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9
10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 **IN RE LARRY STUART KUSH,**
13
14 **Debtor in Possession.**

15 **Chapter 11 Proceeding**
16 **Case Number: 2:13-bk-15987-BMW**

17 **DEBTOR'S SECOND AMENDED DISCLOSURE STATEMENT**

18 **I. INTRODUCTION**

19 This document is the Second Amended Disclosure Statement of the Debtor, Larry Stuart
20 Kush ("Debtor") in the above-entitled Chapter 11 bankruptcy proceeding. This Disclosure
21 Statement is submitted by the Debtor pursuant to 11 U.S.C. §1125.

22 11 U.S.C. §1125(b) prohibits the solicitation of acceptances or rejections of a plan of
23 reorganization unless such plan is accompanied by a copy of the Disclosure Statement that has been
24 approved by the Bankruptcy Court.

25 The purpose of this disclosure statement is to provide creditors and interested parties in this
26 bankruptcy proceeding with such information as may reasonable be deemed sufficient to allow
27 creditors and interested parties to make an informed decision regarding the Debtor's Plan of
28 Reorganization ("Plan").

1 Unless otherwise noted, those portions of the Plan and this Disclosure Statement providing
2 factual information concerning the Debtor, his assets, and liabilities have been prepared from
3 information submitted by the Debtor and his retained professionals. The Debtor and other
4 professionals employed by the Debtor have used all relevant, non-privileged information provided
5 by the Debtor in preparing this Disclosure Statement and the Plan.

6 This Disclosure Statement contains information that may influence your decision to accept
7 or reject the Debtor's proposed Plan. Please read this document with care.

8 The financial information contained in this Disclosure Statement has not been subjected to
9 an audit by an independent certified public accountant. For that reason, the Debtor is not able to
10 warrant or represent that the information contained in this Disclosure Statement is without any
11 inaccuracy. To the extent practicable, the information has been prepared from the Debtor's
12 financial books and records, and great effort has been made to ensure that all such information is
13 fairly representative.

14 This Disclosure Statement and the Plan will classify all creditors into Classes. The
15 treatment of each Class of creditors will be set forth in this Disclosure Statement and in the Plan.
16 You should carefully examine the treatment of the Class to which your Claim will be assigned.

17 The Disclosure Statement requires approval by the Bankruptcy Court after notice and a
18 hearing pursuant to 11 U.S.C. §1125(b). Once approved, the Disclosure Statement will be
19 distributed with the Debtor's proposed Plan for voting. Approval of the Disclosure Statement by
20 the Bankruptcy Court does not constitute either certification or approval of the Debtor's Plan by the
21 Bankruptcy Court or that the Disclosure Statement is without any inaccuracy.

22 The Bankruptcy Court will confirm the Plan if the requirements of 11 U.S.C. §1129 are
23 satisfied. The Bankruptcy Court must determine whether the Plan has been accepted by each
24 impaired class entitled to vote on the Plan. Impaired classes entitled to vote on the Plan are those
25 classes of claims whose legal, equitable, or contract rights are altered, as defined under Section
26 1124 of the Bankruptcy Code. An impaired class of claims is deemed to have accepted the Plan if
27 at least two-thirds in amount of those claims who vote, and more than one-half in number of those
28

1 claims who vote have accepted the Plan. An impaired class of interests is deemed to have accepted
2 the Plan if the Plan has been accepted by at least two-thirds in amount of the allowed interests who
3 vote on the Plan.

4 Even if each class of creditors does not accept the Plan, the Plan can be confirmed under
5 §1129(b) of the Bankruptcy Code, so long as one impaired class of creditors accept the Plan. This
6 is referred to as the “cram down” provision. The failure of each class to accept the Plan could very
7 well result in a conversion of this case to a Chapter 7 or dismissal of the Chapter 11, and the
8 secured creditors repossessing their collateral and disposing of it in a commercially reasonable
9 manner with no obligation to unsecured creditors.

10 Only the votes of those creditors or interested parties whose ballots are timely received will
11 be counted in determining whether a class has accepted the Plan.

12 **II. DEFINITIONS**

13 The definitions set forth in Article I of the Plan apply to this Disclosure statement, except to
14 the extent other definitions are set forth in this Disclosure Statement.

15 **III. THE DEBTOR AND EVENTS PRECIPITATING THE CHAPTER 11**

16 **A. Background**

17 Larry Kush is a married man who resides in Scottsdale, Arizona. The Debtor works
18 as a real estate agent for his wife’s brokerage. The Debtor also has an interest in Plus Agency,
19 LLC, which is a marketing company. Plus Agency consults with large home developers on
20 marketing plans for their developments. Income to fund the Plan will come from both excess wage
21 income and excess income from real property rental activities.

22 **B. Events Preceding the Chapter 11 Filing**

23 The Debtor engaged in real estate investing and residential development over the last
24 ten years. Although most of his projects were successful, some projects failed. In particular, a
25 project called Montevina Estate Homes that consisted of custom-built homes could not be
26 completed, and creditors sued the Debtor for losses sustained or unpaid debts relating to that
27 project. Indeed, the vast majority of the debts scheduled by the Debtor arise out of the Montevina
28 project.

1 project. Such debts were scheduled notwithstanding the lack of any guaranties executed by the
2 Debtor.

3 The Debtor settled or otherwise resolved several lawsuits relating to the Montevina project,
4 but litigation commenced by Silverwood Real Estate Investments, LLC proceeded to trial, and the
5 Maricopa County Superior Court ruled in favor of Silverwood on some of the claims it brought. An
6 appeal is presently before the Arizona Court of Appeals relating to the judgment entered against the
7 Debtor's spouse and marital community. If the appeal is resolved in favor of the Debtor's interests,
8 Silverwood's claim against the Debtor would be significantly reduced (or even eliminated). The
9 Silverwood litigation drained the Debtor of all of his financial resources, and the Debtor
10 consequently filed this proceeding to restructure his financial affairs.

11 C. Overview of the Debtor's Financial Condition

12 The Debtor has no significant personal property assets. He drives a leased vehicle
13 and owns miscellaneous items of personal property such as clothing, furniture, and appliances. He
14 does not own stocks, bonds, mutual funds, or other financial instruments.

15 While the Debtor has membership interest in several different limited liability
16 companies, all but one company has ceased doing business. The Debtor's newest venture, Plus
17 Agency, LLC, is a real estate marketing company. Plus Agency consults with larger residential
18 developers on marketing and sales plans, and receives payment for those services. The Debtor
19 holds a 16% membership interest in Plus Agency, although he receives the majority of fees he
20 generates from his work.

21 The Debtor holds an ownership interest in a residential rental property located in
22 Scottsdale, Arizona. That property is a condominium located on Roosevelt street at Miller. The
23 condominium is worth approximately \$300,000.00, and the debt owed on it is approximately
24 \$199,000.00. The condominium is rented and does generate sufficient income to pay the debt
25 service associated with that property.

26 The Debtor also holds a community property interest in the residence of his spouse.
27 In 2011, the Debtor and his spouse sold their community residence and used the proceeds to acquire
28

1 a new residence. Because of his poor credit rating, the lender who financed that acquisition
2 required the Debtor to execute a disclaimer deed in connection with that transaction. Accordingly,
3 the Debtor holds no title interest in the property, but the nature of the funds used to acquire the
4 property have not lost their character as community property. Exhibit "D" to the Disclosure
5 Statement identifies all entities in which the Debtor holds an interest and all real property in which
6 he holds an interest, including his equitable interest in his spouse's residence.

7 **IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11**

8 A. Commencement of the Case

9 The Debtor filed a Chapter 11 petition on September 13, 2013. The Meeting of
10 Creditors pursuant to 11 U.S.C. §341 was conducted on October 15, 2013.

11 B. Employment of Professionals

12 The Debtor retained the Law Office of Blake D. Gunn to represent him in
13 connection with this matter. The Firm filed an application to be employed as counsel for the
14 Debtor. The firm has not yet filed any fee application.

