**

2                 1.       Payment of Statutory Fees.

3                 All fees payable pursuant to section 1930 of Title 28 of the United States Code, as  
4                 determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid by the Debtor on or  
5                 before the Effective Date.

6                 2.       Dissolution of Creditors' Committee.

7                 On the Effective Date, the Committee shall dissolve, and the members thereof shall be  
8                 released and discharged from all duties and obligations arising from or related to their membership,  
9                 provided, however, that (1) the Committee shall continue in existence and its Professionals shall  
10                continue to be retained with respect to any applications for allowance of compensation and  
11                reimbursement of expenses pending on the Effective Date or filed and served after the Effective  
12                Date pursuant to the terms of the Plan and (2) the Exempt Assets Trust shall be deemed the  
13                successor to the Committee with respect to any motions seeking to enforce the Plan and the  
14                transactions contemplated hereunder or the Confirmation Order and any pending appeals and related  
15                proceedings. The Professionals retained by the Committee and the respective members thereof shall  
16                not be entitled to assert any Fee Claims for any services rendered or expenses incurred on behalf of  
17                the Committee after the Effective Date, except for fees for time spent and expenses incurred in  
18                connection with any applications for allowance of compensation and reimbursement of expenses  
19                pending on the Effective Date or filed and served after the Effective Date pursuant to the terms of  
20                the Plan.

21                3.       Exemption from Transfer Taxes.

22                Pursuant to section 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of notes  
23                or equity securities under the Plan, the creation of any mortgage, deed of trust, Lien, pledge or other  
24                security interest, the making or assignment of any lease or sublease, or the making or delivery of any  
25                deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, shall not  
26                be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

1                   4.       Notice of Entry of Confirmation Order and Relevant Dates.

2                   Promptly upon entry of the Confirmation Order, the Debtor shall publish as directed by the  
3 Bankruptcy Court and serve on all known parties in interest and holders of Claims and Interests,  
4 notice of the entry of the Confirmation Order and all relevant deadlines and dates under the Plan,  
5 including, but not limited to, the deadline for filing notice of Administrative Claims, and the  
6 deadline for filing rejection damage Claims.

7                   5.       Interest and Attorneys' Fees.

8                   Interest accrued after the Petition Date will accrue and be paid on Claims only to the extent  
9 specifically provided for in the Plan, the Confirmation Order or as otherwise required by the  
10 Bankruptcy Court or by applicable law. No award or reimbursement of attorneys' fees or related  
11 expenses or disbursements shall be allowed on, or in connection with, any Claim, except as set forth  
12 in the Plan or as ordered by the Bankruptcy Court.

13                   6.       Modification of the Plan.

14                   As provided in section 1127 of the Bankruptcy Code, modification of the Plan may be  
15 proposed in writing by the Debtor, with the consent of the Prepetition Agent, the Prepetition  
16 Lenders, the Exit Facility Agent, and the Exit Facility Lenders, at any time before confirmation,  
17 provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the  
18 Bankruptcy Code, and the Debtor shall have complied with section 1125 of the Bankruptcy Code.  
19 The Debtor, with the consent of the Prepetition Agent and the Exit Facility Agent, may modify the  
20 Plan at any time after confirmation and before substantial consummation, provided that the Plan, as  
21 modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and the  
22 Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under section 1129 of  
23 the Bankruptcy Code, and the circumstances warrant such modifications. A holder of a Claim that  
24 has accepted the Plan shall be deemed to have accepted such Plan as modified if the proposed  
25 alteration, amendment or modification does not materially and adversely change the treatment of the  
26 Claim of such holder.

1                   7.       Setoff Rights.

2                   In the event that the Debtor has a Claim of any nature whatsoever against the holder of an  
3 Administrative Claim, Tax Claim, Priority Claim, Other Secured Claim, or Unsecured Claim, in  
4 each case against the Debtor accruing prior to the Effective Date, then the Disbursing Agent may,  
5 but is not required to, set off against the Claim (and any payments or other Plan Distributions to be  
6 made in respect of such Claim hereunder) against the Debtor's claim against such holder, subject to  
7 the provisions of sections 553, 556 and 560 of the Bankruptcy Code. Neither the failure to set off  
8 nor the Allowance of any Claim under the Plan shall constitute a waiver or release of any Claims  
9 that the Debtor may have against the holder of any Claim.

