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- EXHIBIT A LIST OF ALL ASSETS**
- EXHIBIT B FINANCIAL STATEMENTS**
- EXHIBIT C UNEXPIRED LEASES/CONTRACTS TO BE ASSUMED**
- EXHIBIT D EXECUTORY CONTRACTS TO BE REJECTED**
- EXHIBIT E LIQUIDATION ANALYSIS**
- EXHIBIT F LIST OF ADMINISTRATIVE EXPENSE CLAIMS**
- EXHIBIT G LIST OF PRIORITY UNSECURED CLAIMS**
- EXHIBIT H LIST OF INVESTOR CLASS CLAIMS**
- EXHIBIT I LIST OF GENERAL UNSECURED CLAIMS**

1 **I. INTRODUCTION**

2 R&S St. Rose Lenders, LLC (“Debtor” or “Proponent”) is the Debtor in a Chapter 11
3 bankruptcy case. On April 4, 2011, Debtor commenced a bankruptcy case (the “Chapter 11
4 Case”) by filing its voluntary Chapter 11 petition under the United States Bankruptcy Code
5 (“Code”), 11 U.S.C. §101 *et seq.* Chapter 11 allows Debtor, and under some circumstances,
6 creditors and other parties in interest, to propose a plan of reorganization (“Plan”).
7

8 Debtor has prepared this Disclosure Statement (“Disclosure Statement”) in connection
9 with the solicitation of votes on the Plan proposed by Debtor to treat the Claims of Creditors
10 of Debtor. The Plan may provide for Debtor to reorganize by continuing to operate, to
11 liquidate by selling and distributing the assets of the estate, or a combination of both. Debtor
12 is the party proposing the Plan sent to you in the same envelope as this document.
13

14 **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE**
15 **STATEMENT FOR THE ENCLOSED PLAN.** Any exhibits to this Disclosure Statement
16 are incorporated into and are a part of this Disclosure Statement. The Plan is provided
17 concurrently with this Disclosure Statement. This is a reorganizing Plan. In other words, the
18 Proponent seeks to reorganize payments under the Plan as to various classes of claims.
19

20 **A. Purpose of This Document.**

21 The objective of a Chapter 11 case is the confirmation (i.e., approval by the
22 bankruptcy court) of a plan of reorganization. A plan describes in detail (and in language
23 appropriate for a legal contract) the means for satisfying the claims against a debtor. After a
24 plan has been filed, the holders of such claims that are impaired (as defined in Bankruptcy
25 Code Section 1124) are permitted to vote to accept or reject the plan. Before a debtor or other
26
27

1 plan proponent can solicit acceptances of a plan, Bankruptcy Code Section 1125 requires
2 Debtor or other plan proponent to prepare a disclosure statement containing adequate
3 information of a kind, and in sufficient detail, to enable those parties entitled to vote on the
4 plan to make an informed judgment about the plan and whether they should accept or reject
5 the plan.

6
7 The purpose of this Disclosure Statement is to provide sufficient information about
8 Debtor and the Plan to enable Creditors to make an informed decision in exercising their
9 rights to accept or reject the Plan. This Disclosure Statement will be used to solicit
10 acceptances of the Plan once approved by the Bankruptcy Court.

11
12 After the appropriate Persons have voted on whether to accept or reject the Plan, there
13 will be a hearing on the Plan to determine whether it should be confirmed. At the
14 Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the
15 various requirements of the Bankruptcy Code. The Bankruptcy Court will also receive and
16 consider a ballot summary which will present a tally of the votes of Classes accepting or
17 rejecting the Plan cast by those entitled to vote. Once confirmed, the Plan will be treated
18 essentially as a contract binding on all Creditors and other parties-in-interest in the Chapter 11
19 Case.
20

21 THIS DISCLOSURE STATEMENT IS NOT THE PLAN. FOR THE
22 CONVENIENCE OF CREDITORS, THE PLAN IS SUMMARIZED IN THIS
23 DISCLOSURE STATEMENT. ALL SUMMARIES ARE QUALIFIED IN THEIR
24 ENTIRETY BY THE PLAN ITSELF. IN THE EVENT OF ANY INCONSISTENCY
25
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1 BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN WILL
2 CONTROL.

3 **READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO**
4 **KNOW ABOUT:**

5 **(1) WHO CAN VOTE OR OBJECT;**

6 **(2) WHAT THE TREATMENT OF YOUR CLAIM IS, (i.e., what your Claim**
7 **will receive if the Plan is confirmed) AND HOW THIS TREATMENT**
8 **COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN**
9 **LIQUIDATION;**

10 **(3) THE HISTORY OF DEBTOR AND SIGNIFICANT EVENTS DURING**
11 **THE BANKRUPTCY;**

12 **(4) WHAT THINGS THE COURT WILL LOOK AT TO DECIDE**
13 **WHETHER OR NOT TO CONFIRM THE PLAN;**

14 **(5) WHAT IS THE EFFECT OF CONFIRMATION; AND**

15 **(6) WHETHER THE PLAN IS FEASIBLE.**

16
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18
19 This Disclosure Statement cannot tell you everything about your rights. You should
20 consider consulting your own lawyer to obtain more specific advice on how the Plan will
21 affect you and what is the best course of action for you.

22
23 Be sure to read the Plan as well as the Disclosure Statement. If there are any
24 inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will
25 govern.

1 The Code requires a Disclosure Statement to contain “adequate information”
2 concerning the Plan. Prior to setting a Confirmation Date, the Bankruptcy Court will have
3 approved this document as an adequate Disclosure Statement, containing enough information
4 to enable parties affected by the Plan to make an informed judgment about the Plan. Any
5 party can now solicit votes for or against the Plan.
6

7 **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing.**

8 THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN
9 DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS
10 OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT
11 LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON ALL
12 CREDITORS AND INTEREST HOLDERS IN THIS CASE.
13

14 **1. Time and Place of the Confirmation Hearing.**

15 The Bankruptcy Court will determine whether or not to confirm the Plan at the Plan
16 Confirmation Hearing assuming the Disclosure Statement is approved. The Plan Confirmation
17 Hearing will be held in the Foley Federal Building, 300 S. Las Vegas Blvd., Las Vegas, NV
18 89101. You will receive a second notice of hearing of the Plan Confirmation Hearing upon
19 approval of this Disclosure Statement.
20

21 **2. Deadline To Vote For or Against the Plan.**

22 If you are entitled to vote, it is in your best interest to timely vote on the enclosed
23 ballot and return the ballot in the enclosed envelope to Ghandi Deeter Law Offices, 601 South
24 6th Street, Las Vegas, NV 89101, attn.: Nedda Ghandi, Esq.
25
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1 Unless a different date is set by the Bankruptcy Court in the Order Approving
2 Disclosure Statement, your ballot must be received no later than ten (10) business days prior
3 to the Confirmation Hearing or it will not be counted.

4 **3. Deadline For Objecting to the Confirmation of the Plan.**

5 Unless a different date is set by the Court in the Order Approving Disclosure
6 Statement, objections to the Confirmation of the Plan must be filed with the Bankruptcy Court
7 and served upon Debtor's Counsel, Nedda Ghandi, Esq., within fourteen (14) business days
8 prior to the Confirmation Hearing.
9

10 **4. Identity of Person to Contact for More Information Regarding the Plan.**

11 Any interested party desiring further information about the Plan should contact
12 Debtor's Counsel, Nedda Ghandi, Esq., at the address, phone number or e-mail address set
13 forth on the first page of this document.
14

15 **C. Disclaimer**

16 Unless otherwise specifically noted, the financial information in this Disclosure
17 Statement has not been subject to audit. Instead, this Disclosure Statement was prepared from
18 information compiled from records maintained in the ordinary course of Debtor's operations.
19 Debtor has attempted to be accurate in the preparation of this Disclosure Statement. Other
20 than as stated in this Disclosure Statement, Debtor has not authorized any representations or
21 assurances concerning Debtor, their operations, or the value of their Assets. Therefore, in
22 deciding whether to accept or reject the Plan, you should not rely on any information relating
23 to Debtor or the Plan other than that contained in this Disclosure Statement or in the Plan
24 itself.
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1 The information contained in this Disclosure Statement is provided by Debtor and
2 Debtor's Counsel. Debtor represents that everything stated in the Disclosure Statement is true
3 to Debtor's best knowledge. The Bankruptcy Court has yet to determine whether or not the
4 Plan is confirmable and makes no recommendation as to whether or not you should support or
5 oppose the Plan.
6

7 **II. DEFINITIONS AND RULES OF INTERPRETATION**

8 **A. Terminology and Meanings.**

9 For the purposes of the Plan, any capitalized terms shall have the respective meanings
10 as set forth in the accompanying Plan, and set forth herein for convenience; such meanings to
11 be equally applicable to the singular and the plural forms of the terms defined, unless the
12 context otherwise requires.
13

14 **1. Definitions.**

15 1. "Administrative Claim" means a Claim for costs and expenses of administration,
16 pursuant to Bankruptcy Code Sections 503(b), 507(a)(2) or 507(b), including: (a) the actual
17 and necessary costs and expenses incurred after the Petition Dates and through the Effective
18 Date of preserving the Estates and operating the businesses of Debtor (such as wages, salaries,
19 or commissions for services, and payments for goods and services); (b) compensation and
20 reimbursement of expenses for legal, financial advisory, accounting, and other services,
21 including but not limited to, Allowed Professional Fees, pursuant to Bankruptcy Code
22 Sections 328, 330(a), or 331 or otherwise for the period commencing on the Petition Date and
23 ending on the Effective Date; (c) all fees and charges assessed against the Estates, pursuant to
24 chapter 123 of the Judicial Code and 28 U.S.C. § 1930; and (d) all Bankruptcy Court
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1 approved requests for compensation or expense reimbursement for making a substantial
2 contribution in the Chapter 11 Cases, pursuant to Bankruptcy Code Sections 503(b)(3), (4),
3 and (5).

4 2. “Administrative Claim Bar Date” means the deadline for filing requests for payment
5 of Administrative Claims, which shall be thirty (30) days after the Effective Date, except with
6 respect to Professional Fees, which shall be subject to the provisions set forth herein relating
7 to the treatment of Administrative Claims for Professional Fees.
8

9 3. “Allowed” means, with reference to any Claim, Equity Interest or Interest and with
10 respect to Debtor: (a) any Claim against or Interest in Debtor that has been listed by Debtor in
11 its Schedules, as such Schedules may be amended by Debtor from time to time in accordance
12 with Bankruptcy Rule 1009, as not disputed, contingent or unliquidated and for which no
13 contrary Proof of Claim or Interest has been Filed; (b) any Claim or Interest allowed (i) under
14 the Plan, (ii) by Final Order, or (iii) as to which the liability of Debtor and the amount thereof
15 are determined by a final order of a court of competent jurisdiction other than the Bankruptcy
16 Court; or (c) as to which a Proof of Claim has been timely Filed in a liquidated amount with
17 the Bankruptcy Court, pursuant to the Bankruptcy Code or any order of the Bankruptcy Court,
18 or has been Filed with leave of the Bankruptcy Court after notice and a hearing, provided that
19 no objection to the allowance of such Claim or motion to expunge such Claim has been
20 interposed by any party in interest before any final date for the filing of such objections or
21 motions set forth in the Plan, the Confirmation Order or other order of the Bankruptcy Court.
22 For purposes of determining the amount of an Allowed Claim, there shall be deducted
23 therefrom an amount equal to the amount of any valid and enforceable Claim that Debtor may
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1 hold against the Holder thereof, to the extent such Claim may be validly offset, recouped, or
2 otherwise reduced under applicable law. Unless the Bankruptcy Court has entered an order
3 disallowing all or part of a creditor's Claim prior to the deadline set by the Bankruptcy Court
4 for casting ballots to accept or reject Debtor's proposed Plan, creditor's votes will be counted
5 in the balloting process. This shall not impact Debtor's rights to object to said Claims after the
6 Confirmation Order is entered.
7

8 4. "Assets" means all of the assets, property, interests, and effects, Cash, receivables,
9 real and personal, tangible and intangible, wherever situated, of Debtor, as they existed on the
10 Effective Date or thereafter, including: (a) executory contracts and unexpired leases; and (b)
11 all of Debtor's other non-Cash property and assets, including all of the Causes of Action.
12

13 5. "Assumed Contracts" means any of Debtor's unexpired leases and executory
14 contracts existing on the Petition Date and any unexpired leases and executory contracts
15 entered into by Debtor post-petition which, prior to the Confirmation Date have been assumed
16 by Debtor pursuant to Bankruptcy Code Section 365, or are to be assumed by Debtor pursuant
17 to the Plan.
18

19 6. "Avoidance Actions" means any actions commenced, or that may be commenced
20 before or after the Effective Date, pursuant to Bankruptcy Code Sections 544, 545, 547, 548,
21 550 or 551.
22

23 7. "Bankruptcy Code" means Title 11 of the United States Code, as amended from
24 time to time, as applicable to this Chapter 11 Case.
25
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1 8. "Bankruptcy Court" means the United States Bankruptcy Court for the District of
2 Nevada, or such other court as may from time to time have jurisdiction over this Chapter 11
3 Case.

4 9. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as
5 heretofore or hereafter amended and the general, local and chambers rules and orders of the
6 Bankruptcy Court.
7

8 10. "Bar Date" means August 3, 2011, the date established by the Bankruptcy Court
9 by which non-governmental Creditors are required to file proofs of claim with respect to pre-
10 petition Claims including Claims asserted, pursuant to Bankruptcy Code Section 503(b)(9),
11 except with respect to Administrative Claims, Claims arising from the rejection of any
12 executory contracts and unexpired leases, and Claims that were scheduled by Debtor as
13 undisputed, noncontingent, and unliquidated; and October 1, 2011, by which governmental
14 Creditors are required to file proofs of claim with respect to pre-petition Claims, including but
15 not limited to Priority Tax Claims.
16

17 11. "Business Day" means a day, other than a Saturday, Sunday, or other day on
18 which commercial banks in Las Vegas, Nevada are authorized or required by law to close.
19

20 12. "Cash" means legal tender of the United States of America, which may be
21 conveyed by check or wire transfer.
22

23 13. "Causes of Action" means any Claim, Avoidance Action, appeal, cause of action,
24 controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability,
25 damage, judgment, account, defense, offset, power, privilege, license, and franchise of any
26 kind or character whatsoever, known, unknown, contingent or non-contingent, matured or
27

1 unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed,
2 secured or unsecured, assertable directly or derivatively, whether arising before, on or after
3 the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of
4 law.

5 14. "Chapter 11 Case" means the Chapter 11 case filed by Debtor as set forth in the
6 caption of the instant Disclosure Statement.

7 15. "Claim" has the meaning set forth in Bankruptcy Code Section 101(5).

8 16. "Claim Objection Deadline" means sixty (60) days from the entry of an order
9 confirming the Plan for all Claims, except for Claims for which a specific objection deadline
10 has been set forth elsewhere in the Plan.
11

12 17. "Claims Register" means the official register of Claims and Interests maintained
13 by Debtor.
14

15 18. "Class" means a class of Holders of Claims or Interests as described in Article III
16 of the Plan.
17

18 19. "Confirmation" means the entry by the Bankruptcy Court of the Confirmation
19 Order.
20

21 20. "Confirmation Date" means the date upon which the clerk of the Bankruptcy Court
22 enters the Confirmation Order on the docket of the Chapter 11 Case, within the meaning of
23 Bankruptcy Rules 5003 and 9021.

24 21. "Confirmation Funds" means all funds required to be disbursed, or deposited and
25 held for later disbursement upon allowance or other Bankruptcy Court authorization, on or as
26 of the Effective Date (i) to Holders of Allowed Professional Fee Claims, other Allowed
27

1 Administrative Claims, Allowed Priority Claims to be paid in Cash on the Effective Date, any
2 Allowed Priority Tax Claims other than Priority Tax Claims to be paid in deferred payments
3 pursuant to the Plan, Allowed Class 1 Claims, and Allowed Class 2 Claims, (ii) to the U.S.
4 Trustee for U.S. Trustee Fees due as of the Effective Date and (iii) for any other Distributions
5 and payment of costs and expenses in connection with consummating the Plan.
6

7 22. "Confirmation Hearing" means the hearing held by the Bankruptcy Court to
8 consider confirmation of the Plan pursuant to Bankruptcy Code Section 1129, as such hearing
9 may be adjourned or continued from time to time.