15 The Debtor plans to retain special counsel in the event litigation objecting to the
16 Debtor's discharge is commenced.

17 C. Appointment of Committee of Unsecured Creditors

18 The United States trustee solicited creditors for interest in serving on an Official
19 Committee of Unsecured Creditors. The United States Trustee filed a statement concerning the
20 inability to appoint a committee.

21 D. Stay Relief and Other Litigation

22 One stay relief motion was filed in this case. As of the date of this Disclosure
23 Statement, that litigation has not been resolved. The motion for relief from the automatic stay filed
24 by Silverwood Real Estate Investments requests that the Court allow the Maricopa County Superior
25 Court to enter final orders in its case. The Debtor objected to the motion because the Debtor
26 believes that Silverwood's claim is liquidated and no further action is necessary.

27 E. Claims Bar Date

1 The bar date for claims is presently set as the date for objecting to the Disclosure
2 Statement.

3 F. Order Approving Disclosure Statement

4 On _____, the Bankruptcy Court entered its order (1) approving this
5 Disclosure Statement as containing “adequate information” pursuant to Section 1125 of the
6 Bankruptcy Code, (2) fixing _____ as the deadline for filing and serving any
7 objections to Confirmation of the Plan, (3) fixing _____ as the deadline for voting to
8 accept or reject the Plan, and (4) setting _____ at _____ a.m./p.m. as the date and time to
9 begin a hearing on the Confirmation of the Plan.

10 **V. DESCRIPTION OF ASSETS AND LIABILITIES OF THE DEBTOR**

11 The Debtor has not obtained recent appraisals of his assets. The values ascribed to the
12 assets below are based upon the Debtor’s best estimates and other factors such as the purchase
13 price, condition of items, comparable sales, and tax assessments.

14 A. Real Property

15 The Debtor owns one condominium, which is leased to a tenant. The condominium
16 is located at 7601 E. Roosevelt St., #1018, Scottsdale, Arizona. Chase Bank holds a first position
17 lien for approximately \$199,000.00, and the debtor believes the real property has a value of
18 \$300,000.00. The condominium is insured, and real property tax payments are current. Likewise,
19 the Debtor is current on assessments payable to the condominium owner’s association.

20 The Debtor resides with his wife, but holds no title interest in that residence. The
21 Debtor executed a disclaimer deed at the time his wife acquired that property. Under Arizona law,
22 a disclaimer deed is clear and convincing evidence that the disclaimed property is the sole and
23 separate property of the non-disclaiming spouse. Consequently, the Debtor has no ability to cause
24 the liquidation of the asset. However, the Debtor did schedule a community property interest in his
25 wife’s real property. Arizona law is clear that contributions of community property to separate
26 property do not grant the community a title interest to the separate property, so the categorization is
27 the schedules is technically inaccurate. The community property interest held by the Debtor is not a
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1 title interest in or to the real property, but rather takes the form of an equitable lien. The value of
2 that equitable lien is determined by a formula set forth in various cases, and represents a portion of
3 the following factors: (a) principal reduced by use of community property, and (b) a portion of the
4 increase in market value of the property. The formula for the community's claim is: $C + [(C/B) +$
5 $A]$, where "C" is the community's contributions to principal reduction "B" is the value of the house
6 at the time of acquisition, and "A" is the appreciation of the property during the relevant time
7 period. The Debtor estimates that the value of the community's equitable lien claim is
8 approximately \$200,000.00, and he would be presumptively entitled to half that amount.
9 Notwithstanding the above statement, to the Debtor's knowledge, only divorce courts have used
10 this calculation to determine how to credit a non-owner spouse for the value of the community
11 interest. The Debtor is unaware whether a civil court would or even could allow a community
12 creditor such a claim.

13 Personal Property

14 Schedules "A" and "B" to the bankruptcy petition disclose the interest of the Debtor
15 in real property and personal property, respectively. The Liquidation Analysis attached to this
16 Disclosure Statement as Exhibit "B" provides an overview of the types of personal property owned
17 by the Debtor and the value ascribed to each item of that personal property. Exhibit "B" also
18 describes any exemptions the Debtor claims and the amounts of any liens encumbering the Debtor's
19 property.
20

21 **VI. CLASSIFICATION, IMPAIRMENT, AND TREATMENT OF CLAIMS AND** 22 **INTERESTS.**

23 THE FOLLOWING STATEMENTS CONCERNING THE PLAN ARE MERELY A
24 SUMMARY OF THE PLAN AND ARE NOT COMPLETE. THE STATEMENTS ARE
25 QUALIFIED ENTIRELY BY EXPRESS REFERENCE TO THE PLAN. CREDITORS ARE
26 URGED TO CONSULT WITH COUNSEL OR EACH OTHER IN ORDER TO UNDERSTAND
27 THE PLAN FULLY. THE PLAN IS COMPLETE, INASMUCH AT IT PROPOSES A
28 LEGALLY BINDING AGREEMENT BY THE DEBTOR. AN INTELLIGENT JUDGMENT
CANNOT BE MADE WITHOUT READING IT IN FULL.

A. Unclassified Claims

1 Under §1123(a)(1)(i) administrative expense claims allowed under §503(b) and
2 entitled to priority under §507(a)(2) (including the claims of professionals, United States trustee
3 fees, and postpetition domestic support obligations; (ii) involuntary gap period claims under
4 §507(a)(3); and (iii) priority tax claims under §507(a)(8) are not classified and are not entitled to
5 vote on confirmation of the Plan. These claims shall be treated as follows:

6 1. Professional Fees. Professional fees may only be paid upon application to
7 and approval by the court. The Debtor will pay professional fees in full in cash on the later of (i) the
8 Effective Date or (ii) upon court order, except to the extent that a holder of such claim agrees to
9 other terms. The Debtor estimates that administrative expenses will be approximately \$10,000.00
10 in this case if there is not significant litigation.

11 2. Other Administrative Claims. The Debtor will pay other claims allowed
12 under §503(b) and entitled to priority under §507(a)(2), including domestic support obligations
13 arising postpetition and United States trustee fees, in full on the Effective Date (although expenses
14 arising and paid in the ordinary course of Debtor's financial affairs may be paid as due), except to
15 the extent that a holder of these claims agrees to other terms.

16 3. Tax Claims. The Debtor will pay claims entitled to priority under §507(a)(8)
17 in full over time with 3.5% interest in equal amortized payments in accordance with §511.
18 Payments will be made quarterly, due on the first day of the quarter, starting on the first such date
19 after the Effective Date and ending on the last such date that is no more than 5 years after the
20 Petition Date.

21 **B. Priority Claims: Class 1**

22 This Class includes allowed unsecured claims entitled to priority under §507 (except
23 administrative claims under §507(a)(2), involuntary gap period claims under § 507(a)(3) and
24 priority tax claims under §507(a)(8), which are unclassified and treated in Section II(A), above).
25 The Debtor has no Priority Claimants.

26 **C. Secured Claims: Class 2**

27 1. Chase: Class 2-A

28

1 Class 2-A consists of the Allowed Secured Claim of Citibank and/or its
2 successors in interest, which is secured by a first deed of trust on real property located at 7601 E.
3 Roosevelt St., #1018, Scottsdale, Arizona. Citibank asserts a Claim of approximately \$199,000.00

4 The Debtor estimates that the fair market value of the condominium is
5 \$300,000.00 based on the condition of the property and observed comparable sales in the area. The
6 Debtor shall list the condominium for sale within 30 days following confirmation and shall sell the
7 property for its fair market value determined by the potential buyer's appraiser. After deductions
8 for the payment to the Class 2-A Claimant, commissions, taxes, inspections, escrow charges,
9 insurance, and other customary selling expenses, the Debtor shall disburse net proceeds to
10 claimants in order of their priority.

11 The Debtor may employ realtors, including insiders or himself, to list the
12 property for sale. The Class 2-A Claimant shall retain its lien until its claim is paid. This Class is
13 unimpaired.