10                   8.       Compliance with Tax Requirements.

11                   In connection with the Plan, the Debtor, the Disbursing Agent, and the Exempt Assets  
12 Trustee, as applicable, shall comply with all withholding and reporting requirements imposed by  
13 federal, state, local, and foreign taxing authorities and all Plan Distributions hereunder shall be  
14 subject to such withholding and reporting requirements. Notwithstanding the above, each holder of  
15 an Allowed Claim that is to receive a Plan Distribution shall have the sole and exclusive  
16 responsibility for the satisfaction and payment of any tax obligations imposed by any government  
17 unit, including income, withholding and other tax obligations, on account of such Plan Distribution.  
18 The Disbursing Agent has the right, but not the obligation, to not make a Plan Distribution until such  
19 holder has made arrangements satisfactory to the Disbursing Agent for payment of any such tax  
20 obligations.

21                   9.       Binding Effect.

22                   The Plan shall be binding upon the Debtor, the holders of all Claims and all parties in interest  
23 and their respective successors and assigns. To the extent any provision of the Disclosure Statement  
24 or any other solicitation document may be inconsistent with the terms of the Plan, the terms of the  
25 Plan shall be binding and conclusive.

26                   **O.       Post Effective Date Employment and Compensation of Professionals.**

27                   After the Effective Date, the Reorganized Debtor, Disbursing Agent and Exempt Assets  
28 Trustee may retain any existing Professionals of the Committee or the Debtor without further

1 employment agreements or orders, whether on an hourly, contingency fee or other basis, and without  
2 requirement that such professionals file applications for payment of post-Effective Date fees and  
3 expenses.

4 V.

5 **TAX DISCLOSURE**

6 Implementation of the Plan may have federal, state, local and foreign tax consequences to the  
7 Debtor, creditors and Interest holders. No tax opinion has been sought or will be obtained with  
8 respect to any tax consequences of the Plan, and the following disclosure (the “Tax Disclosure”)  
9 does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.  
10 Rather, the Tax Disclosure is provided for informational purposes only.

11 Moreover, the Tax Disclosure summarizes only certain of the federal income tax  
12 consequences under the Internal Revenue Code of 1986, as amended associated with the Plan’s  
13 implementation, and does not attempt to comment on all such aspects of the Plan’s implementation.  
14 In addition, certain of the federal income tax consequences described in the Tax Disclosure are  
15 dependent on factual determinations that are subject to uncertainties. Similarly, the Tax Disclosure  
16 does not attempt to consider any facts or limitations applicable to any particular creditor or interest  
17 holder which may modify or alter the consequences described below. The Tax Disclosure also does  
18 not address state, local, or foreign tax consequences or the consequences of any federal tax other  
19 than the federal income tax. No assurance can be given that legislative, judicial, or administrative  
20 changes will not be forthcoming that would affect the accuracy of the discussion below. Any such  
21 changes could be material and could be retroactive with respect to the transactions entered into or  
22 completed prior to the enactment or promulgation thereof. Finally, the tax consequences of certain  
23 aspects of the Plan are uncertain due to a lack of applicable legal authority and may be subject to  
24 judicial or administrative interpretations that differ from the discussion below. The discussion  
25 contained in this Tax Disclosure is not binding on the IRS or any other governmental tax authority.

26 Creditors, therefore, are advised to consult with their own tax advisors regarding the tax  
27 consequences to them of the transactions contemplated by the Plan, including federal, state, local,  
28 and foreign tax consequences.

1           **A. Tax Consequences to the Reorganized Debtor**

2           As noted above, on the Effective Date, the Prepetition Lenders will own the Debtor through  
3 the issuance of new Interests in the Debtor, and all Estate property other than the Exempt Trust  
4 Assets shall vest in the Reorganized Debtor free and clear of all Liens, Claims and Interests. The  
5 Reorganized Debtor shall comply with its tax reporting and filing obligations with governmental  
6 authorities, as appropriate and proper under various tax laws and regulations to which it is subject.  
7 NewZoom, Inc. may recognize income or loss from the operations of the Debtor.