10 23. "Confirmation Order" means the order entered by the Bankruptcy Court
11 confirming the Plan in accordance with the Bankruptcy Code, which shall be in form and
12 substance reasonably acceptable to Debtor.
13

14 24. "Creditor" means a Holder of a Claim.

15 25. "Cure" means the payment of Cash by Debtor, or the Distribution of other
16 property and the performance of any other obligations as the parties may agree or the
17 Bankruptcy Court may order necessary to cure defaults under an executory contract or
18 unexpired lease of Debtor that are required to allow Debtor to assume, or to assume and
19 assign that contract or unexpired lease under Section 365(a) of the Bankruptcy Code, or under
20 the Plan.
21

22 26. "Cure Bar Date" means the deadline for filing requests for payment of Cure, which
23 shall be fifteen (15) days prior to the Confirmation Hearing.
24

25 27. "Debtor" shall mean R&S St. Rose Lenders, LLC.
26
27
28

1 28. "Debtor in Possession" mean Debtor, as debtor in possession in the Chapter 11
2 Case, pursuant to Bankruptcy Code Sections 1107 and 1108.

3 29. "Disallowed Claim" means any Claim or portion thereof that has been disallowed
4 by a Final Order of the Bankruptcy Court; provided, however, that any Order of the Court
5 disallowing all or a portion of a Claim shall be a Final Order irrespective of whether an appeal
6 is taken from such Order, unless a stay pending appeal is timely obtained.
7

8 30. "Disclosure Statement" means the solicitation and disclosure statement for the
9 Plan, including all exhibits and schedules thereto.

10 31. "Disputed Claim" means: (a) any Claim or portion of a Claim (including any
11 Administrative Claim, Priority Claim or other Secured Claim) listed in the Schedules as
12 disputed, contingent, or unliquidated; or (b) any Claim, as to which an objection to the
13 allowance thereof has been filed with the Bankruptcy Court within any time limitation fixed
14 by the Bankruptcy Code, the Bankruptcy Rules, the Plan or an order of the Bankruptcy Court,
15 which objection has not been settled, withdrawn, or determined, in whole or in part, by a Final
16 Order. Pursuant to United States Bankruptcy Court, District of Nevada, Local Rule 3007(d),
17 Debtor may file an objection to any Proof of Claim within sixty (60) days after the entry of an
18 order confirming the Plan.
19
20

21 32. "Distribution" means any distribution made by the Distribution Agent pursuant to
22 the terms of the Plan.
23

24 33. "Distribution Agent" means Debtor, or the Person or Entity chosen by Debtor to
25 make or to facilitate Distributions pursuant to the Plan.
26
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1 34. "Distribution Record Date" means the Confirmation Date unless the Bankruptcy
2 Court establishes a different date for the Distribution Record Date in the Confirmation Order.

3 35. "Effective Date" means the first Business Day on which the conditions specified
4 in Article XII of the Disclosure Statement have been satisfied in full or waived.

5 36. "Entity" has the meaning as set forth in Bankruptcy Code Section 101(15).

6
7 37. "Estate" means the estate of Debtor that was created by the commencement of the
8 Chapter 11 Case pursuant to Bankruptcy Code Section 541, and shall be deemed to include
9 any and all privileges and incorporeal hereditaments of Debtor and any and all interests in
10 property, whether real, personal or mixed, rights, Causes of Action, avoidance powers or
11 extensions of time that Debtor or the estate shall have had effective as of the Petition Date or
12 thereafter, whether by virtue of Bankruptcy Code Sections 544, 545, 546, 547, 548, 549 or
13 550 or otherwise.
14

15 38. "File" means to file a document with the Bankruptcy Court in the Chapter 11 Case.

16 39. "Final Decree" means an order of the Bankruptcy Court closing the Chapter 11
17 Case pursuant to Bankruptcy Code Section 350.

18
19 40. "Final Order" means, unless otherwise expressly stated in the Plan or the
20 Disclosure Statement an order or judgment entered by the Bankruptcy Court: (a) that has not
21 been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which (i)
22 any right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived,
23 or (ii) the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired
24 and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending; or
25 (b) as to which an appeal has been taken or petition for certiorari, review, reargument, stay or
26

1 rehearing has been filed, and (i) such appeal or petition for certiorari, review, reargument, stay
2 or rehearing has been resolved by the highest court to which the order or judgment was
3 appealed or from which certiorari, review, reargument, stay or rehearing was sought, and (ii)
4 the time to appeal further or seek certiorari, review, reargument, stay or rehearing has been
5 waived or expired and no such further appeal or petition for certiorari, review, reargument,
6 stay or rehearing is pending; provided, however, that (i) no order or judgment shall fail to be a
7 “Final Order” hereunder solely because of the possibility that a motion pursuant to Section
8 502(j) or 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure
9 or Bankruptcy Rule 9024 may be Filed with respect to such order or judgment; and (ii) any
10 order of the Bankruptcy Court shall become a Final Order irrespective of whether an appeal or
11 petition for certiorari, review, reargument, stay, or rehearing is taken from such order, unless a
12 stay pending appeal is timely obtained.
13
14

15 41. “General Unsecured Claims” means Claims that are the unsecured nonpriority
16 Claims that are not held by Lenders and that are listed in Debtor’s Schedules of Creditors
17 Holding Unsecured Nonpriority Claims that are not listed as disputed, contingent, or
18 unliquidated, unsecured nonpriority Claims that are not held by Lenders for which a Proof of
19 Claim has been Filed, and for which Debtor, or any other party-in-interest, has not Filed an
20 objection thereto, and unsecured nonpriority Claims that are not held by Lenders for which a
21 Proof of Claim has been Filed and to which an objection has been timely Filed, but where
22 such objection has been overruled by entry of a Final Order of the Court, thereby rendering
23 the Claim an Allowed Claim, all to the extent Allowed by the Court. ~~General Unsecured~~
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1 ~~Claims explicitly excludes the duplicative and moot Proofs of Claim 29 and 43 filed by~~
2 ~~Branch Banking and Trust Company.~~

3 42. "Holder" means any Person or Entity that is the owner of a Claim or Interest in the
4 Chapter 11 Case.

5 43. "Interest" means any: (i) any equity or other ownership interest in any Person or
6 Entity, including, but not limited to, all issued and outstanding or reserved for issuance,
7 common stock, preferred stock, membership interests, warrants, options, or other ownership
8 rights or rights to purchase or receive additional shares of stock or membership interests in
9 any Person or Entity, and/or any other instrument or document to the extent that it directly or
10 indirectly evidences, creates or reserves any equity or ownership interest in any Person or
11 Entity giving rise to any Claim or Interest, (ii) equity security, including all membership
12 interests together with any warrants, options, or contractual rights to purchase or acquire such
13 equity securities at any time and all rights arising with respect thereto and (iii) partnership,
14 limited liability company or similar interest.
15
16

17 44. "Interest Holder" means the Holder of an Interest.

18 45. "Key Transaction Documents" means, the Plan, the Disclosure Statement, the
19 Ballots, and any and all Plan implementation documents filed with any Plan Supplements.
20

21 46. "Lenders" means the Persons that provided loans to or for the benefit of Debtor,
22 which loans were memorialized with promissory notes. For the avoidance of doubt, the term
23 "Lenders" expressly excludes the loan tendered by Branch Banking and Trust Company to
24 R&S St. Rose, LLC.
25

26 47. "Lien" has the meaning set forth in Bankruptcy Code Section 101(37).
27

1 48. “Liquidation Trust” means the trust created pursuant to the Liquidation Trust
2 Agreement on the Effective Date in accordance with the Plan and the Liquidation Trust
3 Agreement.

4 49. “Liquidation Trust Agreement” means the agreement substantially in the form
5 attached as Exhibit A to the Plan evidencing the terms and conditions of the Liquidation
6 Trust.

7 50. “Liquidation Trust Trustee” means the trustee of the Liquidation Trust. On and
8 after the Effective Date, Brian Shapiro shall act as the Liquidation Trust Trustee pursuant to
9 the terms of the Liquidation Trust Agreement without further order of the Bankruptcy Court.

10 51. “Litigation Reserve Funds” means the Cash received by the Liquidation Trust in
11 the amount of \$400,000.00.

12 4852. “Notice of Confirmation” means that certain notice, pursuant to Bankruptcy
13 Rule 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has
14 confirmed the Plan.

15 4953. “Operative Document” means any contract, instrument, release, settlement
16 agreement or other agreement or document, if any, that is reasonably necessary to effectuate
17 and implement the transactions provided for in the Plan, including the Key Transaction
18 Documents.

19 5054. “Person” means any individual, corporation, partnership, limited liability
20 company, joint venture, association, trust or organization, or other “person” as defined in
21 Bankruptcy Code Section 101(41), as well as any governmental agency, governmental unit or
22 political subdivision.

1 ~~5155~~. “Petition Date” means April 4, 2011.

2 ~~5256~~. “Plan” means the Chapter 11 Plan, including all documents referenced herein or
3 thereto and all exhibits, supplements, appendices and schedules hereto or thereto, either in its
4 present form or as the same may be altered, amended or modified from time to time pursuant
5 to the Bankruptcy Code or Final Order.

6 ~~5357~~. “Plan Proponent” means Debtor.

7 ~~5458~~. “Priority Claim” means a Claim entitled to priority under Bankruptcy Code
8 Sections 507(a)(2) through (7).

9 ~~5559~~. “Priority Tax Claims” means any Claim that is entitled to priority under Section
10 502(i) or Bankruptcy Code Section 507(a)(8). Priority Tax Claims do not include *ad valorem*
11 tax Claims if such Claims under applicable state law are Secured by a Lien on Debtor’s
12 Assets.

13 ~~5660~~. “Professional” means a Person or Entity: (a) employed pursuant to a Bankruptcy
14 Court order in accordance with Bankruptcy Code Sections 327 or 1103 and to be
15 compensated for services rendered prior to or on the Effective Date, pursuant to Bankruptcy
16 Code Sections 327, 328, 329, 330, or 331; or (b) awarded compensation and reimbursement
17 by the Bankruptcy Court, pursuant to Bankruptcy Code Section 503(b)(4).

18 ~~5761~~. “Professional Fees” means all reasonable fees and expenses incurred by
19 Professionals and allowed by the Bankruptcy Court.

20 ~~5862~~. “Professional Fee Claim” means any Claim for compensation or reimbursement
21 of fees and expenses as may be requested by a Professional to the extent such Professional is
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1 required to apply to the Bankruptcy Court for payment of such Claim pursuant to Bankruptcy
2 Code Sections 326, 328, 330 or 331 and the terms of the Plan.

3 ~~59~~63. “Promissory Note” means the promissory note dated as of August 23, 2005
4 made by R&S St. Rose, LLC as borrower in favor of R&S St. Rose Lenders, LLC as lender,
5 in the amount of \$12,000,000.
6

7 ~~60~~64. “Proof of Claim” means a Proof of Claim Filed against Debtor in the Chapter 11
8 Cases.

9 ~~61~~65. “Proponent” mean Debtor as proponent of the Plan.

10 ~~62~~66. “Pro Rata” means, with respect to an amount of Cash or other consideration to
11 be paid or distributed on a particular date to a Holder of an Allowed Claim, that such
12 Distribution shall be made in accordance with the ratio, as of such date, of the amount such
13 Allowed Claim is to the aggregate of the amounts of Claims in the Class to which such
14 Allowed Claim belongs.
15

16 ~~63~~67. “Rejected Contract” means any expired lease or contract, or any unexpired lease
17 or executory contract that has been rejected prior to Confirmation, or is the subject of a
18 pending motion for rejection or has been designated in the Disclosure Statement (or in any
19 other contract, instrument, stipulation, settlement, release, or other agreement or document
20 entered into in connection with the Plan) as a contract or lease that is not to be an Assumed
21 Contract, or is otherwise rejected pursuant to the Plan.
22

23 ~~64~~68. “Reorganized Debtor” means Debtor, or any successor thereto, by merger,
24 consolidation or otherwise, on or after the Effective Date.
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1 of that Operative Document, the terms and conditions of the Operative Document shall
2 govern over the reference or description contained in the Plan; (c) any reference in the Plan to
3 an existing document, schedule, Operative Document, or exhibit Filed or to be Filed means
4 such document, schedule, Operative Document, or exhibit, as it may have been or may be
5 amended, modified, or supplemented as of the Confirmation Date in accordance with the
6 terms hereof; (d) unless otherwise specified in a particular reference, all references in the Plan
7 to Sections, Articles, and exhibits are references to Sections, Articles, and exhibits of or to the
8 Plan; (e) the words “herein”, “hereof”, “hereto”, “hereunder”, and others of similar import
9 refer to the Plan in its entirety rather than to only a particular portion of the Plan; (f) the word
10 “all” shall mean “any and all;” (g) captions and headings to Articles and Sections are inserted
11 for convenience of reference only and are not intended to be a part of or to affect the
12 interpretations of the Plan; (h) the rules of construction set forth in Bankruptcy Code Section
13 102 shall apply, including that the terms “includes,” “shall include,” and “including” are not
14 limiting; (i) reference to a pleading, request, or document being “Filed” means duly and
15 properly filed with the Bankruptcy Court as reflected on the docket of the Bankruptcy Court;
16 (j) all exhibits and schedules to the Plan are incorporated into the Plan, and shall be deemed to
17 be included in the Plan, regardless of when they are Filed; (k) any service or notice provided
18 for in the Plan shall be provided at the addresses specified herein; (l) except to the extent that
19 the Bankruptcy Code or other federal law is applicable, or to the extent the exhibits or
20 Operative Documents provide otherwise, the rights, duties and obligations under the Plan
21 shall be governed, construed and enforced in accordance with the laws of the State of Nevada;
22 and (m) to the extent a reference or description in the Disclosure Statement or an Operative
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1 Document is inconsistent with the terms or conditions of the Plan or Operative Document, the
2 terms and conditions of the Plan or Operative Documents, as applicable, shall govern over the
3 reference contained in the Disclosure Statement.

4 **III. BACKGROUND**

5 **A. Description and History of Debtor's Business.**

6 Debtor was formed in August, 2005 for the purposes of real estate investment. Debtor
7 raised funds from private lenders, and loaned those funds to R&S St. Rose, LLC ("St. Rose")
8 for use in purchasing real property. The loan from Debtor to St. Rose was evidenced by the
9 Promissory Note secured by a Second Short Form Deed of Trust and Assignment of Rents
10 dated August 23, 2005 by and among St. Rose as grantor or trustor, Nevada Title Company as
11 trustee, and Debtor as beneficiary, encumbering the real property purchased with the loaned
12 funds. The Promissory Note is Debtor's sole asset. Pursuant to a sale of the encumbered real
13 property, in December of 2013, Debtor received \$12.8 million from the sale proceeds as
14 satisfaction of the Promissory Note.
15

16 **B. Principals/Affiliates of Debtor's Business.**

17 Debtor is a limited liability company organized under the laws of Nevada. RPN, LLC
18 and Forouzan, Inc. each hold a 50% interest in Debtor.
19

20 **C. Management of Debtor Before and After the Bankruptcy.**

21 During the time period prior to the date on which Debtor filed its bankruptcy petition,
22 Debtor operated as a Nevada limited liability company. Debtor intends to operate as such
23 upon confirmation of the Plan.
24

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

1 In addition to the default under the terms of the Lenders loan, St. Rose also defaulted
2 on a construction loan from Colonial Bank entered into on or about July 27, 2007. The terms
3 of this construction loan did not require Lenders to execute an agreement subordinating its
4 loan to the new construction loan. Further, the 2007 construction loan did not contain any
5 requirement that Colonial Bank hold a first priority position on its deed of trust at the time of
6 the initial disbursement. Accordingly, Lenders was never a party to the construction loan and
7 was never required to subordinate the Lenders deed of trust in favor of the Colonial deed of
8 trust ("Colonial DOT").
9

10 The Las Vegas real estate market began to decline in 2007. By 2009, the significant
11 decline in the economy caused the value in the Property to decline, making it difficult for St.
12 Rose to successfully develop the Property.
13

14 On November 3, 2008, two of Lenders' creditors commenced an action in the
15 Business Court in the Eight Judicial District Court, Clark County, Nevada, against the Debtor,
16 St. Rose and their managers and principals of their managers (the "State Court Action"),
17 captioned Robert Murdock, Eckley Keach vs Saiid Rad, R Nourafchaen, et al, Case No.
18 08A574852. The action sought damages against Lenders for breach of the promissory notes
19 granted in favor of Debtor's creditors, and also made claims against the Debtor, St. Rose, their
20 managers and the principals of their managers for fraud and alter ego.
21

22 By April 3, 2009, Colonial alleged that St. Rose was in default under its loan with
23 Colonial. After not having received payment from St Rose, on April 28, 2009, Colonial
24 recorded its Notice of Default in which Colonial stated its intention to foreclose upon the
25 Colonial DOT. ~~Later in 2009, Colonial sold its interest under the construction loan and deed~~
26
27

1 of trust to Branch Banking and Trust Company (“BB&T”). After Colonial failed, the FDIC
2 became the receiver for Colonial. The FDIC sold some of Colonial’s assets to Branch
3 Banking and Trust Company (“BB&T”). BB&T alleged that it thereby acquired the St. Rose
4 Note and DOT from the FDIC, but failed to prove that in district court.