14
15 **D. Unsecured Claims: Class 3**

16 Class 3 consists of the Allowed Unsecured Claims of Creditors. All claims not
17 falling within the "Unclassified Claims" or within the other classes expressly identified in other
18 sections of the Plan are Class 3 general unsecured claims. Class 3 is impaired under the Plan. Each
19 Class 3 Claimant holding an Allowed Claim shall receive a pro rata share of any distribution to this
20 Class. For example, if total claims are \$10,000.00 and a particular member of Class 3 holds an
21 allowed claim of \$1,000.00, the pro rata share attributable to such claim is ten percent (10%). Thus,
22 the hypothetical claimant would receive ten percent (10%) of any distribution to the Class.

23
24 Class 3 Claimants will receive a pro-rata share of an estimated liquidation value of
25 the Debtor's Estate of \$245,000.00, plus a pro-rata share of the Debtor's disposable monthly
26 income, which is estimated to be \$52,800.00. The liquidation value identified above is comprised
27 of (a) estimated net proceeds from the sale of the condominium of \$100,000.00, and non-exempt
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1 equity in the community residence of \$175,000.00 (\$700,000 value, less debt of \$375,000.00, less
2 the Debtor's spouse's homestead exemption of \$150,000.00).

3 Irrespective of the sub-class in which each Claimant's Claim appears, all sub-classes
4 will receive a distribution from such funds. Unsecured claims may be separately classified because
5 a right to a setoff or recoupment may exist, a non-debtor guarantor or other non-debtor third party is
6 also responsible for the claim, or insurance proceeds may exist to cover such claim.
7

8 Class 3-A consists of general unsecured claims that are not separately classified in
9 Classes 3-B or 3-C. Class 3-A Claims total approximately \$548,379.00 and represent
10 approximately 36.5% of all claims against the Debtor. Class 3-A will be paid 36.5% of funds
11 payable to Class 3 creditors. The Debtor estimates that Class 3-A will share a total distribution of
12 \$89,425.00 from proceeds from the liquidation of the Debtor's assets, and will receive a dividend of
13 36.5% of disposable monthly income (\$19,272.00) contributed to the Plan.
14

15 Class 3-B consists of the general unsecured claim of Polsinelli Shugart, which is
16 estimated to be \$600,000.00. The Class 3-B Claim is subject to a possible setoff on account of a
17 potential malpractice claim the Debtors may bring against that creditor. If no setoff occurs, the
18 Class 3-B Claimant will receive 40% of funds payable to Class 3 Claimants, or approximately
19 \$98,000.00. Class 3-B Claimants will also receive 40% of disposable monthly income (\$21,120.00)
20 to the Plan if no setoff occurs.
21

22 Class 3-C consists of the general unsecured claim of Silverwood Real Estate
23 Investments, LLC in the liquidated amount of \$700,000.00. An appeal of the orders liquidating
24 such claim is pending before the Arizona Court of Appeals, and such appeal may result in a remand
25 of the case. The ruling of the Superior Court that is being appealed included a judgment against the
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1 Debtor for breach of fiduciary duty, which the Debtor believes is the only basis for an action to seek
2 to prevent the discharge of the Debtor's obligation to Silverwood.

3 Silverwood shall retain an allowed claim determined by the Court of Appeals and/or
4 the Maricopa County Superior court on remand. If either Court upholds the earlier determination
5 that the Debtor owed a fiduciary duty to Silverwood and also intentionally breached that duty, the
6 Silverwood shall retain a non-dischargeable claim against the Debtor in the amount determined by
7 the Superior Court on remand. In such case, Silverwood shall retain all rights granted to the holder
8 of a non-dischargeable judgment, and Silverwood shall be unimpaired under the Plan.
9

10 If the Court of Appeals rules against Silverwood's position, or the Superior Court
11 rules against Silverwood's position on remand, Silverwood shall have an allowed claim in the
12 amount of any judgment entered by the Superior Court. Such claim shall be dischargeable, and the
13 Silverwood shall be treated as Class 3-A Claim. The Class 3-C Claim will receive approximately
14 23.5% of the funds to be paid to Class 3 Claimants, or approximately \$57,575.00. The Class 3-C
15 Claim will also receive 23.5% of the Debtor's projected disposal monthly income, or an additional
16 \$12,408.00.
17

18 If the Plan is confirmed prior to resolution of the appeal of Silverwood's claim,
19 Silverwood shall receive treatment as if the appeal were resolved against it.
20

21 In addition to the amounts to be paid above, unsecured creditors will receive a pro
22 rata share, up to the amount of their Allowed Claim, from any award or settlement obtained from
23 any claim or right to payment the Debtor has scheduled against another person or entity. However,
24 the Debtor shall have no obligation to pursue such claim if the Debtor is unable to find
25 representation at a cost that is feasible for the Debtor. Such claims the Debtor may have includes a
26 potential malpractice claim against Polsinelli Shugart. Whether such claim exists will depend on
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1 the outcome of the appeal before the Maricopa County Superior Court, and the Debtor cannot
2 determine with any degree of certainty the value of the claim under the present circumstances.

3 If any holder of a Class 3 Claim objects to confirmation of the Plan and the treatment
4 identified above, and if such objection is not resolved prior to the hearing on Plan confirmation,
5 then the total amount to be distributed to Class 3 shall be no less than the disposable monthly
6 income that the Debtors anticipate receiving during the five year period beginning on the Effective
7 Date. Payments of projected disposable monthly income shall be made in quarterly payments
8 beginning on the last day of the calendar quarter in which the Plan is confirmed. For example, if
9 the Plan were confirmed on August 1, 2016, payments would begin on September 30, 2016. The
10 Debtor's projected disposable monthly income is estimated to be \$880.00. A discussion of the
11 Debtors' disposable monthly income projection and its calculation appears in Section VIII, below.
12 Exhibit "C" to this Disclosure Statement provides a detailed description of income received and
13 expenses incurred by the Debtors.
14

15
16 **E. Debtor's Interest: Class 4**

17 Pursuant to §1129(a)(15) and (b)(2)(B)(ii) of the Bankruptcy Code, the Debtor shall
18 retain his interest in all estate property, with the exception of property being used to fund the Plan
19 or sold under its terms, in consideration of his funding payment of Allowed Claims and shall
20 receive all exempt property.
21

22 **VII. LIQUIDATION ANALYSIS**

23 Even if the Plan is accepted by each Class of holders of Impaired Claims, the Bankruptcy
24 Court must find that the Plan is in the "best interest" of all holders of Claims that are impaired by
25 the Plan and that have not accepted the Plan. The so-called "best interest" test, set forth in section
26 1129(a)(7) of the Bankruptcy Code, requires the Bankruptcy Court to find either that all members
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1 of an impaired class of claims have accepted the Plan or that the Plan will provide a member who
2 has not accepted the Plan with property of a value, as of the Effective Date, that is not less than the
3 amount that such holder will receive if the Debtor were liquidated under Chapter 7 of the
4 Bankruptcy Code on that date.

5
6 To calculate the probable distribution to members of each impaired class of claims if a
7 debtor were liquidated under Chapter 7, the Bankruptcy Court must first determine the aggregate
8 dollar amount that would be generated from the Debtor's assets if his Chapter 11 case were
9 converted to a Chapter 7 case under the Bankruptcy Code. This "liquidation value" would consist
10 primarily of the proceeds from a forced sale of the Debtor's assets by a Chapter 7 trustee.

11
12 This liquidation value would be distributed based on statutory priorities (i.e., no junior class
13 of claims may be paid anything unless all classes of claims senior to such junior class are paid in
14 full). Bankruptcy Code Section 510(a) provides that subordination agreements are enforceable in
15 bankruptcy cases to the same extent that they are enforceable under applicable non-bankruptcy law.
16 Therefore, no class of claims that is contractually subordinated to another class would receive any
17 payment on account of its claims, unless all senior classes are paid in full. It is, therefore,
18 exceedingly unlikely that Subordinated Creditors could receive anything in the event of a
19 conversion.