8           **B. Tax Consequences To Creditors**

9           Pursuant to the Plan, holders of allowed claims will receive beneficial interests in the Exempt  
10 Assets Trust in exchange for their Allowed Claims. Whether and the extent to which a payment to a  
11 creditor holding an Allowed Claim on account of such a beneficial interest is properly included in  
12 the holder's gross income will be determined by reference to the claim in respect of which the  
13 distribution is made. The holder may recognize ordinary income in respect of such payment if the  
14 claim is in respect of an item generating ordinary income, such as wages, to such holder. Similarly,  
15 if a claim is held as part of a trade or business, the holder of such claim may recognize ordinary loss  
16 to the extent that such holder's adjusted basis in the claim exceeds the amount received by such  
17 holder with respect to such claim. If a claim is held in respect of a capital asset, the holder may  
18 recognize a capital gain or loss. However, any distribution attributable to accrued but unpaid interest  
19 may be treated as ordinary income, regardless of whether the origin of the claim is capital in nature  
20 or whether gain or loss is otherwise recognized on the Claim.

21           EACH CREDITOR IS URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING  
22 THE CONSEQUENCES FOR SUCH CREDITOR OF THE TRANSACTIONS CONTEMPLATED  
23 BY THE PLAN.

24           **C. Tax Consequences to Holders of Interests**

25           Pursuant to the Plan, Interests will be cancelled on the Effective Date. In general, assuming  
26 that a holder has not previously treated the Interests as worthless for tax purposes, the holder should  
27 recognize a loss equal to the difference between the amount of consideration received by such holder  
28 (in this case, none) and the adjusted tax basis in the Interests of such holder.

1 EACH HOLDER OF AN INTEREST IS URGED TO CONSULT WITH ITS OWN TAX  
2 ADVISOR REGARDING THE CONSEQUENCES OF THE TRANSACTIONS  
3 CONTEMPLATED BY THE PLAN. THE FOREGOING IS INTENDED TO BE ONLY A  
4 SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF  
5 THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX  
6 PROFESSIONAL. THE FEDERAL, STATE AND LOCAL INCOME AND OTHER TAX  
7 CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN.  
8 SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL  
9 CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. ACCORDINGLY,  
10 EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH  
11 HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE AND LOCAL  
12 INCOME AND OTHER TAX CONSEQUENCES UNDER THE PLAN.

13 **VI.**

14 **LIQUIDATION ANALYSIS**

15 Pursuant to section 1129(a)(7) of the Bankruptcy Code, unless there is acceptance of the Plan  
16 by an impaired class, the Debtor must demonstrate, and the Bankruptcy Court must determine, with  
17 respect to such class, each holder of a Claim or Interest will receive property of a value, as of the  
18 Effective Date of the Plan that is not less than the amount that such holder would receive if the  
19 Debtor were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date of the Plan.  
20 This requirement is commonly referred to as the “Best Interests Test.” For the reasons set forth  
21 below, the Debtor submits that it easily satisfies the “Best Interests Test” and therefore should be  
22 approved.

23 As the Liquidation Analysis attached hereto as **Exhibit D** demonstrates, the Debtor estimates  
24 that in this chapter 11 case, General Unsecured Creditors will receive a dividend of [\_\_%] on  
25 Allowed Claims, whereas a chapter 7 dividend would be 0%. The Debtor believes there are a  
26 number of reasons why the recovery to creditors would be reduced in a Chapter 7 liquidation. First,  
27 in the absence of the Plan, the Prepetition Lenders and the DIP Lender will end up with a have a  
28 substantial superpriority administrative claim for the diminution of their collateral during the course

1 of the Chapter 11 case. Second, since the Debtor's assets are fully encumbered by the liens of the  
2 Prepetition Lenders and the DIP Lender, there will be no assets from which to generate a dividend  
3 for unsecured creditors in the absence of their agreement to provide some at Confirmation. Third,  
4 there would be no Exit Facility and, as a result, the DIP Facility (and its attendant collateral) would  
5 have to be accounted for. Additionally, there are the expenses of a chapter 7 trustee, who will also  
6 employ legal counsel and accountants, which would add additional administrative expenses that  
7 would be paid ahead of Class 4 (General Unsecured Creditors). The learning curve for the trustee,  
8 new counsel, and the new staff that would likely need to be hired due to the attrition caused by the  
9 appointment of a trustee, would simply increase expense and reduce the recoveries to creditors.