5
6 On July 15, 2009, the Debtor commenced its own foreclosure proceedings by
7 recording a Notice of Default and Election to Sell under the Deed of Trust. The dueling
8 foreclosure actions between BB&T, Lenders and the State Court Action were all consolidated
9 into one matter. The Nevada District Court enjoined both foreclosure proceedings pending the
10 outcome on the merits of the priority dispute between Lenders and BB&T concerning priority
11 of their respective deeds of trust.

12
13 On June 18, 2010, Business Court Judge Elizabeth Gonzalez issued Findings of Fact
14 and Conclusions of Law (the “State Court Order”) in the State Court Action, which
15 determined, among other things, that Lenders holds a valid first lien against the Debtor’s
16 Property, with BB&T holding a second lien. BB&T filed an appeal of the State Court Order
17 to the Nevada Supreme Court (the “State Court Appeal”). Prior to the Petition Date, Judge
18 Gonzalez permitted a stay of the State Court Action pending BB&T’s appeal, precluding the
19 Debtor from foreclosing upon the Property until the resolution of the appeal.

20
21 On May 31, 2013, the Nevada Supreme Court issued that certain Order of Affirmance
22 and Affirmed the State Court Order, which affirmed, among other things, that the Debtor
23 holds a valid first lien against St. Rose’s property, with BB&T holding a second lien.

24
25 Subsequent to the entry of the Order of Affirmance by the Nevada Supreme Court,
26 BB&T filed a petition for rehearing on June 18, 2013, which was denied on September 26,
27

1 2013. Recently, BB&T has filed a petition for rehearing *en banc*, which the Nevada Supreme
2 Court denied on or about February 21, 2014. BB&T also has stated its intention to petitioned
3 the United States Supreme Court for a writ of certiorari. On or about March 27, 2014, BB&T
4 filed-served a Motion for Stay of the issuance of the remittitur by the Nevada Supreme Court
5 in the State Court Action. BB&T failed to obtain that stay, as the Motion for Stay was never
6 filed, because on March 18, 2014. ~~On April 1, 2014,~~ the Nevada Supreme Court had filed its
7 remittitur certifying the judgment of the state court, the denial of rehearing, and the denial of
8 en banc reconsideration.

9
10 **E. Significant Events During the Bankruptcy Proceedings.**

11 The following is a list of significant events which have occurred during this Case:

12
13 On April 4, 2011, Debtor Filed its Chapter 11 Case. There is one adversary proceeding
14 currently pending. Debtor has not filed any adversary proceedings at this time, however,
15 Debtor may elect to pursue any claims it holds against its creditors.

16
17 Originally, the Debtor retained Larson & Larson as bankruptcy counsel. However, due
18 to certain unavoidable conflicts, Larson & Larson filed a motion to withdraw as counsel for
19 the Debtor, which was granted by the Bankruptcy Court on February 16, 2012. Debtor's
20 current counsel, Nedda Ghandi Esq., filed a substitution of attorney on March 19, 2012 as
21 well as an Application to Employ [Dkt. No. 126] on April 13, 2012. The Application to
22 Employ Nedda Ghandi, Esq. as counsel for the Debtor was granted on May 22, 2012 [Dkt.
23 No. 145].

24
25 On May 3, 2012, BB&T filed a motion for substantive consolidation to consolidate
26 both the Lenders and the St. Rose Chapter 11 cases. The Bankruptcy Court denied the motion
27

1 for substantive consolidation on September 4, 2012. BB&T subsequently filed an appeal on
2 September 12, 2012 of the denial of consolidation to the United States District Court for the
3 District of Nevada [Dkt. No. 163]. BB&T filed an identical appeal in the St. Rose case [Dkt.
4 No. 175].

5 On September 18, 2012, Commonwealth Land Title Insurance Company
6 (“Commonwealth”) also appealed the bankruptcy court’s denial of the substantive
7 consolidation motion to the United States District Court for the District of Nevada [Dkt. No.
8 190]. Commonwealth also filed an identical appeal in the St. Rose case [Dkt. No. 198].

9 On October 2, 2012, BB&T moved to consolidate the appeals with the appeals of
10 Commonwealth. Commonwealth, in turn, on October 31, 2012, also moved to consolidate its
11 appeals with the BB&T appeals. The appeals were consolidated by the District Court in
12 December 2012. On March 27, 2014, the United States District Court entered an order
13 vacating the Bankruptcy Court’s orders denying the motions for substantive consolidation,
14 and remanding the matter to the Bankruptcy Court for further proceedings. Thus, the
15 Bankruptcy Court may grant or deny the motions for substantive consolidation. If the motions
16 for substantive consolidation are to subsequently be granted, Lenders and St. Rose could be
17 treated as a single corporate entity for bankruptcy purposes, whereas their respective
18 bankruptcies have proceeded independently, which could alter the distributions to creditors of
19 both entities.

20 On August 16, 2013, Commonwealth filed its adversary case against R&S Investment
21 Group, LLC. R&S Investment Group, LLC filed a Motion to Dismiss the case because the
22 claims raised are barred by res judicata and judicial estoppel. On March 10, 2014, the
23

1 Bankruptcy Court issued an order granting R&S Investment Group, LLC's Motion to Dismiss
2 the case. Thereafter, Commonwealth appealed the dismissal of its case to the United States
3 District Court. In its appeal, Commonwealth contends that the Bankruptcy Court erred in not
4 allowing it to raise claims of recharacterization of the debt of R&S Investment Group, LLC.
5 Commonwealth contends that if it succeeds on its claim to recharacterize the debt of R&S
6 Investment Group, LLC as equity rather than debt, it would increase the distributions to the
7 other creditors in this case.
8

9 The Debtor filed a proof of claim [Claim No. 12-1] in the St. Rose case on August 2,
10 2011 in the amount of \$27,460,871.00. BB&T filed an objection to the Debtor's proof of
11 claim. On December 11, 2013, the Court ordered an evidentiary hearing set to determine the
12 allowance of the Debtor's proof of claim.
13

14 On August 2, 2013, St. Rose filed its Amended Chapter 11 Plan in which it proposed
15 to auction of the Property encumbered by Debtor's first priority lien. On September 27, 2013,
16 BB&T filed its objection to St. Rose's Amended Chapter 11 Plan [Dkt. No. 264]. On
17 September 30, 2013, Commonwealth filed its objection to St. Rose's Amended Chapter 11
18 Plan [Dkt. No. 266]. On October 21, the Bankruptcy Court held a confirmation hearing and
19 an auction of St. Rose's real property. Nevada West Partners III, LLC bid the winning amount
20 of \$13,500,000.00. On November 8, the Court entered an Order confirming St. Rose's
21 Amended Chapter 11 Plan of Reorganization [Dkt. No. 302].
22

23 To date, sixty-three (63) Proofs of Claim have been filed in connection with the
24 Debtor's Bankruptcy Case. Except to the extent that a Claim is already Allowed pursuant to a
25 final non-appealable order, Debtor reserves the right to object to Creditors' Claims. Therefore,
26
27

1 even if your Claim is Allowed for voting purposes, you may not be entitled to a distribution if
2 an objection to your Claim is later upheld. The procedures for resolving Disputed Claims are
3 set forth in the Plan.

4 Separately, the Court set a Bar Date for Proofs of Claim to be Filed in the Case of
5 August 3, 2011 for non-governmental Creditors and October 1, 2011 for governmental
6 agencies. The Bar Date is the date after which Creditors cannot file a Proof of Claim in this
7 Case. Importantly, if your Claim is listed in Debtor's Schedules, and you agree with the Claim
8 amount listed there, you do not need to file a Proof of Claim in the Case. However, the non-
9 filing of a Proof of Claim may impact your eligibility for payment in the Plan. If Debtor
10 amends its Schedules and your Claim is affected, you will have an opportunity to file an
11 objection to any such change.
12
13

14 **F. BB&T Filed Proofs of Claim.**

15 Branch Banking and Trust Company Filed Proof of Claim No. 29 and Proof of Claim
16 No. 43, each in the unsecured amount of \$38,539,707.47, for a total of \$77,079,414.94. First,
17 the two Proofs of Claim are duplicative. Second, the purported basis for these Proofs of
18 Claim, listed in the attached documentation Filed with the Proofs of Claim, were Branch
19 Banking and Trust Company's state law claims in Case No. 09-594512-C stemming from
20 Branch Banking and Trust Company's loan priority dispute, as discussed above. As Branch
21 Banking and Trust Company has lost that loan priority dispute and its state law claims, and
22 has likewise lost its appeals thereof, Branch Banking and Trust Company's claims are moot
23 and must be withdrawn. Should Branch Banking and Trust Company fail to withdraw its
24 duplicative and moot Proofs of Claim in a timely manner, Debtor will File its objections to
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1 these Proofs of Claim with the Court. On March 13, 2014, a group of creditors filed its
2 Objection to these claims [Dkt. No. 306]. BB&T filed its response to that Objection on April
3 1, 2014 [Dkt. No. 313], to which the creditors filed their reply on April 9, 2014 [Dkt. No.
4 323]. The matter came for hearing on April 16, 2014. ~~For the foregoing reasons, Debtor did
5 not include these claims in the class of General Unsecured Claims.~~

6
7 **G. Recovery of Preferential, Avoidable, or Fraudulent Transfers.**

8 At this time, Debtor does not intend to pursue preference, fraudulent conveyance, or
9 other Avoidance Actions. Debtor does not believe any significant transfers occurred, other
10 than to its Secured Creditors, during the 2 year period leading up to the filing of this Case.
11 Debtor does reserve its right, however, to perform and complete an investigation with regard
12 to prepetition transactions. Although Debtor does not believe significant transfers occurred,
13 Creditors should be aware that if you received a payment or other transfer within 90 days of
14 the Petition Date, or other transfer avoidable under the Bankruptcy Code, Debtor may seek to
15 avoid such transfer in an Avoidance Action.
16

17
18 **H. Current and Historical Financial Conditions.**

19 Debtor's sole asset is the Promissory Note. Debtor's financial conditions are described
20 in more detail in **Exhibit A** and **Exhibit B** attached to the Disclosure Statement.

21 **I. Status of Class 1 Creditors.**

22 ~~BB&T and Commonwealth contend that certain holders of Class 1 Lender Class~~
23 ~~Claims may constitute "insiders" pursuant to the Bankruptcy Code because they are~~
24 ~~purportedly relatives of the Debtor. See Commonwealth's Objection to Debtor's Ex Parte~~
25 ~~Motion for Order Pursuant to [sic] U.S.C. § 105(d)(2)(B) and Local Rule 3017(b): (I)~~

1 Granting Conditional Approval of the Proposed Disclosure Statement for Debtor’s Plan of
2 Liquidation; (II) Prescribing Notice and Solicitation Procedures; and (III) Setting a Combined
3 Hearing on Final Approval of the Proposed Disclosure Statement and Confirmation of the
4 Plan, p. 2, ll. 18-20 [Dkt. No. 320]; see also BB&T Joinder [Dkt. No. 321]. Section 101(31) of
5 the Bankruptcy Code states that “The term ‘insider’ includes ... (B) if the debtor is a
6 corporation – (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the
7 debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the
8 debtor; or (vi) relative of a general partner, director, officer, or person in control of the
9 debtor[.]” 11 U.S.C. § 101(31). Section 101(41) defines “person” to include a corporation. 11
10 U.S.C. § 101(41). RPN, LLC and Forouzan, Inc. are in control of the Debtor. Thus, the
11 Debtor has no statutory insiders under 11 U.S.C. § 101(31)(B)(vi) because individuals cannot
12 be “relatives” of a corporation or a limited liability company. In the alternative, in the event
13 the Court determines that the individual owners of RPN, LLC and Forouzan, Inc. are “in
14 control of the” Debtor pursuant to 11 U.S.C. § 101(31)(B)(vi) and deemed insiders under the
15 Bankruptcy Code, then those holders of Class 1 Lender Class Claims who are relatives of
16 those individual owners may constitute insiders under 11 U.S.C. § 101(31)(B)(vi).

20 **IV. SUMMARY OF THE PLAN OF REORGANIZATION**

21 **A. What Creditors Will Receive Under The Proposed Plan.**

22 As required by the Bankruptcy Code, the Plan places Claims in separate Classes and
23 describes the treatment each Class will receive. The Plan also states whether each Class of
24 Claims is Impaired. If the Plan is confirmed, your recovery will be limited to the amount
25 provided by the Plan.
26

1 **B. Claims: Unclassified and Classified.**

2 Certain Claims are automatically entitled to specific treatment under the Code. They
3 are not considered Impaired, and Holders of such Claims do not vote on the Plan. They may,
4 however, object if, in such Claim Holder's view, the treatment under the Plan does not
5 comply with the Code. As such, Debtor did not place the following Claims in any Class:
6 Administrative Claims and Priority Tax Claims.
7

8 **1. Administrative Claims.**

9 Administrative Claims are Claims for the costs or expenses of administering Debtor's
10 Chapter 11 case which are Allowed under Section 507(a)(2) of the Bankruptcy Code.
11 Administrative Claims also include the value of any goods or services sold post-petition to
12 Debtor in the ordinary course of business. The Bankruptcy Code requires that all
13 Administrative Claims be paid on the Effective Date of the Plan, unless a particular claimant
14 agrees to a different treatment. All fees required to be paid by 28 U.S.C. § 1930 will accrue
15 and be timely paid until the Chapter 11 Case is closed, dismissed, or converted to another
16 Chapter of the Code. Any U.S. Trustee Fees owed on or before the Effective Date of the Plan
17 will be paid on the Effective Date. The following lists all of Debtor's Section 507(a)(2)
18 Administrative Claims and their treatment under the Plan (see **Exhibit F** for detailed
19 information about each administrative expense claim):
20
21
22

23 **UNCLASSIFIED CLAIMS: ADMINISTRATIVE CLAIMS**

TYPE	ESTIMATED AMOUNT
Expenses Arising in the Ordinary Course of Business Post-Petition	Unknown
Professional Fees, as approved by the	\$208,000±

Court	
Office of the U.S. Trustee Fees	\$500.00±
Clerk's Office Fees	Unknown
Other Administrative Expenses	Unknown
TOTAL ESTIMATED AMOUNT:	\$208,500±

Court Approval of Fees Required:

The estimated Administrative Claims set forth above shall solely become Allowed Administrative Claims upon entry of a Final Order of the Court approving such fees. The Court must rule on all fees listed in this chart before the fees will be owed. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional(s) in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees allowed by the Court will be owed and required to be paid under the Plan.

2. Priority Tax Claims.

Priority Tax Claims include certain unsecured income, employment and other taxes described by Section 507(a)(8) of the Bankruptcy Code. The Bankruptcy Code requires that each Holder of such a Section 507(a)(8) Priority Tax Claims receive the present value of such Claim in deferred cash payments, over a period not exceeding five (5) years from the date of the order of relief. The legal and equitable rights of Priority Tax Claims are unaltered by the Plan. As of the Date of the Plan, Debtor does not have any other Priority Unsecured Claims as referred to in Section 507(a)(1), (4), (5), (6), and (7) of the Bankruptcy Code.