20
21 The Debtor believes that under the Plan all holders of Impaired Claims and Impaired
22 Interests will receive property with a value not less than the value such holder would receive in a
23 liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. The Debtor's beliefs are based
24 primarily on the following facts: (a) Chapter 7 would substantially reduce the proceeds available for
25 distribution to Creditors, including, but not limited to, the increased costs and expenses of a
26 liquidation under Chapter 7 arising from fees payable to a Chapter 7 trustee and professional
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1 advisors to the trustee; (b) the erosion in value of assets in a Chapter 7 case in the context of the
2 rapid liquidation required under Chapter 7 and the “forced sale” atmosphere that would prevail; (c)
3 the substantial increases in claims, such as estimated contingent claims, which would be satisfied on
4 a priority basis or on parity with the no priority unsecured Creditors; (d) the substantial delay in
5 distributions to the Debtor’s Creditors that would likely ensue in a Chapter 7 liquidation. The
6 liquidation analysis prepared by the Debtor which is annexed to this Disclosure Statement as
7 Exhibit B (the “Liquidation Analysis”).

9 The Debtor believes that any liquidation analysis is speculative, as such an analysis
10 necessarily is premised on assumptions and estimates which are inherently subject to significant
11 uncertainties and contingencies, many of which would be beyond the Debtor’s control. Thus, there
12 can be no assurance as to the values that would actually be realized in a Chapter 7 liquidation, nor
13 can there be any assurance that a Bankruptcy Court would accept the Debtor’s conclusions or
14 concur with such assumptions in making its determinations under Bankruptcy Code Section
15 1129(a)(7).
16

17 For example, the Liquidation Analysis attached hereto necessarily contains an estimate of
18 the amount of Claims which will ultimately become Allowed Claims. This estimate is based on the
19 Debtor’s review of their books and records and the Claims filed in the Chapter 11 Case and its
20 estimation of the Claims that might arise in the event of a conversion of the case from Chapter 11 to
21 Chapter 7. The Bankruptcy Court has not estimated or fixed the amount of Claims at the projected
22 amounts of Allowed Claims set forth in the Liquidation Analysis. The estimate of the amount of
23 Allowed Claims set forth in the Liquidation Analysis should not be relied on for any other purpose,
24 including, without limitation, any determination of the value of any distribution to be made on
25 account of Allowed Claims under the Plan.
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1 To the extent that confirmation of the Plan requires the establishment of amounts for the
2 Chapter 7 liquidation value of the Debtor, funds available to pay Claims, and the reorganization
3 value of the Debtor, the Bankruptcy Court will determine those amounts at the Confirmation
4 Hearing. Accordingly, the annexed Liquidation Analysis is provided solely to disclose to holders
5 the effects of a hypothetical Chapter 7 liquidation of the Debtor, subject to the assumptions set forth
6 therein.
7

8 If no plan is confirmed, the Chapter 11 Case may be converted to a case under Chapter 7. In
9 Chapter 7 a trustee would be elected or appointed to liquidate the Debtor's assets for distribution to
10 Creditors in accordance with the priorities set by the Bankruptcy Code. It is impossible to predict
11 precisely how the proceeds of the liquidation would be distributed to the respective holders of
12 Claims against or Interests in the Debtor. The Debtor believes, however, that the distributions to
13 each Creditor in Chapter 7 would be less than or equal to the distributions they would receive under
14 the Plan. An analysis of the "best interests of creditors" test is present in Exhibit "B" to this
15 Disclosure Statement.
16

17 **VIII. INCOME PROJECTION**

18 An income projection for the Debtor is attached hereto as Exhibit "C". The Debtor
19 presently has household income of \$8,735.00 per month derived from his work, social security
20 payments, and his wife's anticipated income. After deducting personal expenses, the Debtor
21 estimates that his Disposable Monthly Income is approximately \$880.00 per month. The Debtor
22 also receives income from one rental property, but that property will be sold to fund the Plan. In
23 any event, gross rents are sufficient cover only pre-sale debt service, taxes, insurance, maintenance,
24 and other property-related expenses.
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1 The Debtor will fund the Chapter 11 Plan and payments required under it with those monies
2 that represent his Disposable Monthly Income (or “Excess Income,” used in the Plan). For the
3 purposes of income projections, the Debtor has assumed that his personal income will remain
4 unchanged for the next five years. Based on the amount presented, the Debtor’s Disposable
5 Monthly Income is \$52,800.00.
6

7 **IX. EFFECT OF CONFIRMATION**

8 Except as otherwise provided in the Plan or the Court’s order confirming the Plan, the
9 Confirmation Order acts as a discharge, effective as of the Effective Date, of any and all debts of
10 the Debtor that arise at any time before entry of the Confirmation Order, including, but not limited
11 to, all principal and any and all interest accrued thereon, pursuant to §1141(d)(1) of the Bankruptcy
12 Code. The discharge of the Debtor shall be effective as to each claim regardless of whether a proof
13 of claim thereof was filed, whether the claim is an allowed claim, or whether the holder thereof
14 votes to accept the Plan.
15

16 From and after the Effective Date, the Plan will be binding upon and insure to the benefit of
17 the Debtor, all present and former holders of Claims against the Debtor, whether or not such holders
18 will receive or retain any property or interest in property under the Plan, their respective successors
19 and assigns.
20

21 Except as otherwise expressly provided in the Plan or the Confirmation Order, all entities
22 who have held, hold or may hold Claims against the Debtor will be permanently enjoined, on and
23 after the Effective Date, from (i) the enforcement, attachment, collection or recovery by any manner
24 or means of any judgment, award, decree or order against the property of the Estate or the proceeds
25 of such property, of any kind against the property or interests in such property while it remains in
26 the Estate, on account of any such Claim or Interest, and (iii) asserting any right of setoff,
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1 subrogation or recoupment of any kind against any obligation due from the Debtor or against the
2 property or interests in property of the Debtor on account of any such Claim or Interest.

3 Debtor, nor any of his respective present or former employees, advisors, attorneys, or
4 agents, shall have or incur any liability to any holder of a Claim or an Interest, or any other party in
5 interest, or any of their respective agents, employees, representatives, financial advisors, attorneys,
6 or affiliates, or any of their successors or assigns, for any act or omission in connection with,
7 relating to, or arising out of, the Chapter 11 Cases, the sale of the Debtor's assets pursuant to the
8 Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the
9 consummation of the Plan, or the administration of the Estate or of the Plan or the property to be
10 distributed under the Plan, and in all respects they shall be entitled to reasonably rely on the advice
11 of counsel with respect to their duties and responsibilities under the Plan.

14 Notwithstanding any other provision of the Plan, no holder of a Claim or Interest, no other
15 party in interest, none of their respective agents, employees, representatives, financial advisors,
16 attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action
17 against any Debtor, or any of its respective present or former members, officers, directors, employees,
18 advisors, attorneys, or agents, for any act or omission in connection with, relating to, or arising out of
19 the Chapter 11 Cases, the sale of assets pursuant to the Plan, the solicitation of acceptances of the Plan,
20 the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the
21 Estate or of the Plan or the property to be distributed under the Plan, and in all respects they shall be
22 entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities
23 under the Plan.