10 Because the Plan implements the priorities set forth in the Bankruptcy Code, each creditor  
11 will receive under the Plan proposed by the Debtor property of a value that is not less than the  
12 amount such creditor would receive in a chapter 7 case. The Plan proposed by the Debtor presents a  
13 better alternative to creditors than a chapter 7 liquidation because the Plan provides a certain  
14 recovery on Unsecured Claims.

## 15 VII.

### 16 RISK ANALYSIS

17 The Plan is conditioned on the Debtor's fulfillment of its responsibilities under the Plan  
18 together with the Exempt Assets Trustee's performance of its obligations, and the Bankruptcy  
19 Court's confirmation of the Plan. Although the Debtor currently expects that all of the events  
20 required under the Plan will be consummated, there is always a risk that an unforeseen development  
21 could affect either the confirmation or the implementation of the Plan or affect the transactions  
22 contemplated under the Plan after confirmation. In addition, the Plan contains several conditions  
23 precedent to the confirmation of the Plan and it is possible that one or more of these conditions may  
24 not be satisfied. Finally, while the Debtor believes that the Plan satisfies all of the confirmation  
25 requirements under section 1129 of the Bankruptcy Code, there is no guarantee that the Bankruptcy  
26 Court will concur with this analysis and necessarily confirm the Plan. In addition, recovery by  
27 unsecured creditors is tied directly to the Exempt Asset Trustee's ability to convert the Exempt Asset  
28



1 Trust's assets into cash proceeds, which amounts are presently unknown. Thus, the recovery by  
2 creditors may vary.

3 **VIII.**

4 **FEASIBILITY**

5 Section 1129(a)(11) of the Bankruptcy Code requires a finding that confirmation of the Plan  
6 is not likely to be followed by the liquidation, or the need for further reorganization, of the Debtor or  
7 any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in  
8 the Plan. As is set forth on the Debtor's Sources & Uses of Cash at Confirmation attached hereto as  
9 **Exhibit C**, the Debtor will have sufficient cash on hand to meet all of the Debtor's Effective Date  
10 obligations under the Plan. In addition, the Debtor's Post-Confirmation Budget (attached hereto as  
11 **Exhibit B**) establishes that the Reorganized Debtor will have adequate cash flow to fund its  
12 obligations under the Plan thereafter. Accordingly, the Plan proposed by the Debtor satisfies the  
13 requirements of section 1129(a)(11) and is "feasible."

14 **IX.**

15 **CONFIRMATION OF THE PLAN**

16 The Debtor will seek confirmation of the Plan at the Confirmation Hearing, pursuant to  
17 applicable provisions of the Bankruptcy Code. If the Plan is not confirmed by the Bankruptcy Court  
18 and consummated, the alternatives include (i) liquidation of the Debtor under chapter 7 or chapter 11  
19 of the Bankruptcy Code; or (ii) confirmation of an alternative plan of reorganization under chapter  
20 11 of the Bankruptcy Code. If the Plan is not confirmed, the Debtor will decide which alternative to  
21 pursue by weighing each of the available options and choosing the alternative or alternatives that are  
22 in the best interests of the Debtor, its Creditors and other parties in interest. However, the Debtor  
23 believes that the Plan, as proposed, provides the greatest possible return currently available for the  
24 holders of Claims in this chapter 11 case.

25 **X.**

26 **RECOMMENDATION AND CONCLUSION**

27 Based on the foregoing, the Debtor believes that the Plan is in the best interests of creditors  
28 and urges creditors to vote to accept the Plan.

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Dated: September 22, 2015

NEWZOOM, INC.

By /s/ John A. Lawrence  
John A. Lawrence  
Chief Executive Officer

Dated: September 22, 2015

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ John D. Fiero  
John D. Fiero  
Attorneys for NewZoom, Inc.,  
Debtor and Debtor in Possession

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**EXHIBIT A**  
**Plan**  
**[Filed Separately]**

**EXHIBIT B**  
**Post Confirmation Budget**  
**[To be included with Plan Supplement]**

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**EXHIBIT C**  
**Sources and Uses at Confirmation**  
**[To be included with Plan Supplement]**

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**EXHIBIT D**  
**Liquidation Analysis**  
**[To be included with Plan Supplement]**

**EXHIBIT E**  
**Schedule of Approved Cure Obligations**  
**[To be included with Plan Supplement]**

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