To date, Debtor has no Section 507(a)(8) Priority Tax Claims.

3. Classified Claims and Interests.

1 The bar date for filing claims expired on August 3, 2011. The following are the classes
2 set forth in the Plan, and the proposed treatment that they will receive under the Plan.

3 All Claims and Interests, except Administrative Claims (including Professional Fee
4 Claims) and Priority Tax Claims, are placed in the Classes set forth below. In accordance with
5 Bankruptcy Code Section 1123(a)(1), Administrative Claims and Priority Tax Claims, as
6 described above, have not been classified.
7

8 A Claim or Interest is placed in a particular Class only to the extent that the Claim or
9 Interest falls within the description of that Class and is classified in other Classes to the extent
10 that any portion of the Claim or Interest falls within the description of such other Classes. A
11 Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions
12 pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that
13 Class and such Claim has not been paid, released or otherwise settled prior to the Effective
14 Date.
15

16 The following are the Classes set forth in the Plan, and the proposed treatment that
17 they will receive under the Plan.
18

19 **4. Class 1: Lender Class Claims.**

20 Class 1 shall be the Lender Class Claims, and shall include all Claims held by the
21 individuals and/or entities that were Lenders to Debtor. These Lender Class Claims include:
22 (i) Claims held by Lenders that are listed in Debtor's Schedules of Creditors Holding
23 Unsecured Nonpriority Claims that are not listed as disputed, contingent, or unliquidated, (ii)
24 nonpriority Claims held by Lenders for which a Proof of Claim has been Filed, and for which
25 Debtor, or any other party-in-interest, has not Filed an objection thereto, and (iii) nonpriority
26
27

1 Claims held by Lenders for which a Proof of Claim has been Filed and to which an objection
 2 has been timely Filed, but where such objection has been overruled by entry of a Final Order
 3 of the Court, thereby rendering the Claim an Allowed Claim, all to the extent Allowed by the
 4 Court. ~~Some of the creditors in this class are relatives of Debtor's officers and directors.~~

5 The following lists Debtor's understanding of the potential Claims that may be
 6 included in Debtor's Class 1 Lender Class Claims and their treatment under the Plan:
 7

TYPE	ESTIMATED AMOUNT
Investor Class Claims	\$26,967,589.13

8
 9
 10
 11 *Claims in Class 1:* Class 1 consists of the Lender Class Claims against Debtor.

12 *Treatment of Claims in Class 1:* The Lender Class Claims shall be paid on the
 13 Effective Date, or as otherwise provided in the Confirmation Order, in the following manner:
 14 (i) \$11,677,000 shall be paid to the Allowed Lender Class Claims Pro Rata, which amount is
 15 equal to approximately forty-three and one-third percent (43.3%) of the estimated amount of
 16 the Lender Class Claims, and (ii) any remaining Assets, expressly including any remaining
 17 litigation reserve funds as described in Section V.A of the Plan, shall be distributed Pro Rata
 18 to the Holders of the Allowed Lender Class Claims after the final resolution of all pending
 19 litigations and appeals involving the Debtor. These payments shall be full satisfaction,
 20 settlement, release and exchange for such Lender Class Claims. Upon payment, all Allowed
 21 Lender Class Claims shall be released without further action by Debtor or notice to Holders of
 22 Allowed Lender Class Claims being necessary. A list of Lender Class Claims is attached to
 23 the Disclosure Statement as **Exhibit H**.
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1 *Impairment and Voting for Class 1:* Class 1 is Impaired. Holders of Class 1 Lender
2 Class Claims are entitled to vote to accept or reject the Plan.

3 **5. Class 2: General Unsecured Claims.**

4 Class 2 shall be General Unsecured Claims, and shall include: (i) the unsecured
5 nonpriority Claims that are not held by Lenders that are listed in Debtor's Schedules of
6 Creditors Holding Unsecured Nonpriority Claims that are listed as not disputed, contingent, or
7 unliquidated; (ii) unsecured nonpriority Claims that are not held by Lenders for which a Proof
8 of Claim has been Filed, and for which Debtor, or any other party-in-interest, has not Filed an
9 objection thereto; and (iii) unsecured nonpriority Claims that are not held by Lenders for
10 which a Proof of Claim has been Filed and to which an objection has been timely Filed, but
11 where such objection has been overruled by entry of a Final Order of the Court, thereby
12 rendering the Claim an Allowed Claim, ~~and excluding the duplicative and moot Proofs of~~
13 ~~Claim 29 and 43 filed by Branch Banking and Trust Company,~~ all to the extent Allowed by
14 the Court.
15
16

17 The following lists Debtor's understanding of the potential Claims that may be
18 included in Debtor's Class 2 General Unsecured Claims and their treatment under the Plan:
19

20

TYPE	ESTIMATED AMOUNT
General Unsecured Claims	\$1,198,905.44

21
22
23
24

25 *Claims in Class 2:* Class 2 consists of the General Unsecured Claims against Debtor.
26
27

1 **C. Elimination of Vacant Classes.**

2 Any Class of Claims that is not occupied as of the date of the commencement of the
3 Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under
4 Bankruptcy Rule 3018 shall be deemed eliminated from the Plan for purposes of voting to
5 accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan
6 by such Class pursuant to Bankruptcy Code Section 1129(a)(8).
7

8 **D. Tabulation of Votes.**

9 Debtor will tabulate all votes on the Plan for the purpose of determining whether the
10 Plan satisfies Bankruptcy Code Sections 1129(a)(8) and (10).
11

12 **E. Nonconsensual Confirmation.**

13 If any Impaired Class of Claims entitled to vote shall not accept the Plan by the
14 requisite statutory majorities provided in Bankruptcy Code Section 1126(c), Debtor reserves
15 the right to amend the Plan or undertake to have the Bankruptcy Court confirm the Plan under
16 Bankruptcy Code Section 1129(b), or both. With respect to any Impaired Classes of Claims
17 that are deemed to reject the Plan, Debtor shall request that the Bankruptcy Court confirm the
18 Plan under Bankruptcy Code Section 1129(b).
19

20 **VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

21 **A. Executory Contracts and Unexpired Leases.**

22 Debtor shall be deemed to have assumed each Assumed Contract for the property to
23 which such contracts relate as of the Effective Date. A list of the Assumed Contracts is
24 included as **Exhibit C** hereto. The Confirmation Order shall constitute an order of the
25
26
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28

1 Bankruptcy Court under Bankruptcy Code Sections 365 and 1123(b)(2) approving the
2 contract and lease assumptions by Debtor as of the Effective Date.

3 **B. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.**

4 Any of the Assumed Contracts that are, or may be, alleged to be in default, shall be
5 Cured either in the ordinary course of business or on the Effective Date. Except with respect
6 to Assumed Contracts with respect to which Debtor and the applicable counterparties have
7 stipulated in writing the appropriate Cure, all requests of Cure that differ from the amounts
8 and treatment proposed by Debtor must be Filed with the Bankruptcy Court on or before the
9 Cure Bar Date. Any request for payment or other Cure that is not timely Filed shall be
10 disallowed automatically and forever barred from assertion and shall not be enforceable
11 against Debtor, without the need for any objection by Debtor or further notice to or action,
12 order, or approval of the Bankruptcy Court, and any Claim for Cure shall be deemed fully
13 satisfied, released, and discharged upon payment by Debtor of the amounts listed on the
14 proposed Cure schedule, notwithstanding anything included in the Schedules or in any Proof
15 of Claim to the contrary. Debtor also may settle any Cure without further notice to or action,
16 order, or approval of the Bankruptcy Court.

17
18
19
20 If a counterparty objects to any Cure or any other matter related to assumption and
21 assignment, the Bankruptcy Court shall determine the Allowed amount of such Cure and any
22 related issues. If there is a dispute regarding such Cure, the ability of Debtor to provide
23 “adequate assurance of future performance” within the meaning of Bankruptcy Code Section
24 365, or any other matter pertaining to assumption, then Cure shall occur as soon as reasonably
25 practicable after entry of an order resolving such dispute, approving such assumption (and, if
26

1 applicable, assignment), or as may be agreed upon by Debtor and the counterparty to the
2 Assumed Contract. Any counterparty to an Assumed Contract that fails to object timely to the
3 proposed assumption and assignment of any such contract or unexpired lease will be deemed
4 to have consented to such assumption and assignment. Debtor reserves the right either to
5 reject or nullify the assumption of any executory contract or unexpired lease no later than
6 thirty (30) days after a Final Order determining the Cure or any request for adequate
7 assurance of future performance required to assume such executory contract or unexpired
8 lease.
9

10 Assumption of any Assumed Contract pursuant to the Plan or otherwise shall result in
11 the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary,
12 including defaults with respect to provisions restricting the change in control or ownership
13 interest composition or other bankruptcy-related defaults against Debtor, arising under any
14 Assumed Contract at any time prior to the effective date of assumption and assignment. Any
15 Proofs of Claim Filed with respect to an Assumed Contract that has been assumed shall be
16 deemed disallowed and expunged, without further notice to or action, order, or approval of the
17 Bankruptcy Court.
18

19 **C. Rejection of Executory Contracts.**

20 Entry of the Confirmation Order shall, subject to and upon the occurrence of the
21 Effective Date, constitute the approval, pursuant to Bankruptcy Code Sections 365(a) and
22 1123(b)(2), of the rejection of all executory contracts and unexpired leases other than the
23 Assumed Contracts, as are more particularly set forth in **Exhibit D** hereto.
24

25 **D. Filing of Rejection Claims.**

1 Any Person or Entity who believes they are entitled to assert a Claim against Debtor
2 by virtue of the rejection of an executory contract or unexpired lease pursuant to this Article
3 or a Final Order entered after the Confirmation Date, may File a Claim with the Clerk of the
4 Bankruptcy Court not later than twenty (20) days after the date of any such rejection or such
5 later time as may be set forth for the filing of such Claim in said Final Order. If such Claim is
6 not so Filed, it shall be forever barred from assertion against Debtor. Nothing in this Section
7 shall affect the right of any party-in-interest to object to any Claim, which has been
8 improperly Filed or not Filed on a timely basis.

10 **E. Modifications, Amendments, Supplements, Restatements, or Other Agreements.**

11 Unless otherwise provided, each Assumed Contract that is assumed and assigned shall
12 include all modifications, amendments, supplements, restatements, or other agreements that in
13 any manner affect such Assumed Contract, and all executory contracts and unexpired leases
14 related thereto, if any, including all easements, licenses, permits, rights, privileges,
15 immunities, options, rights of first refusal, and any other interests, unless any of the foregoing
16 agreements has been previously rejected or repudiated or is rejected or repudiated under the
17 Plan.
18

19
20 Modifications, amendments, supplements, and restatements to pre-petition executory
21 contracts and unexpired leases that have been executed by Debtor during the Chapter 11 Case
22 shall not be deemed to alter the pre-petition nature of the executory contract or unexpired
23 lease, or the validity, priority, or amount of any Claims that may arise in connection
24 therewith.
25

26 **F. Reservation of Rights.**

1 Neither the exclusion nor inclusion of any contract or lease in any Plan Supplement,
2 nor anything contained in the Plan, shall constitute an admission by Debtor that any such
3 contract or lease is in fact an executory contract or unexpired lease or that Debtor has any
4 liability thereunder. If there is a dispute regarding whether a contract or lease is or was
5 executory or unexpired at the time of assumption or rejection, Debtor shall have thirty (30)
6 days following entry of a Final Order resolving such dispute to alter their treatment of such
7 contract or lease.
8

9 **VII. PLAN IMPLEMENTATION**

10 **A. Plan Implementation.**

11 The Plan shall be implemented in all respects in a manner that is consistent with the
12 terms and conditions of the Operative Documents, and the requirements of Section 1123(a)
13 and other applicable provisions of the Bankruptcy Code. Without limiting the generality of
14 the foregoing, the Confirmation Funds shall be used to fund the Plan and shall be distributed
15 or applied in the manner necessary to provide all required Confirmation Funds for
16 Distribution pursuant to the Plan, satisfy the costs, expenses, required payments and
17 entitlements outlined herein on the Effective Date and provide Debtor with working capital
18 and funding for operations and Plan needs.
19

20 The proposed payments to Holders of Class 1 and Class 2 claims total \$12,197,000.00.
21 As shown in **Exhibit A** to the Disclosure Statement, Debtor possesses funds sufficient to
22 make these payments. The funds derive from the sale proceeds distributed to Debtor from the
23 sale of real property in satisfaction of the Promissory Note. After deducting the estimated
24 amount necessary to pay Administrative Expenses, and reserving funds sufficient to pay the
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1 ongoing legal expenses associated with two appeals that Debtor is presently a party to, Debtor
2 will have the requisite \$12,197,000.00 to pay the Allowed Class 1 and Class 2 claims as
3 anticipated under this Plan.

4 **1. Liquidation Trust.**

5 A Liquidation Trust shall be established with the primary purpose of providing legal
6 representation and defense of the Debtor in any and all litigation appeals in which Debtor is
7 named. The Litigation Reserve Funds and the Causes of Action shall be delivered to the
8 Liquidation Trust to be held and preserved by the Liquidation Trust as property of the Estate
9 to be used in accordance with the Plan. The Liquidation Trust Agreement shall be executed
10 and the Liquidation Trust shall be deemed effective. Debtor shall settle the Liquidation Trust
11 by irrevocably delivering, assigning and conveying the Litigation Reserve Funds and Causes
12 of Action to the Liquidation Trust, including all rights to prosecute and/or defend all Causes
13 of Action. All property received by the Liquidation Trust shall be used in accordance with the
14 Liquidation Trust Agreement and the Plan.

15 **a. Status of the Liquidation Trust.**

16 The Liquidation Trust shall be organized pursuant to the terms of that certain
17 Liquidation Trust Agreement attached as Exhibit A to the Plan, and the Litigation Reserve in
18 the amount of \$400,000 shall be funded from a portion of the proceeds of the sale Debtor
19 received in December 2013, in the amount of \$12.8 million as satisfaction of the Promissory
20 Note. Effective on the Effective Date, the Liquidation Trust Trustee shall be a representative
21 of the Estate as that term is used in Section 1123(b)(3)(B) of the Bankruptcy Code of the
22 Bankruptcy Code with respect to the Causes of Action and shall have the rights and powers
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1 provided for in the Bankruptcy Code in addition to any rights and powers granted herein. In
2 its capacity as a representative of the Estate, the Liquidation Trust Trustee shall be the
3 successor-in-interest to Debtor with respect to any action commenced by or against Debtor or
4 on behalf of Debtor prior to the Confirmation Date. All such actions and any and all other
5 Causes of Action shall be retained and enforced by the Liquidation Trust Trustee as a
6 representative of the Estate pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code. For
7 the avoidance of doubt, confirmation of the Plan does not adversely affect or bar any Cause of
8 Action or Avoidance Action of the Debtor's Estate.

9
10 **b. Authority.**

11 Subject to the limitations contained herein, the Liquidation Trust shall have the
12 following powers, authorities, and duties, by way of illustration and not of limitation.

13
14 (i) Pay and discharge any costs, expenses, Professional Fees or obligations
15 deemed necessary to perform the purpose of the Liquidation Trust; payment of such shall not
16 require approval of the Bankruptcy Court;

17
18 (ii) Open and maintain bank accounts and deposit funds and draw checks and
19 make disbursements;

20 (iii) Engage and retain such attorneys, accountants, engineers, agents, tax
21 specialists, financial advisors, appraisers, investment bankers, other professionals, and clerical
22 and stenographic assistance as may, in the discretion of the Liquidation Trust, be deemed
23 necessary;

24
25 (iv) Institute or continue actions which were or otherwise could have been brought
26 by the Estate, and prosecute or defend all appeals on behalf of the Estate and, when

1 appropriate, settle such actions and claims with the approval of the Bankruptcy Court after
2 hearing on notice;

3 (v) Obtain and pay for insurance coverage relative to the proper performance of
4 duties under the Plan;

5 (vi) Act in the place and stead of Debtor and represent the Estate with regard to all
6 matters for which the jurisdiction of the Bankruptcy Court is reserved under Section X of the
7 Plan;

8 (vii) Draw against the Litigation Reserve Funds for purposes of paying the actual
9 and necessary fees, costs and expenses of the Liquidation Trust Trustee, including the
10 compensation of the Liquidation Trust Trustee, of performing the duties described herein and
11 in the Liquidation Trust Agreement;

12 (viii) To distribute any unused portion of the Litigation Reserve Funds remaining
13 after the completion of the duties described herein and in the Liquidating Trust Agreement, if
14 any, to the holders of Class 1 Lender Class Claims in accordance with the Plan;

15 (ix) When the business and affairs of the post-confirmation estate and the
16 Liquidation Trust have been otherwise wound up, the Liquidation Trust Trustee shall seek
17 authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the
18 Bankruptcy Code and Bankruptcy Rules; and

19 (x) Do any and all things necessary to accomplish the purposes of the Liquidation
20 Trust.