26 **X. IMPLEMENTATION AND FUNDING OF DEBTOR'S PLAN**

1 The Plan will be funded by the Debtor's post-petition earnings and the sale of rental
2 property. The Debtor's spouse will seek a loan secured by her residence, or may sell her residence
3 to fund the Plan. The Reorganized Debtor shall act as the Disbursing Agent under the Plan.
4

5 In the event any entity which possesses an Allowed Secured Claim, or any other lien in any
6 of the Debtor's property for which the Plan requires the execution of any documents to incorporate
7 the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to
8 satisfy the requirements of the Plan, the Debtor may record a copy of their Plan and the
9 Confirmation Order with the appropriate governmental agency and such recordation shall constitute
10 the lien release and creation of the necessary new liens to satisfy the terms of the Plan. If the
11 Debtor deems advisable, he may obtain a further Order from the Court that may be recorded in
12 order to implement the terms of the Plan.
13

14 **XI. TAX CONSEQUENCES**

15 Pursuant to §1125(a)(1) of the Bankruptcy Code, the Debtor is to provide a discussion of the
16 potential material federal tax consequences of the Plan to the Debtor, any successor to the Debtor,
17 and a hypothetical investor typical of the holders of claims or interests in the case, that would
18 enable such a hypothetical investor of the relevant class to make an informed judgment about the
19 Plan. Adequate information provided in the disclosure statement need not include such information
20 about any other possible or proposed plan, and in determining whether the Disclosure Statement
21 provides adequate information, the Court shall consider the complexity of the case, the benefit of
22 additional information to creditors and other parties in interest, and the cost of providing additional
23 information.
24
25

26 Neither the Debtor nor his attorneys can make any statements with regard to the tax
27 consequences of the Plan on any creditors. Although they would note that to the extent the creditor
28

1 is not paid its Allowed Claim in full, the creditor should consult with its tax advisor concerning the
2 possibility of writing off for tax purposes that portion of its Allowed Claim that is not paid. Each
3 creditor in this case, when analyzing the Plan, should consult with their own professional advisors
4 to determine whether or not acceptance of the Plan by the creditor will result in any adverse tax
5 consequences to the creditor.
6

7 The Bankruptcy Tax Act generally provides that the Debtor does not have to recognize
8 income from the discharge of indebtedness. The Plan contemplates significant discharge of
9 indebtedness; however, because the Debtor is in bankruptcy, he will not have to recognize the
10 discharge of indebtedness as income for tax purposes. The Debtor does not believe the Plan will
11 cause any adverse tax consequences.
12

13 **XII. NON-ALLOWANCE OF PENALTIES AND FINES**

14 No distribution shall be made under this Plan on account of, and no allowed claim, whether
15 secured, unsecured, priority, or administrative, shall include any fine, penalty, exemplary or
16 punitive damages, late charges, or other monetary charge relating to or arising from any default or
17 breach by Debtor, and any claim on account thereof shall be deemed disallowed whether or not an
18 objection to it is filed.
19

20 **XIII. EXECUTORY CONTRACTS**

21 The Debtor assumes all leases under which the Debtor is the lessor of real property. The
22 Debtor rejects all other unexpired leases and executory contracts not herein assumed or assumed
23 pursuant to a separate order of the Court or associated with an Allowed Secured Claim. Claims for
24 any executory contracts or unexpired leases rejected by the Debtor shall be filed no later than ten
25 (10) days after the earlier of Confirmation or the date the executory contract or unexpired lease is
26 specifically rejected. Any such Claims not timely filed and served shall be disallowed.
27
28

1 **XIV. VOTING PROCEDURE**

2 Each Impaired Class of Claims or Interest that is likely to receive or retain any interest in
3 property under the Plan shall be entitled to vote to accept or reject the Plan. By operation of law,
4 each Unimpaired Class of Claims is deemed to have accepted the Plan and, therefore, is not entitled
5 to vote to accept or reject the Plan. By operation of law, each class that will receive nothing under
6 the Plan is deemed to have rejected the Plan. Class 4 (Unsecured Creditors) is entitled to vote on
7 the Plan. Only creditors and equity interest holders whose claims and interests have been both
8 **allowed** for purposes of voting and **impaired** by the Plan are entitled to vote on the Plan. The Plan
9 divides the claims of creditors and interest holders into separate classes. All classes of claimants
10 are encouraged to vote; however, only the vote of holders of claims that are impaired by the Plan
11 will have a significant impact upon the confirmation process. Generally, this includes creditors
12 who, under the Plan, will receive less than payment in full of their claims on the Effective Date of
13 the Plan.

14
15
16 For a claim to be allowed for voting purposes, the claim must be listed in the Debtor's
17 Chapter 11 schedules **and** must **not** be listed as "disputed", "contingent" or "unliquidated". If a
18 claim is listed but shown as "disputed", "contingent" or "unliquidated", the holder of the claim will
19 not be entitled to vote absent the timely filing of a proof of claim. If a claim is not listed, or is listed
20 incorrectly, or is listed as "disputed", "contingent", or "unliquidated", the holder of the claim must
21 file a proof of claim on or before the bar date set by the Court (or the Debtor must file a proof of
22 claim for that creditor as permitted by the Federal Rules of Bankruptcy Procedure) for that creditor
23 to be entitled to vote. Moreover, no holder of a claim will be entitled to vote if any party in interest
24 objects to that claim before balloting on the Plan or any Amended Plan occurs, unless the
25 Bankruptcy Court enters a specific order allowing the claim for voting purposes.
26
27
28

1 If the claim or interest you hold has been classified in one of the impaired classes of claims
2 or interests created by the Plan, it is important that you vote. In addition, if you hold more than one
3 claim or interest classified as "impaired" under the Plan, it is important that you vote with respect to
4 each such claim or interest. **IF YOU FAIL TO VOTE, YOUR RIGHTS MAY BE**
5 **JEOPARDIZED.**

6
7 All creditors entitled to vote on the Plan must cast their vote by completing, dating, and
8 signing the ballot which has been mailed to them together with the Disclosure Statement. The
9 ballot contains instructions concerning the deadline for submitting the ballot and to what address
10 the ballot should be mailed.

11
12 AS MAIL DELAYS MAY OCCUR, IT IS IMPORTANT THAT THE BALLOT OR
13 BALLOTS BE MAILED OR DELIVERED **WELL IN ADVANCE** OF THE BAR DATE
14 SPECIFIED. BALLOTS RECEIVED AFTER THIS DATE MAY NOT BE COUNTED.

15 Each creditor entitled to vote is to receive a ballot for each separately classified, impaired
16 claim held. Each equity interest holder entitled to vote is also to receive a ballot. If you believe
17 that you are entitled to vote on the Plan and you have not received this Disclosure Statement along
18 with the Exhibits, a Ballot and related materials, you may request them from Counsel for the Debtor
19 at the address shown on this Disclosure Statement.

20
21 If you do not receive the required number of ballots, with your copy of the Court-approved
22 disclosure statement, notify the proponents attorneys immediately at the address noted above.

23
24 **IT IS IMPORTANT FOR YOU TO CAST ALL BALLOTS WHICH YOU ARE**
25 **ENTITLED TO VOTE.**

26 This Disclosure Statement has been approved by the Bankruptcy Court in accordance with
27 §1125 of the Bankruptcy Code, and is provided to each person whose claim or interest has been
28 scheduled by the Debtor, or who has filed a proof of claim or interest with respect to the Debtor or

1 their property, each known equity interest holder, and other parties in interest known to the Debtor.
2 The Disclosure Statement is intended to assist creditor in evaluating the Plan and in determining
3 whether to accept the Plan. In determining acceptance of the Plan, votes of creditors will only be
4 counted if submitted by a creditor whose claim is duly scheduled by the Debtor as undisputed, non-
5 contingent, and liquidated, or who has timely filed with the Court a proof of claim of interest.

6 The Bankruptcy Court will schedule a hearing to determine whether the requirements for
7 confirmation under the Bankruptcy Code have been met and whether the Plan has been accepted by
8 each impaired class and by the requisite number of creditors in such class. Under §1126 of the
9 Bankruptcy Code, an impaired class I deemed to have accepted the Plan upon a favorable vote of at
10 least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed
11 claims of class members voting on the Plan. Further, unless there is unanimous acceptance of the
12 Plan by an impaired class, the Court must also determine that class members will receive at least as
13 much as they would if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

14 If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer
15 of a corporation, or another acting in a fiduciary or representative capacity, such person should
16 indicate such capacity when signing and, unless otherwise determined by Debtor, must submit
17 proper evidence satisfactory to Debtor of authority to so act.

18 All questions as to the validity, form, eligibility (including the time of the receipt),
19 acceptance, and revocation or withdrawal of Ballots and/or withdrawals will be determined by the
20 Debtor in their sole discretion, which determination shall be final and binding. The Debtor reserve
21 the absolute right to reject any and all Ballots or withdrawals not in proper form, the acceptance of
22 which would, in the opinion of the Debtor or their counsel be unlawful. The Debtor further reserve
23 the right to waive any defects or irregularities of conditions of delivery as to any particular Ballot or
24 withdrawal. The interpretation by the Debtor will be final and binding on all parties. Neither the
25 Debtor nor any other person will be under any duty to provide notification of defects or
26 irregularities with respect to the delivery of Ballots or withdrawals, nor will any of them incur any
27 liability for the failure to provide such notification.
28

1 Any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may
2 withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Debtor at
3 any time prior to the Voting Deadline. A notice of withdrawal, to be valid, must (i) contain the
4 description of the Claim to which it relates and the aggregate principal amount represented by such
5 Claim, (ii) be signed by the withdrawing party as the same manner as the Ballot being withdrawn,
6 (iii) contain a certification that the withdrawing party owns the Claim and possesses the right to
7 withdraw the vote sought to be withdrawn, and (iv) be received by the Debtor in a timely manner at
8 the addresses set forth in this Disclosure Statement.

9
10 If you have any questions or require further information about the voting procedure for voting
11 your Claim or about the packet of material received, or if you wish additional materials, call or write
12 Blake D. Gunn at (480) 270-5073 or at the address written above.

13 Even if each class of creditors does not accept the Plan, the Plan can be confirmed under
14 §1129(b) of the Bankruptcy Code, so long as one impaired class of creditors accepts the Plan. The
15 failure of each class to accept the Plan could very well result in a conversion of this case to a
16 Chapter 7 or dismissal of the Chapter 11, and the secured creditors repossessing their collateral and
17 disposing of it in a commercially reasonable manner with no obligation to unsecured creditors.

18 **XV. CONFIRMATION OF THE PLAN**

19 **A. Confirmation Hearing.**

20 The Bankruptcy Court has scheduled the Confirmation hearing for _____ at
21 _____ m. The Confirmation hearing may be adjourned from time to time by the Bankruptcy Court
22 with further notice except for announcement made at the hearing or any adjourned hearing.

23 **B. Objections to Confirmation of the Plan**

24 Bankruptcy Code section 1128(b) provides that any party in interest may object to confirmation
25 of the Plan, regardless of whether it is entitled to vote. The Bankruptcy Court has directed that, any
26 written objections to the Confirmation of the Plan must be filed with the Bankruptcy Court and served
27 upon Counsel for the Debtor and other parties in interest. Objections to Confirmation of the Plan must:
28 (i) be in writing, (ii) comply with the Bankruptcy Code and Bankruptcy Rules, (iii) set forth the name

1 of the objector and the nature and amount of any Claim or Interest asserted by the objector against the
2 Debtor, and (iv) state with particularity the legal and factual bases for the objection. Objections to the
3 Plan are governed by Bankruptcy Rule 9014.

4 **Objections to Confirmation that are not timely filed and served may not be considered by**
5 **the Bankruptcy Court and may be overruled solely on the basis that it was untimely.**

6 **Parties with objections are encouraged to contact Debtor's counsel to attempt to**
7 **negotiate resolution prior to filing an objection to Confirmation.**

8 C. Requirements for Confirmation of the Plan

9 At the Confirmation hearing, the Court will determine whether the Plan satisfies the
10 requirements for Confirmation listed in § 1129(a) of the Bankruptcy Code. If the Court determines
11 that those requirements are satisfied, it will enter a confirmation order. The requirements of § 1129(a)
12 of the Bankruptcy Code are:

- 13 1. The Plan complies with the applicable provisions of this title;
- 14 2. The Debtor have complied with the applicable provisions of this title;
- 15 3. The Plan has been proposed in good faith and not by any means forbidden by law;
- 16 4. Any payment made or to be made by the by the Debtor, or by a person acquiring
17 property under the Plan for services or for costs and expenses in, or in connection with,
18 the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11
19 Case, has been disclosed to the Bankruptcy Court, and any such payment made before
20 confirmation of the Plan is reasonable, or if such payment is to be fixed after
21 confirmation of the Plan, such payment is subject to the approval of the Bankruptcy
22 Court as reasonable;
- 23 5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any
24 individual proposed to serve, after confirmation of the plan, as a director, officer, or
25 voting trustee of the Debtor, an affiliate of the Debtor participating in a joint plan
26 with the Debtor, or a successor to the Debtor under the plan; and (ii) the appointment
27 to, or continuance in, such office of such individual, is consistent with interests of
28 creditors and equity security holders and with public policy; and (B) the proponent
of the plan has disclosed the identity of any insider that will be employed or retained
by the reorganized Debtor, and the nature of any compensation for such insider.
6. With respect to each Class of Claims or Interests, each Impaired Creditor and
Impaired Interest holder either has accepted the Plan or will receive or retain under

1 the Plan on account of the Claims or Interests held by such entity, property of a
2 value, as of the Effective Date, that is not less than the amount that such entity would
3 receive or retain if the Debtor were liquidated on such date under Chapter 7 of the
Bankruptcy Code. See Section “Best Interests Test/Liquidation Under Chapter 7;”

- 4 7. The Plan provides that Administrative Claims and other Priority Claims will be paid
5 in full on the Initial Distribution Date or such later date as they are due by their own
6 terms, except to the extent that the holder of any such Claim has agreed to a different
7 treatment;
- 8 8. At least one Class of Impaired Claims has accepted the Plan, determined without
9 including any acceptance of the Plan by insiders holding Claims in such class;
- 10 9. Confirmation of the Plan is not likely to be followed by the liquidation, or the need
11 for further financial reorganization, of the Debtor or any successor to the Debtor
12 under the Plan, unless such liquidation or reorganization is proposed in the Plan; and
- 13 10. The Plan provides for the continuation after the Effective Date of all retiree benefits,
14 if any, at the level established pursuant to Bankruptcy Code Section 1114(e)(1)(B) or
15 1114(g), at any time prior to confirmation of the Plan for the duration of the period
16 the Debtor have obligated itself to provide such benefits. The Debtor do not have
17 any such retiree benefits.

18 The Debtor believes that, upon receipt of the Requisite Acceptances by at least one
19 Class of Impaired Creditors, the Plan will satisfy all the statutory requirements of Chapter 11 of the
20 Bankruptcy Code, that the Debtor has complied or will have complied with all of the requirements of
21 Chapter 11, and that the Plan is being proposed and will be submitted to the Bankruptcy Court in good
22 faith.

23 The court values the assets of the Debtor and determines that the payments to be made
24 under the Plan exceed the current value of the non-exempt assets owned by the Debtor so that the Plan
25 complies with the best interest test.

26 D. Feasibility of the Plan

27 Bankruptcy Code section 1129(a)(11) requires that the Bankruptcy Court find that
28 Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial
reorganization of the Debtor unless such liquidation is proposed in the Plan. Since Debtor’s Plan
provides for the payment of Administrative Expenses and Priority Claims on or shortly after the
Effective Date, and the payment of Unsecured Classes over a period of years, Debtor must show the

1 Court that he has or can obtain the required monies and that future operations will generate sufficient
2 monies to pay operating expenses with enough left over to fulfill the ongoing obligations in the Plan.

3 The Debtor has conservatively estimated his ability to produce income over the next
4 five years. On the Effective Date, the Debtor estimates that he will have \$10,000.00 in unreserved
5 cash that can be used for the payment of the Plan obligations at or shortly after the Effective Date.

6 E. Confirmation without Acceptance of All Impaired Classes “Cramdown”

7 Notwithstanding the rejection of any class of the Plan, the Court may still confirm the
8 Plan if, as to each Impaired Class which has not accepted the Plan, the Plan "does not discriminate
9 unfairly" and is "fair and equitable".