21 **c. No Recourse.**

1 No recourse shall ever be had, directly or indirectly, against the Liquidation Trust
2 Trustee or against any agent, attorney, accountant or other professional for the Liquidation
3 Trust, by legal or equitable proceedings or by virtue of any statute or otherwise, nor upon any
4 promise, contract, instrument, undertaking obligation, covenant or agreement whatsoever
5 executed by the Liquidation Trust under the Plan, or by reason of the creation of any
6 indebtedness by the Liquidation Trust under the Plan for any purpose authorized by the Plan,
7 it being expressly understood and agreed that all such liabilities, covenants, and agreements of
8 the Liquidation Trust, whether in writing or otherwise, shall be enforceable only against and
9 be satisfied only out of the Litigation Reserve Funds or such part thereof as shall under the
10 terms of any such agreement be liable therefore or shall be evidence only of a right of
11 payment out of the Litigation Reserve Funds.

14 **d. Further Authorization.**

15 The Liquidation Trust shall be entitled to seek such orders, judgments, injunctions, or
16 rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to
17 the provisions, of the Plan.

19 **B. Authority to Execute Operative Documents.**

20 The Confirmation Order shall, among other things, constitute an Order authorizing
21 Debtor to execute and deliver the Operative Documents, as applicable (to the extent they have
22 not already been executed and delivered).

24 **C. Management.**

25 Following the Effective Date, Debtor shall manage its own affairs. RPN, LLC, whose
26 president is Phillip Nourafchan, and Forouzan, Inc., whose president is Saiid Forouzan Rad,

1 will continue to each hold a 50% interest in the reorganized Debtor until the Liquidation Trust
2 Trustee is appointed, upon which appointment the equity interests will immediately be
3 released.

4 **D. Exemption from Certain Transfer Taxes and Further Transactions.**

5 Pursuant to Bankruptcy Code Section 1146(a), the issuance or exchange of any
6 security, or the making or delivery of any instrument of transfer under, in furtherance, or in
7 connection with the Plan, including, but not limited to, any deeds, bills of sale, assignments or
8 other instruments of transfer (including those with respect to the Property), shall not be
9 subject to any stamp tax, real estate transfer tax or similar tax.

11 **E. Final Decree.**

12 Notwithstanding otherwise applicable law, the Chapter 11 Case shall be closed and a
13 Final Decree entered as soon as possible after the occurrence of the Effective Date, unless and
14 until:

15 (a) All adversary proceedings and contested matters pending before the Bankruptcy
16 Court have been resolved by a Final Order.

17 (b) All Claims have either: (i) become Allowed Claims and payments have begun to
18 be paid in accordance with the treatment to be given such Allowed Claim pursuant to
19 the Plan; (ii) been disallowed by a Final Order or deemed to be a Disallowed Claim, in
20 accordance with the terms of the Plan; (iii) been assumed by Debtor; or (iv) reinstated.

21 **F. Effectuating Documents, Further Transactions.**

22 On and after the Effective Date, Debtor is authorized to and may issue, execute,
23 deliver, file, or record such contracts, securities, instruments, releases, and other agreements
24

1 or documents and take such actions as may be necessary or appropriate to effectuate,
2 implement, and further evidence the terms and conditions of the Plan in the name of and on
3 behalf of Debtor, as applicable, without the need for any approvals, authorizations, or
4 consents except for those expressly required pursuant to the Plan. Such actions may include:

- 5 • the execution and delivery of appropriate instruments of transfer, assignment,
6 assumption or delegation of any asset, property, right, liability, debt or
7 obligation on terms consistent with the terms of the Plan and having other
8 terms for which the applicable parties agree;
- 9 • the filing of appropriate certificates or articles of formation, reformation,
10 merger, consolidation, conversion or dissolution pursuant to applicable state
11 law; and
- 12 • all other actions that the Debtor determines to be necessary or appropriate,
13 including making filings or recordings that may be required by applicable state
14 law in connection with the effectuation of the Plan.
15
16
17

18 **VIII. PROVISIONS CONCERNING PLAN DISTRIBUTIONS**

19 **A. Distributions on Account of Claims Allowed as of the Effective Date.**

20 Distributions under the Plan on account of Claims Allowed on or before the Effective
21 Date shall be made on the Effective Date, as otherwise set forth in the Plan, or on the first date
22 thereafter as is reasonably practicable.
23

24 **B. Distributions on Account of Claims Allowed After the Effective Date.**

- 25 **1. Payments and Distributions on Disputed Administrative and Priority**
26 **Claims.**

1 In the event that there are Disputed Administrative Claims or Disputed Priority Claims
2 requiring adjudication and resolution and such Claims have not become Allowed or
3 Disallowed prior to the Effective Date, then the obligation to satisfy such Claims shall be
4 from the Confirmation Funds which are held for the same, but to the extent there are no
5 available Confirmation Funds from which to pay such Claim, the obligation to satisfy such
6 Claims will be assumed by Debtor, subject to Allowance or Disallowance by the Bankruptcy
7 Court. Except as otherwise provided in the Plan, or Final Order, any Disputed Administrative
8 Claim or Disputed Priority Claim that becomes Allowed after the Effective Date shall be
9 satisfied from the Confirmation Funds or performed by Debtor in the ordinary course of
10 business in accordance with the terms and conditions of any controlling agreements, course of
11 dealing, course of business, or industry practice.
12
13

14 **2. Special Rules for Distributions to Holders of Disputed Claims.**

15 Except as otherwise provided in the Plan and except as otherwise agreed by the
16 relevant parties: (i) no partial payments and no partial Distributions shall be made with
17 respect to a Disputed Claim until all such disputes in connection with each respective
18 Disputed Claim have been resolved by settlement or Final Order, and (ii) any Person that
19 holds both an Allowed Claim and a Disputed Claim shall not receive any Distribution on
20 account of the Allowed Claim unless and until all objections to the Disputed Claim have been
21 resolved by settlement or Final Order and the Claims have been Allowed.
22
23

24 **C. Manner of Payment Under the Plan.**

1 Distributions of Cash to be made by the Distribution Agent pursuant to the Plan shall
2 be made, at the discretion of the Distribution Agent, by check drawn on the Distribution
3 Agent's bank account or by wire transfer from a domestic bank.

4 **D. Whole Dollars.**

5 Any other provision of the Plan to the contrary notwithstanding, no payments of cents
6 will be made. Whenever any payment of cents would otherwise be called for, the actual
7 payment may reflect a rounding of such fraction to the nearest whole dollar (up or down).
8

9 **E. Escheat.**

10 Holders of Allowed Claims shall have three (3) months from the check date to
11 negotiate Distribution checks issued by the Distribution Agent under the terms of the Plan,
12 otherwise payment on such checks may at the Distribution Agent's sole discretion be stopped
13 and the funds shall escheat to the Distribution Agent and shall be promptly distributed to
14 Debtor (in accordance with Bankruptcy Code Section 347).
15

16 **F. Delivery of Distributions.**

17 **1. Record Date for Distributions.**

18 On the Distribution Record Date, the Claims Register shall be closed and any Person
19 responsible for making Distributions shall be authorized and entitled to recognize only those
20 record Holders listed on the Claims Register as of the close of business on the Distribution
21 Record Date. Notwithstanding the foregoing, if a Claim is transferred twenty or fewer days
22 before the Distribution Record Date, the Distribution Agent shall make Distributions to the
23 transferee only to the extent practical and in any event only if the relevant transfer forms
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1 contains an unconditional and explicit certification and waiver of any objection to the transfer
2 by the transferor.

3 **2. Distribution Agent.**

4 The Distribution Agent shall make all Distributions required under the Plan.

5 **3. Delivery of Distributions in General.**

6 Except as otherwise provided in the Plan, and notwithstanding any authority to the
7 contrary, Distributions to all Holders of Allowed Claims shall be made to Holders of record as
8 of the Distribution Record Date by the Distribution Agent:
9

10 (a) In accordance with Federal Rule of Civil Procedure 4, as modified and made
11 applicable by Bankruptcy Rule 7004;

12 (b) To the signatory set forth on any of the Proofs of Claim Filed by such Holder or
13 other representative identified therein (or at the last known addresses of such Holder if
14 no Proof of Claim is Filed or if Debtor has been notified in writing of a change of
15 address);
16

17 (c) To the addresses set forth in any written notices of address changes delivered to
18 Debtor after the date of any related Proof of Claim;

19 (d) To the addresses reflected in the Schedules if no Proof of Claim has been Filed and
20 the Distribution Agent has not received a written notice of change of address; or
21

22 (e) To any counsel that has appeared in the Chapter 11 Case on the Holder's behalf.
23

24 Except as otherwise provided in the Plan, Distributions under the Plan, made on
25 account of Allowed Claims, shall not be subject to levy, garnishment, attachment, or like legal
26 process. Each Holder of an Allowed Claim shall have and receive the benefit of the
27

1 Distributions in the manner set forth in the Plan. Absent willful misconduct or gross
2 negligence, Debtor and Distribution Agent, as applicable, shall not incur any liability on
3 account of any Distributions made under the Plan.

4 **4. Returned Distributions.**

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

18 **5. Disputed Distributions.**

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

1 Court prior to the issuance of such disputed Distribution by the Distribution Agent shall be
2 deemed to have forever waived any right to dispute such Distribution or to enjoin, impair or
3 otherwise restrict the use of any such Distribution.

4 **6. Setoffs.**

5 The Distribution Agent may, but shall not be required to, set-off against any
6 Distributions to be made pursuant to the Plan to a Holder of an Allowed Claim, Claims of any
7 nature whatsoever that Debtor may have, or may have had, against such Holder that have not
8 been previously released, but neither the failure to do so, nor the allowance of any Claim held
9 by such Holder shall constitute a waiver or release by the Distribution Agent of any such
10 Claim Debtor may have, or may have had, against such Holder.
11
12

13
14 **7. Withholding Taxes.**

15 The Distribution Agent shall be entitled to deduct any applicable federal or state
16 withholding taxes from any payments made with respect to Allowed Claims, as appropriate,
17 and shall otherwise comply with Bankruptcy Code Section 346.
18

19 **IX. REQUIREMENTS FOR PLAN CONFIRMATION**

20 **A. Best Interest Test/Liquidation Analysis.**

21 To confirm a Plan, the Court must find that all Creditors who do not accept the Plan
22 will receive at least as much under the Plan as such Claim Holders would receive in Chapter 7
23 liquidation. This is known as the “Best Interest Test,” which requires a liquidation analysis.
24

25 In a Chapter 7 case, Debtor’s Assets are usually sold by a Chapter 7 trustee. Secured
26 Creditors are paid first from the sales proceeds of properties on which the Secured Creditor
27

1 has a Lien. Administrative Claims are paid next. Next, General Unsecured Creditors are paid
2 from any remaining sales proceeds, according to their rights to priority. General Unsecured
3 Creditors with the same priority share in proportion to the amount of their allowed claim in
4 relationship to the amount of total Allowed General Unsecured Creditors. Finally, Interest
5 Holders receive the balance that remains after all Creditors are paid, if any.
6

7 For the Court to be able to confirm this Plan, the Court must find that all creditors and
8 interest holders who do not accept the Plan will receive at least as much under the Plan as
9 such holders would receive under Chapter 7 liquidation.

10 A Liquidation Analysis, in balance sheet format, is attached as **Exhibit E**. The
11 Liquidation Analysis illustrates that all Creditors and Interest Holders will receive at least as
12 much under the Plan as such Creditors and Interest Holders would receive under Chapter 7
13 liquidation. This information is provided by Debtor and Debtor's counsel.
14

15 **B. Feasibility.**

16 Another requirement for Confirmation involves the feasibility of the Plan, which
17 means that Confirmation of the Plan is not likely to be followed by the liquidation, or the need
18 for further financial reorganization, of Debtor or any successor to Debtor under the Plan,
19 unless such liquidation or reorganization is proposed in the Plan.
20

21 There are at least two important aspects of a feasibility analysis. The first aspect
22 considers whether Debtor will have enough cash on hand on the Effective Date of the Plan to
23 pay all the Claims and Expenses which are entitled to be paid on such date. Debtor maintains
24 that this aspect of feasibility is satisfied as illustrated here. The cash that Debtor will have on
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1 hand by the Effective Date will be from the funds in its Debtor-in-Possession account, which
2 is in an amount sufficient to cover the Claims and Expenses due on the Effective Date.

3 The second aspect of feasibility considers whether the Proponent will have enough
4 cash over the life of the Plan to make the required Plan payments. The proposed payments to
5 Holders of Class 1 and Class 2 claims total \$12,197,000.00, on the Effective Date, or as
6 otherwise provided in the Confirmation Order. As shown in **Exhibit A** to the Disclosure
7 Statement, Debtor possesses funds sufficient to make these payments. The funds derive from
8 the sale proceeds distributed to Debtor from the sale of real property in satisfaction of the
9 Promissory Note. After deducting the estimated amount necessary to pay Administrative
10 Expenses, and reserving funds sufficient to pay the legal expenses associated with two
11 appeals that Debtor is presently a party to, Debtor will have the requisite \$12,197,000.00 to
12 pay the Class 1 and Class 2 claims as anticipated under this Plan.
13
14

15 **YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR**
16 **FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO**
17 **THESE FINANCIAL STATEMENTS.**
18

19 In summary, the final Plan payment is expected to be paid on the Effective Date, or as
20 otherwise provided in the Confirmation Order. The Plan Proponent contends that Debtor's
21 financial projections are feasible.
22

23 **C. Confirmation Without Acceptance by All Impaired Classes.**

24 Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan
25 even if all impaired classes entitled to vote on the plan have not accepted it, provided that the
26 plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the
27

1 Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the
2 plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly
3 known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and
4 equitable" with respect to each class of claims or equity interests that is impaired under, and
5 has not accepted, the plan.