10 A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a
11 rejecting Impaired Class is treated equally with respect to other classes with equal priority or legal
12 rights. “Fair and equitable” has different meanings for secured claims, unsecured claims and interests.

13 A plan is fair and equitable as to a class of unsecured claims that rejects the plan, if the
14 plan provides (a) that each holder of a claim in the rejecting class will receive or retain on account of
15 its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of
16 the claim; or (b) but no holder of a claim or interest that is junior to the claims of the rejecting class
17 will receive or retain under the plan any property on account of such junior claim or interest.

18 A plan is fair and equitable as to a class of equity interests that rejects the Plan if the
19 plan provides (a) that each holder of an interest included in the rejecting class receive or retain on
20 account of that interest property that has a value, as of the effective date of the plan, equal to the
21 greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any
22 fixed redemption price to which such holder is entitled, or the value of such interest; or (b) that no
23 holder of an interest that is junior to the interest of the rejecting Class will receive or retain under the
24 Plan any property on account of such junior interest.

25 The Debtor believes that the treatment under the Plan of the holders of Claims and
26 Interests in such Classes will satisfy the "fair and equitable” test because all Claims shall be paid in full
27 unless that Claimholder elects to compromise its claim by participation in the Settlement Fund. In
28

1 addition, the Debtor does not believe that the Plan unfairly discriminates against any dissenting Class
2 because all dissenting Classes of equal rank are treated equally under the Plan.

3
4 In the event that one or more classes of impaired Claims reject the Plan, the Court
5 will determine at the Confirmation hearing whether the Plan is fair and equitable with respect to and
6 does not discriminate unfairly against, any rejecting impaired Class of Claims.

7 **XVI. MODIFICATION OF PLAN**

8 In addition to their modification rights under §1127 of the Bankruptcy Code, the Debtor
9 may amend or modify their Plan at any time prior to Confirmation without leave of the Court. The
10 Debtor or the Reorganized Debtor may propose amendments and/or modifications of his Plan at any
11 time subsequent to Confirmation with leave the Court and upon notice to Creditors. After
12 Confirmation of the Plan, the Debtor or the Reorganized Debtor may, with approval of the Court, as
13 long as it does not materially or adversely affect the interests of Creditors, remedy any defect or
14 omission or reconcile any inconsistencies in the Plan, or in the Confirmation Order, if any may be
15 necessary to carry out the purpose and intent of their Plan.

16 **XVII. CLOSING OF THE CASE**

17 If the Court does not close this case on its own motion, the Reorganized Debtor will move
18 the Court to close this case once the Plan is deemed substantially consummated. Until substantial
19 consummation, the Reorganized Debtor will be responsible for filing pre- and post-confirmation
20 reports required by the United States Trustee, and paying the quarterly post-confirmation fee of the
21 United States Trustee, in cash, pursuant to 28 U.S.C. §1930, as amended. Pursuant to 11 U.S.C.
22 §1129(a)(12), all fees payable under section 1930 of Title 28, as determined by the Court at the
23 hearing on confirmation of the Plan, will be paid, in cash, on the Effective Date.

24 **XVIII. RETENTION OF JURISDICTION**

25 The Court will retain jurisdiction until the Plan has been fully consummated for, including
26 but not limited to, the following purposes:

27 1. The classification of Claims of any Creditors and the re-examination of any Claims
28 which have been allowed for the purposes of voting, and for the determination of such objections as

1 may be filed to Creditors' Claims. The failure by the Debtor to object to or examine any Claim for
2 the purpose of voting shall not be deemed to be a waiver of the Debtor's right to object to or re-
3 examine the Claim in whole or in part.

4 2. To determine any Claims which are disputed by the Debtor, whether such objections
5 are filed before or after Confirmation, to estimate any Unliquidated or Contingent Claims pursuant
6 to 11 U.S.C. §502(c)(1) upon request of the Debtor or any holder of a Contingent or Unliquidated
7 Claim, and to make determination on any objection to such Claim.

8 3. To determine all questions and disputes regarding title to the assets of the estate, and
9 determination of all causes of action, controversies, disputes, or conflicts, whether or not subject to
10 action pending as of the date of Confirmation, between Debtor and any other party, including, but
11 not limited to, any rights of the Debtor to recover assets pursuant to the provisions of the
12 Bankruptcy Code.

13 4. The correction of any defect, the curing of any omission or any reconciliation of any
14 inconsistencies in the Plan, or the Confirmation Order, as may be necessary to carry out the
15 purposes and intent of the Plan.

16 5. The modification of the Plan after Confirmation, pursuant to the Bankruptcy Rules
17 and the Bankruptcy Code.

18 6. To enforce and interpret the terms and conditions of the Plan.

19 7. The entry of an order, including injunctions, necessary to enforce the title, rights,
20 and powers of the Debtor, and to impose such limitations, restrictions, terms, and conditions of such
21 title, right, and power that this Court may deem necessary.

22 8. The entry of an order concluding and terminating this case.

23
24 **XIX. DISCLAIMER**

25 No representations or other statements concerning the Debtor (particularly as to its future
26 business operations or the value of its assets) are authorized by Debtor other than those expressly
27 set forth in this Disclosure Statement. You should not rely upon any representations or
28

1 inducements made to secure your acceptance of the Plan other than those set forth in this Disclosure
2 Statement.

3
4 The information contained herein has been prepared by the Debtor in good faith, based upon
5 information available to the Debtor and their counsel. None of the information herein concerning
6 the Plan has been subject to a verified audit.

7 Debtor provided the factual information for this disclosure statement. Debtor believes that
8 the statements contained in this Disclosure Statement are accurate as of the date hereof unless
9 another time is specified. The facts, statements and representations herein may be altered by events
10 and circumstances occurring after the date of this Disclosure Statement. Delivery of this Disclosure
11 Statement should not be construed as implying that there has been no change in the facts set forth
12 herein since the date of this Disclosure Statement.

13 This Disclosure Statement is intended for the sole use of Creditors and other parties-in-interest
14 and for the sole purpose of assisting them in making an informed decision about the Plan. This
15 Disclosure Statement may not be relied on for any purpose other than to determine how to vote on the
16 Plan, and nothing contained in it shall constitute an admission of any fact or liability by any party, or
17 be admissible in any proceeding involving Debtor or any other party or be deemed conclusive advice
18 on the tax or other legal effects of the reorganization of holders of Claims or interests.

19
20 **THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE**
21 **STATEMENT CONSTITUTES NEITHER A CERTIFICATION THAT THE FACTUAL**
22 **INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS ACCURATE,**
23 **NOR AN ENDORSEMENT OF THE PLAN.**

24 **THIS DISCLOSURE STATEMENT HAS BEEN PROMULGATED BY THE**
25 **PROPONENT IN AN EFFORT TO SOLICIT CREDITORS AND EQUITY INTEREST**
26 **HOLDERS TO VOTE TO ACCEPT THE PLAN. THE SOLICITATION IS A**
27 **SOLICITATION BY THE PROPONENT ONLY. IT IS NOT A SOLICITATION BY THE**
28 **ATTORNEYS OR ACCOUNTANTS, AND THE REPRESENTATIONS MADE HEREIN**

1 ARE THOSE OF THE PROPONENT AND NOT OF THE DEBTOR'S ATTORNEYS OR
2 ACCOUNTANTS.

3 CERTAIN MATERIALS CONTAINED IN THIS DISCLOSURE STATEMENT ARE
4 TAKEN DIRECTLY FROM OTHER, READILY ACCESSIBLE DOCUMENTS OR ARE
5 DIGESTS OF DOCUMENTS. WHILE EFFORTS HAVE BEEN MADE TO CONVEY
6 ACCURATELY THE CONTENTS OF SUCH DOCUMENTS, YOU ARE URGED TO
7 EXAMINE THE DOCUMENTS THEMSELVES AND TO USE THE DESCRIPTIONS OF
8 DOCUMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ONLY AFTER
9 HAVING CONDUCTED SUCH AN EXAMINATION.
10