6
7 **1. No Unfair Discrimination.**

8 This test applies to classes of claims or equity interests that are of equal priority and
9 are receiving different treatment under the Plan. The test does not require that the treatment be
10 the same or equivalent for all such classes, but that such treatment be "fair." In general,
11 bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of
12 claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take
13 into account a number of factors in determining whether a plan discriminates unfairly, and,
14 accordingly, a plan could treat two classes of unsecured creditors differently without unfairly
15 discriminating against either class.
16

17
18 **2. Fair and Equitable Test.**

19 This test applies to classes of different priority and status (e.g., secured versus
20 unsecured) and includes the general requirement that no class of claims receive more than
21 100% of the amount of the allowed claims in such class. As to the dissenting class, the test
22 sets different standards depending on the type of claims or equity interests in such class:

- 23 • Secured Claims. The condition that a plan be "fair and equitable" to a
24 non-accepting class of secured claims includes the requirements that:
25 (a) the holders of such secured claims retain the liens securing such
26

1 claims to the extent of the allowed amount of the claims, whether the
2 property subject to the liens is retained by the debtor or transferred to
3 another entity under the plan; and (b) each holder of a secured claim in
4 the class receives deferred Cash payments totaling at least the allowed
5 amount of such claim with a present value, as of the effective date of
6 the plan, at least equivalent to the value of the secured claimant's
7 interest in the debtor's property subject to the liens.
8

- 9 • Unsecured Claims. The condition that a plan be "fair and equitable" to
10 a non-accepting class of unsecured claims includes the following
11 requirement that either: (a) the plan provides that each holder of a claim
12 of such class receive or retain on account of such claim property of a
13 value, as of the effective date of the plan, equal to the allowed amount
14 of such claim; or (b) the holder of any claim or any equity interest that
15 is junior to the claims of such class will not receive or retain under the
16 plan on account of such junior claim or junior equity interest any
17 property.
18
19

20 To the extent that any of the Voting Classes vote to reject the Plan, Debtor reserves the
21 right to seek (a) Confirmation of the Plan under section 1129(b) of the Bankruptcy Code
22 and/or (b) to modify the Plan accordingly.
23

24 The Debtor does not believe that the Plan discriminates unfairly against any Impaired
25 Class of Claims. The Debtor believes that the Plan and the treatment of all Classes of Claims
26 under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.
27

1 **X. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

2 **A. Objection to and Resolution of Claims.**

3 Except as to applications for allowance of compensation and reimbursement of
4 expenses under Bankruptcy Code Sections 330, 331 and/or 503, Debtor or the estate's
5 representative pursuant to Section 1123(b)(B)(3) of the Bankruptcy Code shall, on and after
6 the Effective Date, have the exclusive right to make and file objections to Claims (“Disputed
7 Claims”). On and after the Effective Date, Debtor or the representative shall have the
8 authority to compromise, settle, otherwise resolve or withdraw any objections to any Claims
9 and compromise, settle or otherwise resolve Disputed Claims without approval of the
10 Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, Debtor and, on and
11 after the Effective Date, Debtor or the representative, shall file all objections to Claims that
12 are the subject of Proofs of Claim or requests for payment filed with the Bankruptcy Court
13 (other than applications for allowances of compensation and reimbursement of expenses with
14 respect to Professional Fee Claims) and serve such objections upon the Holder of the Claim as
15 to which the objection is made as soon as is practicable, but in no event later than one (1) year
16 after the Effective Date or such later date as may be approved by the Bankruptcy Court.
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19

20 **B. Payments.**

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

3 **C. Contingent Claims.**

4 Until such time as a contingent Claim or a contingent portion of an Allowed Claim
5 becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim
6 for all purposes related to Distributions under the Plan. The Holder of a contingent Claim will
7 only be entitled to a Distribution under the Plan when and if such contingent Claim becomes
8 an Allowed Claim.
9

10 **D. Estimation of Claims.**

11 Debtor or the Estate's representative pursuant to Section 1123(b)(3)(B) shall be
12 permitted, at any time, to request that the Bankruptcy Court estimate any contingent or
13 unliquidated Claim pursuant to Section Bankruptcy Code 502(c), regardless of whether
14 Debtor previously had objected to such Claim or whether the Bankruptcy Court had ruled on
15 such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any
16 time during any litigation concerning any objection to such Claim, including during the
17 pendency of any appeal relating to such objection. In the event that the Bankruptcy Court
18 estimates any contingent or unliquidated Claim, the amount so estimated shall constitute
19 either the Allowed amount of such Claim or a maximum limitation on such Claim, as
20 determined by the Bankruptcy Court. If such estimated amount constitutes a maximum
21 limitation on the amount of such Claim, Debtor or the representative may elect to pursue any
22 supplemental proceedings to object to the allowance of such Claim.
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26 **E. Reserve for Disputed Claims.**

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

10 **XI. RESERVATION OF RIGHTS**

11 **A. Withdrawal of Plan; Rights if Plan Not Confirmed; Effective Date Does Not** 12 **Occur.**

13 Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation
14 Date and to File subsequent plans of reorganization. If Debtor revokes or withdraws the Plan,
15 or if Confirmation of the Plan or the Effective Date does not ultimately occur, then: (1) the
16 Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the
17 Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims),
18 assumption or rejection of executory contracts or unexpired leases effected by the Plan, and
19 any document or agreement executed pursuant to the Plan, shall be deemed null and void; and
20 (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or
21 Interests by or against Debtor or any Person or Entity; (b) prejudice in any manner the rights
22 of Debtor or any other Person or Entity in any further proceedings involving Debtor; or (c)
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1 constitute an admission, acknowledgment, offer, or undertaking of any sort by Debtor or any
2 other Person or Entity.

3 **B. No Admissions or Waiver.**

4 Without limiting the generality of any similar provision in the Plan, notwithstanding
5 anything in the Plan to the contrary, nothing contained in the Plan, any Plan Supplement or in
6 the Disclosure Statement shall be deemed an admission by Debtor or any Person or Entity
7 with respect to any matter set forth herein. If Confirmation of the Plan or the Effective Date
8 does not ultimately occur, no statement contained in the Plan, any Plan Supplement or in the
9 Disclosure Statement may be used or relied on in any manner in any suit, action, proceeding
10 or controversy within or outside of the Chapter 11 Case against Debtor. Without in any way
11 limiting the provisions set forth in Section X, Subpart A, Debtor reserves any and all of its
12 rights as against all Persons and Entities in the event Confirmation of the Plan or the Effective
13 Date does not ultimately occur.
14
15

16 **C. Term of Bankruptcy Injunction or Stays.**

17 All injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362
18 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall
19 remain in full force and effect until the Effective Date unless the Bankruptcy Court shall order
20 otherwise.
21

22 **XII. CONDITIONS TO EFFECTIVE DATE**

23 **A. Conditions to Occurrence of Effective Date.**

24 Each of the following is a condition to be met on or before the Effective Date, which
25 conditions must be satisfied or waived in writing by Debtor:
26
27

1 (a) That the Confirmation Order shall be entered by the Bankruptcy Court;

2 (b) The required amount of Confirmation Funds have been paid and turned over to the
3 Distribution Agent for Distribution in accordance with the Plan; and

4 (c) Any outstanding U.S. Trustee Fees shall have been paid in full.

5 **XIII. RETENTION OF JURISDICTION**

6 **A. Retention of Jurisdiction.**

7
8 Except to the extent otherwise expressly set forth herein, the Bankruptcy Court shall
9 retain jurisdiction of the Chapter 11 Case following the Confirmation Date for the following
10 purposes, it being expressly intended that such retention of jurisdiction shall in all cases
11 hereafter set forth, extend to any actions or proceedings commenced prior or subsequent to the
12 Confirmation Date and/or the Effective Date whether by Debtor, or the parties specified
13 herein:
14

15 (a) To hear and determine any objections to the allowance of Claims, including any
16 objections by Debtor or the Liquidation Trust with respect to any Claims which have been
17 reinstated or assumed in accordance with the terms of the Plan;

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

21 (c) To determine any and all applications for the rejection or assumption and
22 assignment of executory contracts or for the rejection or assumption and assignment, as the
23 case may be, of unexpired leases to which Debtor is a party or with respect to which it may be
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1 liable, and to hear and determine, and if need be to liquidate, any and all Claims arising
2 therefrom;

3 (d) To modify the Plan pursuant to Bankruptcy Code Section 1127 or to remedy any
4 defect or omission or reconcile any inconsistency in the Confirmation Order to the extent
5 authorized by the Bankruptcy Code;

6
7 (e) To hear and determine all controversies, suits and disputes, if any, as may arise in
8 connection with the interpretation or enforcement of the Plan or the Liquidation Trust;

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

11 (g) To adjudicate all controversies concerning the classification of any Claim;

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

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

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

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

20 (l) To adjudicate all Causes of Action with respect to which Debtor is a party, whether
21 or not such Claim or controversy is raised or filed before or after the Effective Date;

22 (m) To determine issues and disputes concerning entitlement to Distributions to be
23 made under and pursuant to the Plan;

1 (n) To enter any order, including injunctions, necessary to enforce the title, rights and
2 powers of Debtor's limitations, restrictions, terms and conditions on such title, rights and
3 powers as the Bankruptcy Court may deem necessary or appropriate;

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

7 (p) To enter a Final Decree closing the Chapter 11 Case;

8 (q) To enforce the provisions of any Administrative Claim Bar Date entered by the
9 Bankruptcy Court;

10 (r) To make such orders as are necessary or appropriate to carry out the provisions of
11 the Plan or the Liquidation Trust, including but not limited to orders interpreting, clarifying or
12 enforcing the provisions thereof; and

13 (s) Without limiting the generality of any of the foregoing, to hear and determine
14 matters concerning state, local, and federal taxes in accordance with Bankruptcy Code
15 Sections 345, 505, and 1146.

16 **B. Jurisdiction Unaffected.**

17 The occurrence of the Effective Date and/or the entry of a Final Decree shall not
18 divest the Bankruptcy Court of any jurisdiction otherwise retained under this Article X of the
19 Plan or the Confirmation Order.

20 **C. Failure of Bankruptcy Court To Exercise Jurisdiction.**

21 If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction,
22 or is otherwise without jurisdiction over any matter arising under, arising in or related to the
23

1 Bankruptcy Case, including any of the matters set forth in the Plan, the Plan shall not prohibit
2 or limit the exercise of jurisdiction by any other court of competent jurisdiction with respect
3 to such matter.

4 **XIV. EFFECT OF CONFIRMATION OF PLAN**

5 **A. Discharge.**

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

16 (b) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,
17 EXCEPT AS PROVIDED IN THE CONFIRMATION ORDER,
18 CONFIRMATION DISCHARGES DEBTOR FROM ALL CLAIMS, OR
19 OTHER DEBTS THAT AROSE BEFORE THE EFFECTIVE DATE,
20 AND ALL DEBTS OF THE KIND SPECIFIED IN SECTIONS 502(G),
21 502(H) OR 502(I) OF THE BANKRUPTCY CODE, WHETHER OR
22 NOT: (i) A PROOF OF CLAIM BASED ON SUCH A DEBT HAS
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1 BEEN FILED, OR DEEMED TO HAVE BEEN FILED, UNDER
2 BANKRUPTCY CODE SECTIONS 501 OR 1111(A); (ii) A CLAIM
3 BASED ON SUCH DEBT IS ALLOWED UNDER BANKRUPTCY
4 CODE SECTION 502 OF THE BANKRUPTCY CODE; OR (iii) THE
5 HOLDER OF A CLAIM BASED ON SUCH DEBT HAS ACCEPTED
6 THE PLAN.

7
8 (c) EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, (I) ON THE
9 EFFECTIVE DATE, ALL CLAIMS AGAINST DEBTOR WHICH
10 AROSE BEFORE THE EFFECTIVE DATE SHALL BE SATISFIED,
11 DISCHARGED AND RELEASED IN FULL, AND (II) ALL PERSONS
12 SHALL BE PRECLUDED FROM ASSERTING AGAINST DEBTOR
13 OR ANY OF THEIR ASSETS OR PROPERTIES, ANY OTHER OR
14 FURTHER CLAIMS OR EQUITY INTERESTS BASED UPON ANY
15 ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF
16 ANY KIND OR NATURE THAT OCCURRED BEFORE THE
17 EFFECTIVE DATE, AS WELL AS ANY DEBT OF A KIND
18 SPECIFIED IN BANKRUPTCY CODE SECTIONS 502(G), 502(H), OR
19 502(I), IRRESPECTIVE OF WHETHER (i) A PROOF OF CLAIM
20 BASED ON SUCH A DEBT HAS BEEN FILED, OR DEEMED TO
21 HAVE BEEN FILED, UNDER BANKRUPTCY CODE SECTIONS 501
22 OR 1111(a), (ii) SUCH CLAIM IS ALLOWED UNDER BANKRUPTCY
23 CODE SECTION 502, OR (iii) THE HOLDER OF THE CLAIM HAS
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1 ACCEPTED THE PLAN.

2 (d) THE DISCHARGE OF THE RESPECTIVE DEBTOR, AS SET FORTH
3 IN THE PLAN, SHALL NOT RELEASE OR DISCHARGE ANY
4 THIRD-PARTY GUARANTORS FROM ANY PERSONAL
5 OBLIGATIONS THEY MAY HAVE TO ANY SECURED LENDER OR
6 OTHER CREDITOR UNDER ANY PERSONAL GUARANTY OR
7 OTHERWISE.
8

9 **B. Binding Effect of Plan/Injunction.**

10 (a) UPON THE EFFECTIVE DATE, BANKRUPTCY CODE SECTION
11 1141 SHALL BECOME APPLICABLE WITH RESPECT TO THE
12 PLAN AND THE PLAN SHALL BE BINDING ON ALL PARTIES TO
13 THE FULLEST EXTENT PERMITTED BY BANKRUPTCY CODE
14 SECTION 1141(A). IN ACCORDANCE WITH BANKRUPTCY CODE
15 SECTION 1141, ALL OF DEBTOR'S PROPERTY SHALL BE
16 VESTED IN DEBTOR FREE AND CLEAR OF ALL CLAIMS, LIENS AND
17 INTERESTS OF CREDITORS AND EQUITY INTEREST
18 HOLDERS.
19

20
21 (b) UPON THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES
22 SHALL BE PERMANENTLY ENJOINED BY THE PLAN FROM (i)
23 COMMENCING OR CONTINUING ANY ACTION, EMPLOYING
24 ANY PROCESS, ASSERTING OR UNDERTAKING AN ACT TO
25 COLLECT, RECOVER, OR OFFSET, DIRECTLY OR INDIRECTLY,
26
27

1 ANY CLAIM, RIGHTS, CAUSES OF ACTION, LIABILITIES, OR
2 INTERESTS IN OR AGAINST ANY PROPERTY DISTRIBUTED OR
3 TO BE DISTRIBUTED UNDER THE PLAN, OR VESTED IN
4 DEBTOR, BASED UPON ANY ACT, OMISSION, TRANSACTION,
5 OR OTHER ACTIVITY THAT OCCURRED BEFORE THE
6 EFFECTIVE DATE, (ii) CREATING, PERFECTING OR ENFORCING
7 ANY LIEN OR ENCUMBRANCE AGAINST ANY PROPERTY
8 DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE PLAN
9 OTHER THAN AS PERMITTED UNDER THE PLAN, AND (iii)
10 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,
11 ASSERTING ANY CLAIMS AGAINST DEBTOR BASED ON
12 SUCCESSOR LIABILITY OR SIMILAR OR RELATED THEORY,
13 EXCEPT TO THE EXTENT A PERSON OR ENTITY HOLDS AN
14 ALLOWED CLAIM UNDER THE PLAN AND IS ENTITLED TO A
15 DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN
16 ACCORDANCE WITH ITS TERMS, AND TO ENFORCE ITS RIGHTS
17 TO DISTRIBUTION UNDER THE PLAN.

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

3 (d) THE DISCHARGE OF THE RESPECTIVE DEBTOR, AS SET FORTH
4 IN THE PLAN, SHALL NOT RELEASE OR DISCHARGE ANY
5 THIRD-PARTY GUARNTORS FROM ANY PERSONAL
6 OBLIGATIONS THEY MAY HAVE TO ANY SECURED LENDER OR
7 OTHER CREDITOR UNDER ANY PERSONAL GUARANTY OR
8 OTHERWISE.
9

10 **C. Injunction Against Interference With Plan.**

11 Upon the Effective Date, all Holders of Claims against or Interests in Debtor and their
12 respective Representatives and any of their successors or assigns shall be enjoined from
13 taking any actions to interfere with the implementation or consummation of the Plan.
14

15 **D. Modification of Debt Instruments.**

16 On the Effective Date, all instruments evidencing indebtedness of Debtor held by
17 Holders of Claims that are Impaired by the Plan or have been paid in full pursuant thereto
18 shall be deemed modified or canceled as against Debtor as set forth in the Plan.
19

20 **E. Judgments Void.**

21 Any judgment obtained before or after the Effective Date in any court other than the
22 Bankruptcy Court shall be null and void as a determination of liability of Debtor with respect
23 to any debt treated by the Plan.
24

25 **F. Revesting of Assets in Debtor.**

1 Except as otherwise expressly provided herein or in the Confirmation Order or in the
2 Liquidation Trust Agreement, on the Effective Date, but retroactive to the Confirmation Date,
3 without any further action, Debtor will be vested with all of the property of the Estate,
4 wherever situate, free and clear of all Claims and Liens (except for Liens provided or
5 authorized pursuant to the Plan and Permitted Encumbrances). Without limiting the generality
6 of the foregoing, except as otherwise expressly provided herein or in the Confirmation Order
7 or in the Liquidation Trust Agreement, on and after the Effective Date, Debtor shall be vested
8 with all of the property of the Estate, wherever situate, free and clear of any Claims based on
9 any form of successor liability or similar or related theory of liability. On and after the
10 Effective Date, (i) Debtor shall be free of any restrictions imposed by the Bankruptcy Code or
11 Bankruptcy Court, may operate its business and may use, acquire or dispose of its assets
12 (including the Properties) free of any restrictions imposed by the Bankruptcy Code and the
13 Bankruptcy Rules and without supervision or approval by the Bankruptcy Court, other than
14 the obligations set forth in the Plan, or the Confirmation Order. Without limiting the
15 generality of the foregoing and except as otherwise expressly provided herein or in the
16 Confirmation Order or in the Liquidation Trust Agreement, any Causes of Action will be
17 preserved and retained solely for Debtor's commencement, prosecution, use and benefit.
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21 **G. Preservation of Causes of Action.**

22 Pursuant to Bankruptcy Code Section 1123(b), Debtor shall retain and reserve the
23 right to enforce all rights to commence and pursue Causes of Action whether arising prior to
24 or after the Petition Dates, and whether pending as of or Filed after the Effective Date, in any
25 court or other tribunal and shall assign such rights to the Liquidation Trust, as the estate
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1 representative pursuant to Section 1123(b)(3)(B), as provided herein and in the Liquidation
2 Trust Agreement. Unless a Cause of Action is expressly waived, relinquished, released,
3 compromised or settled in the Plan, or any Final Order, Debtor on behalf of themselves
4 expressly reserve all Causes of Action for later adjudication and, therefore, no preclusion
5 doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue
6 preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply
7 to any Causes of Action upon Confirmation or the Effective Date. No entity may rely on the
8 absence of a specific reference in the Plan, any Plan Supplement, or the Disclosure Statement
9 to any Cause of Action against them as an indication that Debtor or the Estate representative,
10 will not pursue any and all available Causes of Action against them.
11

12
13 Debtor expressly reserves all rights to prosecute any and all Causes of Action against
14 any Entity, except as otherwise expressly provided in the Plan.

15 **H. Maintenance of Administrative Claim Status Post Discharge.**

16 Notwithstanding any discharge granted to Debtor, Allowed Administrative Claims
17 shall maintain their administrative priority status under Bankruptcy Code Section 507(a)(2)
18 until paid in full.
19

20 . . .

21 **I. No Limitation on Effect of Confirmation.**

22 Nothing contained in the Plan or the Disclosure Statement will limit, waive or restrict
23 in any way the effect of Confirmation as set forth in Bankruptcy Code Section 1141.
24 Confirmation will bind Debtor, all Creditors, Equity Interest Holders and other parties in
25 interest to the provisions of the Plan, whether or not the Claim or Equity Interest of such
26

1 Creditor or Equity Interest Holder is Impaired under the Plan and whether or not such
2 Creditor or Equity Interest Holder has accepted the Plan and whether or not a proof of Claim
3 or Equity Interest has been filed or deemed to have been filed under Bankruptcy Code
4 Sections 501 or 1111(a), or such Claim or Equity Interest is allowed under Bankruptcy Code
5 Section 502.
6

7 **XV. PLAN RELATED RISK FACTORS**

8 PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF
9 CLAIMS THAT ARE IMPAIRED SHOULD READ AND CONSIDER CAREFULLY THE
10 FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET
11 FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.
12 ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT
13 BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION
14 WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.
15
16

17
18 **A. CERTAIN BANKRUPTCY LAW CONSIDERATIONS**

19 **1. Parties-in-Interest May Object to the Debtor's Classification of Claims**
20 **and Equity Interests.**

21 Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an
22 equity interest in a particular class only if such claim or equity interest is substantially similar
23 to the other claims or equity interests in such class. The Debtor believes that the classification
24 of Claims and Equity Interests under the Plan complies with the requirements set forth in the
25 Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each
26

1 encompassing Claims or Equity Interests, as applicable, that are substantially similar to the
2 other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance
3 that the Bankruptcy Court will reach the same conclusion.

4 **2. The Debtor May Fail to Satisfy the Vote Requirement.**

5 If votes are received in number and amount sufficient to enable the Bankruptcy Court
6 to confirm the Plan, the Debtor intends to seek, as promptly as practicable thereafter,
7 Confirmation of the Plan. In the event that sufficient votes are not received, the Debtor may
8 seek to accomplish an alternative chapter 11 plan. There can be no assurance that the terms of
9 any such alternative chapter 11 plan would be similar or as favorable to the Holders of
10 Allowed Claims as those proposed in the Plan.
11

12 **3. The Debtor May Not Be Able to Secure Confirmation of the Plan.**

13 Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a
14 chapter 11 plan, and requires, among other things, findings by the bankruptcy court that: (a)
15 such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-
16 accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or
17 a need for further financial reorganization unless such liquidation or reorganization is
18 contemplated by the plan; and (c) the value of distributions to non-accepting Holders of
19 Claims within a particular class under such plan will not be less than the value of distributions
20 such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy
21 Code.
22

23 There can be no assurance that the requisite acceptances to confirm the Plan will be
24 received. Even if the requisite acceptances are received, there can be no assurance that the
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1 Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might
2 challenge either the adequacy of this Disclosure Statement or whether the balloting
3 procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy
4 Rules. Even if the Bankruptcy Court determined that the Disclosure Statement, the balloting
5 procedures and voting results were appropriate, the Bankruptcy Court could still decline to
6 confirm the Plan if it found that any of the statutory requirements for Confirmation had not
7 been met, including the requirement that the terms of the Plan do not “unfairly discriminate”
8 and are “fair and equitable” to non-accepting Classes.
9

10 Confirmation of the Plan is also subject to certain conditions as described in the Plan.
11 If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed
12 Claims would receive with respect to their Allowed Claims.
13

14 The Debtor, subject to the terms and conditions of the Plan, reserves the right to
15 modify the terms and conditions of the Plan as necessary for Confirmation. Any such
16 modifications could result in less favorable treatment of any non-accepting Class, as well as
17 any Classes junior to such non-accepting Class, than the treatment currently provided in the
18 Plan. Such less favorable treatment could include a distribution of property to the Class
19 affected by the modification of a lesser value than currently provided in the Plan or no
20 distribution of property whatsoever under the Plan.
21

22 **4. Nonconsensual Confirmation of the Plan May be Necessary.**
23

24 In the event that any impaired class of claims or equity interests does not accept a
25 chapter 11 plan, a bankruptcy court may nevertheless confirm such a plan at the proponents’
26 request if at least one impaired class has accepted the plan (with such acceptance being
27

1 determined without including the vote of any “insider” in such class), and, as to each impaired
2 class that has not accepted the plan, the bankruptcy court determines that the plan “does not
3 discriminate unfairly” and is “fair and equitable” with respect to the dissenting impaired
4 classes. The Debtor believes that the Plan satisfies these requirements and the Debtor may
5 request such nonconsensual Confirmation in accordance with subsection 1129(b) of the
6 Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will
7 reach this conclusion.
8

9 **5. The Debtor May Object to the Amount or Classification of a Claim.**

10 Except as otherwise provided in the Plan, the Debtor and Reorganized Debtor reserve
11 the right to object to the amount or classification of any Claim under the Plan. The estimates
12 set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim where
13 such Claim is subject to an objection. Thus, any Holder of a Claim that is subject to an
14 objection thus may not receive its expected share of the estimated distributions described in
15 this Disclosure Statement.
16

17 **6. Risk of Non-Occurrence of the Effective Date.**

18 Although the Debtor believes that the Effective Date may occur quickly after the
19 Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective
20 Date will, in fact, occur.
21

22 **7. Contingencies Will Not Affect Votes of Impaired Classes to Accept or**
23 **Reject the Plan.**

24 The distributions available to Holders of Allowed Claims under the Plan can be
25 affected by a variety of contingencies, including, without limitation, whether the Bankruptcy
26

1 Court orders certain Allowed Claims to be subordinated to other Allowed Claims. The
2 occurrence of any and all such contingencies, which could affect distributions available to
3 Holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by the
4 Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired
5 Classes.

6
7 **8. The Financial Information Contained Herein is Based on the Debtor's**
8 **Books and Records and, Unless Otherwise Stated, No Audit Was**
9 **Performed.**

9 The financial information contained in this Disclosure Statement has not been audited.
10 In preparing this Disclosure Statement, the Debtor relied on financial data derived from its
11 books and records that was available at the time of such preparation. Although the Debtor has
12 used its reasonable business judgment to ensure the accuracy of the financial information
13 provided in this Disclosure Statement, and while the Debtor believes that such financial
14 information fairly reflects the financial condition of the Debtor, the Debtor is unable to
15 warrant or represent that the financial information contained herein and attached hereto is
16 without inaccuracies.
17

18
19 **XVI. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

20 IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH
21 REQUIREMENTS IMPOSED BY THE IRS, ANY TAX ADVICE CONTAINED IN THIS
22 DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED
23 OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR
24 THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE IRC. TAX
25 ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY
26

1 ATTACHMENTS) IS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF
2 THE TRANSACTIONS OR MATTERS ADDRESSED BY THE DISCLOSURE
3 STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE
4 TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX
5 ADVISOR.
6

7 **A. Certain Federal Income Tax Consequences of the Plan.**

8 The following discussion is a summary of certain U.S. federal income tax
9 consequences of the consummation of the Plan to Holders of Allowed Claims. This summary
10 is based on the Internal Revenue Code (the "IRC"), the U.S. Treasury Regulations
11 promulgated thereunder, judicial authorities, published administrative positions of the Internal
12 Revenue Service (the "IRS") and other applicable authorities, all as in effect on the date of
13 this Disclosure Statement and all of which are subject to change or differing interpretations,
14 possibly with retroactive effect. No rulings or determinations of the IRS or any other taxing
15 authorities have been sought or obtained with respect to the tax consequences discussed
16 herein, and the discussion below is not binding upon the IRS or the courts. No assurance can
17 be given that the IRS would not assert, or that a court would not sustain, a different position
18 than any position discussed herein.
19
20

21 This discussion is for general information only and does not purport to address all
22 aspects of U.S. Federal income taxation that may be relevant to Holders of Claims in light of
23 their personal circumstances, nor does the discussion deal with tax issues with respect to
24 taxpayers subject to special treatment under the U.S. federal income tax laws (including, for
25 example, banks, governmental authorities or agencies, pass-through entities, brokers and
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1 dealers in securities, insurance companies, financial institutions, tax-exempt organizations,
2 small business investment companies or regulated investment companies). This discussion
3 only addresses the tax consequences to Holders of Claims who have held such Claims as
4 capital assets within the meaning of the IRC. No aspect of foreign, state, local or estate and
5 gift taxation is addressed.

6
7 THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX
8 CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A
9 SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE
10 INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF AN ALLOWED
11 CLAIM. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX
12 ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL AND NON-UNITED STATES
13 TAX CONSEQUENCES OF THE PLAN.
14

15 . . .

16 **B. In General.**

17 The U.S. federal income tax consequences of the distributions contemplated by the
18 Plan to Holders of Claims will depend upon a number of factors. The character and amount of
19 income, gain or loss recognized as a consequence of the Plan and the distributions provided
20 thereby will depend upon, among other things, (i) the manner in which a Holder acquired a
21 Claim, (ii) the length of time the Claim has been Held, (iii) whether the Claim was acquired at
22 a discount, (iv) whether the Holder has taken a bad debt deduction with respect to the Claim
23 (or any portion thereof) in the current or prior years, (v) whether the Holder has previously
24 included in income accrued but unpaid interest with respect to the Claim (vi) the method of
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1 tax accounting of the Holder, and (vii) whether the Claim is an installment obligation for U.S.
2 federal income tax purposes.

3 For purposes of the following discussion, a “U.S. Holder” is any person (i) who is a
4 citizen resident of the United States; (ii) that is a corporation or partnership created or
5 organized in or under the laws of the United States or any state thereof of the District of
6 Columbia; (iii) that is an estate, the income of which is subject to U.S. Federal income
7 taxation regardless of its source; or (iv) that is a trust (a) the administration over which a
8 United States person can exercise primary supervision and all of the substantial decisions of
9 which one or more United States persons have the authority to control or (b) that has elected
10 to continue to be treated as United States person for U.S. federal income tax purposes. A
11 “Non-U.S. Holder” is any person that is not a U.S. Holder. In the case of a partnership, the tax
12 treatment of its partners will depend on the status of the partner and the activities of the
13 partnership. Holders who are partnerships or partners in a partnership should consult their tax
14 advisors.
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16

17 Certain Holders of Claims (such as foreign persons, S corporations, regulated
18 investment companies, insurance companies, financial institutions, small business investment
19 companies, broker-dealers, and tax exempt organizations) may be subject to special rules not
20 addressed in this summary of the U.S. federal tax consequences. There also may be state,
21 local and/or foreign income or other tax considerations or U.S. federal estate and gift tax
22 consideration applicable to Holders of Claims, which are not addressed herein. EACH
23
24
25 **HOLDER OF A CLAIM OR EQUITY INTEREST AFFECTED BY THE PLAN IS**

1 STRONGLY URGED TO CONSULT ITS TAX ADVISOR WITH RESPECT TO
2 DISTRIBUTIONS RECEIVED UNDER THE PLAN.

3 **C. U.S. Holders of Claims.**

4 A U.S. Holder should generally recognize capital gain or loss for U.S. income tax
5 purposes in an amount equal to the difference between the amount of Cash (and other
6 consideration received) under the Plan in respect of such Holder's Claim and the Holder's
7 adjusted tax basis in the Claim. However, to the extent a U.S. Holder received any Cash (or
8 other consideration) in satisfaction of any accrued and unpaid interest, such Holder may
9 recognize ordinary income or loss to the extent that such Cash (or other consideration) is
10 allocable to the accrued and unpaid interest, unless such Holder has previously included the
11 accrued interest in such Holder's taxable income.
12
13

14 ...

15 ...

16 **D. Non-U.S. Holders of Claims.**

17 A Non-U.S. Holder of a Claim generally will not be subject to the U.S. federal income
18 tax with respect to any income or gain recognized upon the exchange of such Holder's Claim
19 with Cash (or other property) pursuant to the Plan, unless (i) such Holder is engaged in a trade
20 or business in the United States to which income, gain from the exchange is "effective
21 connected" for U.S. federal income tax purposes, or (ii) if such Holder is an individual, such
22 Holder is present in the United States for 183 Days or more during the taxable year of the
23 exchange and certain other requirements are met. To the extent any cash (or other
24 consideration) is distributed for accrued and unpaid interest, however, a Non-U.S. Holder may
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1 be subject to U.S. withholding taxes at (30%) unless such Holder is qualified for the so-called
2 “portfolio interest exemption” or eligible to claim a reduction or exemption under any
3 applicable treaty and complies with certain required certification procedures.

4 **E. Importance of Obtaining Professional Tax Assistance.**

5 The U.S. federal income tax consequences to a Holder other than a Holder receiving
6 Cash (or other property) in satisfaction of such Holder’s Claim may be different from the tax
7 consequences described above. Holders of each such Claim should consult their tax advisers
8 regarding potential federal income tax consequences.

9
10 THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF
11 CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A
12 SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE
13 ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT
14 TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND
15 MAY VARY DEPENDING ON A CLAIM HOLDER’S PARTICULAR
16 CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT
17 THEIR TAX ADVISORS ABOUT THE U.S., STATE AND LOCAL, AND APPLICABLE
18 FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.
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21 **XVII. MISCELLANEOUS PROVISIONS**

22 **A. Modification of the Plan.**

23 Debtor may alter, amend or modify the Plan at any time before the entry of the
24 Confirmation Order, provided that the Plan, as altered, amended or modified, satisfies the
25 conditions of Bankruptcy Code Sections 1122 and 1123, and Debtor shall have complied with
26
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1 Bankruptcy Code Section 1125. However, the Bankruptcy Court may require a new
2 disclosure statement and/or re-voting on the Plan if Debtor modifies the plan before
3 Confirmation.