11 NO REPRESENTATIONS OR ASSURANCES CONCERNING THE DEBTOR,
12 INCLUDING, WITHOUT LIMITATION, ITS FUTURE BUSINESS OPERATIONS, THE
13 VALUE OF ITS PROPERTY, OR THE VALUE OF SECURITIES TO BE ISSUED
14 PURSUANT TO THE PLAN ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS
15 SET FORTH IN THIS DISCLOSURE STATEMENT. IN ARRIVING AT YOUR
16 DECISION TO ACCEPT OR REJECT THE PLAN, YOU SHOULD NOT RELY UPON
17 ANY REPRESENTATIONS OR INDUCEMENT MADE TO SECURE YOUR
18 ACCEPTANCE OF THE PLAN WHICH ARE OTHER THAN THOSE CONTAINED IN
19 THIS DISCLOSURE STATEMENT. SUCH ADDITIONAL REPRESENTATIONS OR
20 INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE PROPONENTS
21 WHO, IN TURN, SHALL DELIVER SUCH INFORMATION TO THE COURT FOR SUCH
22 ACTION AS MAY BE APPROPRIATE.
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26 EFFORTS HAVE BEEN MADE TO PREPARE ALL UNAUDITED FINANCIAL
27 STATEMENTS WHICH MAY BE CONTAINED IN THIS DISCLOSURE STATEMENT IN
28 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPALS.

1 **HOWEVER, AS TO ALL FINANCIAL STATEMENTS, THE DEBTOR ARE UNABLE TO**
2 **WARRANT OR REPRESENT THE ACCURACY OF THE INFORMATION CONTAINED**
3 **IN THOSE STATEMENTS TO BE WITHOUT ERROR.**

4 **THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE**
5 **STATEMENT HAS NOT BEEN SUBJECTED TO AN EXAMINATION BY**
6 **INDEPENDENT, CERTIFIED PUBLIC ACCOUNTANTS. THE DEBTOR HAVE KEPT**
7 **RECORDS SUBSEQUENT TO THE FILING OF THE PETITION COMMENCING THIS**
8 **CASE AND THE DEBTOR HAVE FILED MONTHLY FINANCIAL REPORTS WITH**
9 **THE COURT SINCE THAT DATE.**

10 **THE LIQUIDATION ANALYSIS CONTAINED IN THIS DISCLOSURE**
11 **STATEMENT WAS NEITHER COMPILED BY INDEPENDENT, CERTIFIED PUBLIC**
12 **ACCOUNTANTS NOR SUBJECTED TO AN AUDIT OR EXAMINATION BY**
13 **INDEPENDENT, CERTIFIED PUBLIC ACCOUNTANTS.**

14 **IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU SHOULD DO SO.**
15 **UNDER THE BANKRUPTCY CODE, DETERMINING THE OUTCOME OF BALLOTING**
16 **ON THE PLAN REQUIRES A CALCULATION WHICH CONSIDERS THE VOTES OF**
17 **THOSE CREDITORS AND EQUITY INTEREST HOLDERS WHO ACTUALLY VOTED**
18 **ON THE PLAN. YOUR RIGHTS MAY BE AFFECTED EVEN IF YOU DO NOT VOTE**
19 **ON THE PLAN. YOUR OPPORTUNITY TO HAVE THE OUTCOME YOU DESIRE**
20 **WILL LIKELY BE ENHANCED IF YOU VOTE.**

21 **NOTHING IN THIS DISCLOSURE STATEMENT LIMITS DEBTOR'S RIGHTS**
22 **TO OBJECT TO ANY PROOFS OF CLAIMS OR INTERESTS FILED IN THIS CASE.**
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1 **BECAUSE THE PROPONENT DOES NOT EXPRESS ANY OPINION AS TO THE**
2 **TAX CONSEQUENCES OF THE PLAN, IN NO EVENT WILL THE DEBTOR, OR THEIR**
3 **PROFESSIONAL ADVISORS THEY HAVE ENGAGED, BE LIABLE IF, FOR ANY**
4 **REASON, THE TAX CONSEQUENCES OF THE PLAN ARE NOT AS ANTICIPATED BY**
5 **CREDITORS AND EQUITY INTEREST HOLDERS. CREDITORS AND EQUITY**
6 **INTEREST HOLDERS MUST LOOK SOLELY TO AND RELY SOLELY UPON THEIR**
7 **OWN ADVISORS AS TO THE TAX CONSEQUENCES OF THE PLAN.**

9 **XX. RISKS**

10 Holders of Impaired Claims who are entitled to vote on the Plan should carefully consider
11 the following risk factors before deciding whether to vote to accept or to reject the Plan.
12

13 Even if the Requisite Acceptances are received, the Bankruptcy Court may choose not to
14 confirm the Plan. Although the Debtor believe that the Plan should be confirmed, there can be no
15 assurance that the Bankruptcy Court will reach the same conclusion.
16

17 Certain conditions must be satisfied in order for the Plan to become effective and to be
18 consummated. Unless such conditions are fully satisfied, or waived in accordance with the
19 applicable provisions of the Plan, the Bankruptcy Code, the transactions contemplated in the Plan
20 will not be consummated, and the Plan will not become effective.

21 Debtor must accumulate sufficient monies to pay Administrative Expenses and classes with
22 payments due on the Effective Date or negotiate alternative payment arrangements.
23

24 Since this plan provides for payments over a period of time out of future operating income,
25 performance under the Plan is dependent on Debtor future success. While Debtor believes in his
26 prospects for future success and that they can meet their forecast of future income, such is dependent
27 on numerous factors and by its nature uncertain.
28

1 **XXI. PROPONENTS' RECOMMENDATION / ALTERNATIVES TO PLAN**

2 The Debtor recommends that all creditors entitled to vote for the Plan do so. The
3 alternatives to confirmation of the Plan would be either conversion of this case to a case under
4 Chapter 7 of the Bankruptcy Code or its dismissal. Conversion will result in the appointment of a
5 Chapter 7 Trustee and, most likely, the hiring of an attorney by the Trustee. Expenses incurred in
6 administering the Chapter 7 case will take priority in the right to payment over allowed,
7 administrative expenses incurred in the Chapter 11 case. Both Chapter 7 and Chapter 11
8 administrative expenses take priority over the payment of unsecured claims without any priority. In
9 other words, conversion would likely decrease the net amount available to pay currently existing
10 creditors.
11

12
13 In addition, conversion could substantially delay any distribution to creditors beyond the
14 time period for distribution defined in the Plan. A Chapter 7 Trustee is not limited to specific
15 deadlines for closing a case and distributing assets to creditors. It is not unusual for distributions in
16 Chapter 7 cases to be delayed by years. Moreover, the return on the assets of the Estate a trustee is
17 likely to obtain through a standard Chapter 7 liquidation could be less than the return the Plan will
18 generate.
19

20 Dismissal of the case would leave all creditors holding unsecured claims in the position of
21 having to institute legal proceedings to collect their debts. Moreover, outside the context of a
22 bankruptcy case, the first creditor to collect may collect all non-exempt property, leaving nothing to
23 be paid to remaining creditors. In addition, dismissal of this case would open the door for the
24 Debtor to file a new bankruptcy case, which could further delay or reduce funds available to pay
25 creditors.
26
27
28

1 For all these reasons, the Debtor urges you to vote to accept the Plan and return your ballots
2 in time to be counted.

3 RESPECTFULLY SUBMITTED this 6th day of June 2016,
4

5 /s/ Blake D. Gunn 019112
6 Blake D. Gunn
7 Attorney for Debtor

8 /s/ Larry S. Kush
9 Larry S. Kush, Debtor-in-Possession
10

11 COPY of the forgoing filed via ECF this
12 6th day of June 2016.

13 Office of the United States Trustee
14 230 N. First Ave.
15 Suite 204
Phoenix, AZ 85003

16 All parties requesting notice

17 By /s/ Blake D. Gunn
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