4 Debtor may also seek to alter, amend or modify the Plan at any time after
5 Confirmation so long as (i) the Plan has not been substantially consummated, (ii) as altered,
6 amended or modified the Plan satisfies the conditions of Bankruptcy Code Sections 1122 and
7 1123, and (iii) the Bankruptcy Court authorizes the proposed modification after notice and a
8 hearing under Bankruptcy Code Section 1129.
9

10 A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the
11 Plan, as altered, amended or modified, if the proposed alteration, amendment or modification
12 does not materially and adversely change the treatment of the Claim of such Holder. Prior to
13 the Effective Date, Debtor may make appropriate technical non-material modifications to the
14 Plan or the Disclosure Statement without further order or approval of the Bankruptcy Court,
15 provided that such technical modifications do not adversely affect the treatment of Holders of
16 Claims or Equity Interest.
17

18 Debtor further reserves the right to modify the treatment of any Allowed Claims at any
19 time after the Effective Date of the Plan upon the consent of the Creditor whose Allowed
20 Claim treatment is being modified, so long as no other Creditors are materially adversely
21 affected.
22

23 Debtor reserves the right, in accordance with the Bankruptcy Code, to amend or
24 modify the Plan before or after the Confirmation Date, including making any amendments or
25 modifications to satisfy the requirements of Bankruptcy Code Section 1129(b), if necessary.
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1 **B. Notices.**

2 Except as otherwise set forth below, all notices, requests, elections or demands in
3 connection with the Plan, including any change of address of any Holder of a Claim for the
4 purposes of receiving any Distributions under the Plan, shall be in writing and shall be
5 delivered personally or by facsimile, electronic mail or overnight courier (confirmed by first
6 class mail or express mail) or mailed by first class mail. Such notice shall be deemed to have
7 been given when received or, if mailed by first class mail, seven (7) days after the date of
8 mailing, or if express mailed, the next Business Day following the date of mailing and
9 addressed to the following:
10

11 **If to Debtor, to:**

12 R&S St. Rose Lenders, LLC
13 3140 South Durango Dr. #103
14 Las Vegas, NV 89117

15 with copies to:

16 Ghandi Deeter Law Offices
17 NEDDA GHANDI, ESQ.
18 601 South 6th Street
19 Las Vegas, Nevada 89101
20 Telephone: (702) 878-1115
21 Facsimile: (702) 447-9995

22 All notices and requests to Holders of Claims of any Class shall be sent to them at
23 their known address. Any Holder of a Claim of any Class may designate in writing any other
24 address for purposes of this Section, which designation shall be effective upon receipt.

25 **C. Limitation of Notice.**

1 Debtor shall give the following notice with regard to the following matters, which
2 notice shall be deemed to be good and sufficient notice of such matters, with no requirement
3 for any additional or further notice:

4 (a) Notice of Entry of Confirmation Order. Notice of the entry of the Confirmation
5 Order shall be sufficient if mailed to all known Holders of Claims (which have not become
6 Disallowed Claims) and Interests within five (5) Business Days of the entry of Confirmation
7 Order.
8

9 (b) Post-Confirmation Date Service List - Additional Persons Entitled to Notice.
10 Except as set forth in Section XIV, Subpart(B) hereof, from and after the date the
11 Confirmation Order becomes a Final Order, notices of appearances and demands for service
12 of process Filed with the Bankruptcy Court prior to such date shall no longer be effective, and
13 no further notices, other than Notice of Confirmation Order, shall be required to be sent to
14 such parties, unless such parties File a new notice of appearance and demand for service of
15 process dated subsequent to the Effective Date, which subsequent notice and demand must be
16 Filed with the Bankruptcy Court and served upon the Persons and Entities listed in Section
17 15(B) above.
18

19 (c) Subordination - Nothing in the Plan shall in any way be deemed to have Impaired,
20 altered or otherwise affected the rights of Debtor to enforce any right of subordination that
21 may exist by agreement or otherwise, including under Bankruptcy Code Section 510.
22

23 **D. Headings.**
24

25 The headings used in the Plan are inserted for convenience only and do not constitute
26 a portion of the Plan nor in any manner affect the provisions of the Plan.
27

1 **E. Exhibits.**

2 All exhibits and documents included in the Disclosure Statement are incorporated into
3 and are a part of the Plan, as if set forth in full in the Plan. After the exhibits and documents
4 are Filed, copies of such exhibits and documents shall have been available upon written
5 request to Debtor's counsel at the address above or by downloading such exhibits and
6 documents from the Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the
7 extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise
8 ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall
9 control.
10

11 **F. Nonseverability of Plan Provisions.**

12 If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy
13 Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power, at the
14 request of Debtor and subject to the consent of any party adversely affected thereby, to alter
15 and interpret such term or provision to make it valid or enforceable to the maximum extent
16 practicable, consistent with the original purpose of the term or provision held to be invalid,
17 void, or unenforceable, and such term or provision shall then be applicable as altered or
18 interpreted.
19

20 Notwithstanding any such holding, alteration, or interpretation, the remainder of the
21 terms and provisions of the Plan will remain in full force and effect and will in no way be
22 affected, Impaired, or invalidated by such holding, alteration, or interpretation. The
23 Confirmation Order shall constitute a judicial determination and shall provide that each term
24 and provision of the Plan, as it may have been altered or interpreted in accordance with the
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1 foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may
2 not be deleted or modified without the consent of Debtor and any other Person or Entity
3 affected by such provision; and (c) nonseverable and mutually dependent.

4 **G. Waiver or Estoppel.**

5 Each Holder of a Claim or an Interest shall be deemed to have waived any right to
6 assert any argument, including the right to argue that its Claim or Interest should be Allowed
7 in a certain amount, in a certain priority, Secured or not subordinated by virtue of an
8 agreement made with Debtor or its counsel, or any other Entity, if such agreement was not
9 disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court
10 prior to the Confirmation Date.
11

12 **H. Conflicts.**

13 To the extent that any provision of the Disclosure Statement, any Plan Supplement
14 (other than any amendments to the Plan), or any other order (other than the Confirmation
15 Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or
16 amendments to any of the foregoing), conflict with or are in any inconsistent with any
17 provision of the Plan, the Plan shall govern and control, unless expressly set forth herein.
18

19 **I. Computation of Time.**

20 In computing any period of time prescribed or allowed by the Plan, the provisions of
21 Bankruptcy Rule 9006(a) shall apply.
22

23 **J. Governing Law.**

1 Except to the extent that the Bankruptcy Code or any other Federal law is applicable,
2 the rights and obligations arising under the Plan shall be governed by, and construed and
3 enforced in accordance with, the laws of the State of Nevada.

4 **K. Successors and Assigns.**

5 The rights and obligations of any Person or Entity named or referred to in the Plan
6 shall be binding upon, and shall inure to the benefit of, the successors and assigns of such
7 Person or Entity.
8

9 **L. Good Faith.**

10 Confirmation of the Plan will constitute a finding that the Plan has been proposed in
11 good faith and in compliance with all applicable provisions of the Bankruptcy Code.
12

13 **M. Post-Confirmation Conversion or Dismissal.**

14 A creditor or party in interest may bring a motion to convert or dismiss the Chapter 11
15 Cases under Bankruptcy Code Section 1112(b), after the Plan is confirmed, if there is a
16 default in performance of the Plan or if cause exists under Bankruptcy Code Section 1112(b).
17 If the Bankruptcy Court orders the case converted to Chapter 7 after the Plan is confirmed,
18 then all property that had been property of the Estate, and that has not been disbursed or
19 distributed pursuant to the Plan, will revert in the Chapter 7 estate, and the automatic stay will
20 be re-imposed upon the re-vested property only to the extent that relief from stay was not
21 previously granted by the Bankruptcy Court during these Chapter 11 Cases. In addition, any
22 Allowed Administrative Claims which are not paid on the Effective Date shall continue to be
23 entitled to administrative priority, under Bankruptcy Code Section 507(a)(1) in any such
24 subsequent Chapter 7 case to which this case is converted.
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1 **N. Post Confirmation Reports and Quarterly Fees.**

2 Until the entry of the final decree, Debtor shall file with the clerk, not later than
3 twenty (20) days after the end of the calendar quarter which occurs after the entry of this
4 order, and every six (6) months thereafter, a report of the action taken by the Reorganized
5 Debtor and the progress made toward consummation of the Confirmed Plan. Said report shall
6 include, at a minimum, the following information:
7

8 (A) A schedule of any personal property costing more than \$5,000 and any real
9 property acquired, sold or disposed of since confirmation of the plan and the price paid for
10 each;
11

12 (B) A schedule listing each debt, the total amount required to be paid under the plan,
13 the amount required to be paid to date, the amount actually paid to date, and the amount
14 unpaid;

15 (C) A schedule of executory contracts entered into after plan confirmation;

16 (D) A statement listing each post-petition tax (i.e., income, payroll, property, sales),
17 and payee and the amount actually paid;
18

19 (E) The progress toward completion of the confirmed plan and a list and status of any
20 pending adversary proceedings or motion and resolution expected; and

21 (F) A statement regarding the status of payment of both pre-confirmation and post
22 confirmation United States trustee quarterly fees.

23 U.S. Trustee Fees continue to be payable to the Office of the United States Trustee post
24 confirmation until such time as the case is converted, dismissed, or closed pursuant to Final
25 Decree.
26

1 **O. Entire Agreement.**

2 The Plan, as described herein, the Disclosure Statement and exhibits thereto, and any
3 Plan Supplements set forth the entire agreement and understanding of the parties hereto
4 relating to the subject matter hereof and supersede all prior discussions and documents. No
5 party hereto shall be bound by any terms, conditions, definitions, warrants, understandings or
6 representations with respect to the subject matter hereof, other than as in expressly provided
7 for herein or as may hereafter be agreed by the parties in writing.

8 Respectfully submitted,

9 Submitted by:

10 **GHANDI DEETER LAW OFFICES**

11 /s/Nedda Ghandi
12 NEDDA GHANDI, ESQ.
13 Nevada Bar No. 11137
14 601 South 6th Street
15 Las Vegas, Nevada 89101
16 (702) 878-1115
Attorneys for Debtor

EXHIBIT A

LIST OF ALL ASSETS

CURRENT ASSETS (as of February 1, 2014)

Debtor-in-Possession Account	\$ 12,805,677.71
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TOTAL ASSETS:	\$ 12,805,677.71
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EXHIBIT B

FINANCIAL STATEMENTS

Statement of Debtor's Financial Condition has been filed along with Debtor's other schedules and these statements give a fair approximation of the condition of Debtor. Monthly Operating Reports have been filed with the Bankruptcy Court throughout the Case.

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EXHIBIT C

UNEXPIRED LEASES/EXECUTORY CONTRACTS TO BE ASSUMED

None.

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EXHIBIT D

UNEXPIRED LEASES/EXECUTORY CONTRACTS TO BE REJECTED

None.

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EXHIBIT E**LIQUIDATION ANALYSIS**

TOTAL ASSETS, as shown in Exhibit A:	\$ 12,805,677.71
Less:	
Chapter 7 trustee fees and expenses ¹	\$ (1,280,567.77)
Less:	
Chapter 11 administrative expenses	\$ (208,500±)
Less:	
Priority claims, excluding admin. expense claims	<u>\$ (0.00)</u>
TOTAL ASSETS LESS ADMIN. EXPENSES/CLAIMS:	\$ 11,525,109.94
Less:	
Estimated Balance of secured claim:	\$ (0.00)
<u>Litigation Reserve Funds</u>	<u>\$ (400,000.000)</u>
Remaining Balance for Unsecured Claims:	\$ 11,5125,109.94
Estimated Total Amount of Allowed Unsecured Claims:	\$ 28,166,494.57

Summary:

% of Claims Which Unsecured Creditors Would Receive or Retain in a Ch. 7 Liquidation, After Chapter 7 Estimated Costs:	41 <u>39.5</u> %
% of Claims Which Unsecured Creditors Will Receive or Retain Under This Plan:	43.3%

¹ Chapter 7 Liquidation Costs. These are estimated at 10% of Non-Exempt Estate Assets. Pursuant to section 726 of the Bankruptcy Code, the allowed administrative expenses incurred by a Chapter 7 trustee, including, but not limited to, expenses affiliated with selling Debtor's assets, will be entitled to payment in full prior to any distribution to Chapter 11 administrative and other priority claims. It is anticipated that creditors' recoveries would be extinguished by the secured claims of Debtor's first lien holder, leaving no recovery for unsecured creditors.

EXHIBIT F**LIST OF ADMINISTRATIVE EXPENSE CLAIMS****UNCLASSIFIED CLAIMS: ADMINISTRATIVE CLAIMS**

TYPE	ESTIMATED AMOUNT
Expenses Arising in the Ordinary Course of Business Post-Petition	Unknown
Professional Fees, as approved by the Court	\$208,000±
Office of the U.S. Trustee Fees	\$500.00±
Clerk's Office Fees	Unknown
Other Administrative Expenses	Unknown
TOTAL ESTIMATED AMOUNT:	\$208,500±

EXHIBIT G

LIST OF PRIORITY UNSECURED CLAIMS

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None.

EXHIBIT H**LIST OF CLASS 1 LENDER CLASS CLAIMS**

MARVIN BURNS	102,000.00
SAEED SASSOONI	195,582.96
BRUCE H ROSEN	275,000.00
MARVIN BURNS	2,000.00
BARRY D BRISKIN	142,469.00
MEHRDAD NOORANI	209,041.67
EBRAHIM NOORANI	236,647.22
MEHRDAD DANIALIFAR	207,041.67
BARBARA NARENS	134,292.00
EDWARD NARENS	398,875.00
MERLE HARRIS	264,583.00
STEVEN HARRIS	332,729.00
MERLE HARRIS	531,167.00
BABS KAUFMAN	200,438.00
JULIE HARRIS	200,438.00
GEORGE NYMAN	538,219.18
ROMYAR NOURAFCHAN	278,055.56
FASHANDI & ASSOC	138,027.78
IRAJ JOURABCHI	139,027.78
VIDA HAMADANI	278,055.56
POOPAK NOURAFCHAN	278,055.56
AFAGH NOURAFCHAN	140,027.78
DAVID SETAREH	195,238.89
R. PHILLIP & AGAGH NOURAFCHAN FAMILY TRUST	353,970.83
SHARAREH MAKHANI	414,083.33
HOUSHANG FOROUZAN	278,055.56
FOROUZAN PARTNERSHIP- MITRA	761,152.78
RAFEE HALELOUYAN	117,323.61
YEHUDA OHEBSION	1,865,375.00

1	SHAHNAZ SEFARADI	103,520.83
2	ALLAN G ZIELELMAN	135,694.44
3	DR. RAHMAT OLLAH RAFFI	1,077,706.26
4	JOSEPH SAFARADI	241,548.61
5	SHAHRAM RAHIMI	138,027.78
6	FASHANDI & ASSOC	138,027.78
7	MEHRDAD DANIALIFAR	207,041.67
8	MOULOUK FOROUZAN	416,083.33
9	DAVID SAADNIA	138,027.78
10	DOURIZ SAADNIA	138,027.78
11	BRADLEY ABESON	2,000.00
12	BRADLEY ABESON	86,625.00
13	MAJID TABIBZADEH	672,638.89
14	DOUBLE E FAMILY, LLC	1,518,825.00
15	R&S INVESTMENT GROUP	3,322.38
16	R&S INVESTMENT GROUP	8,439,463.49
17	WILLIAM WETSMAN TRUST	134,292.22
18	LILLIAN R WETSMAN TRUST	67,146.00
19	WETSMAN FOUNDATION	134,292.00
20	ADDA ENTERPRISES, LLC	67,146.00
21	ISABELLE ZIEGELMAN	67,847.22
22	JEFFREY NOVICK	468,584.00
23	EDITH BRISKIN	134,292.00
24	SHIRLEY K SCHLAFER FOUNDATION	134,292.00
25	JEFFREY HARRIS	502,000.00
26	ZOMCO	1,520,305.56
27	KEYVAN SETAREH	1,073,837.39
28	<u>TOTAL:</u>	<u>\$26,967,589.13</u>

EXHIBIT I

LIST OF CLASS 2 GENERAL UNSECURED CLAIMS

<u>COMMONWEALTH LAND TITLE INSURANCE COMPANY</u>	<u>1,175,905.44</u>
<u>DAVID J. MERRILL</u>	<u>23,000.00</u>
TOTAL:	\$1,198,905.44

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