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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re:

11 DAVID KARMEL

12 Debtor.

In Proceedings under Chapter 11

Case No. 4:15-bk-02229-SHG

13 **DISCLOSURE STATEMENT**
14 **WITH RESPECT TO CHAPTER**
15 **11 PLAN OF**
16 **REORGANIZATION**

Filed on September 27, 2016

17 **DISCLOSURE STATEMENT WITH RESPECT TO THE**
18 **CHAPTER 11 PLAN OF REORGANIZATION FOR DEBTOR**
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3 **ARTICLE I**
4 **SUMMARY OF PLAN**

5 **Section 1.1 General Summary**

6 On March 4, 2015, the Debtor commenced this case by filing a voluntary petition for
7 relief under Chapter 13 of Title 11 of the United States Code. Debtor sought conversion of their
8 case from Chapter 13 to Chapter 11 on January 4, 2016. After notice and a hearing, the case was
9 converted to a case under Chapter 11 on March 4, 2016.

10 Concurrently herewith, the Debtor filed its proposed Plan of Reorganization (as amended
11 or supplemented from time to time, the (“**Plan**”). The Plan sets forth the manner in which Claims
12 against and Interests in the Debtor will be treated following confirmation of the Plan. This
13 Disclosure Statement describes certain aspects of the Plan, the Debtor’s business operations,
14 significant events occurring in the Debtor’s Chapter 11 Case, and related matters. This Summary
15 is intended solely as a summary of the distribution provisions of the Plan and certain matters related
16 to the Debtor’s business. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU
17 SHOULD READ THE DISCLOSURE STATEMENT, THE PLAN AND THE EXHIBITS
18 THERETO IN THEIR ENTIRETY. Capitalized terms used in this Summary and not otherwise
19 defined herein have the meanings ascribed to them in the Plan.
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22 **Section 1.2 Summary of the Plan**

23 Under the Plan, Claims against and Interests in the Debtor are divided into different classes.
24 Certain unclassified Claims, including Administrative Expense Claims, will receive payment in
25 cash either on the Effective Date, as such Claims are liquidated or as agreed with the Holders of
26 such Claims. Trade claims from the Debtor’s operation of its business during the chapter 11
27
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1 process will be paid in the ordinary course. All other Claims and Interests are classified into eight
 2 (8) classes and will receive the distributions set forth in the table below. For certain classes of
 3 Claims, an estimated percentage recovery is set forth. Unless otherwise indicated, the estimated
 4 recovery value was determined based upon the Debtor's review of its books and records and
 5 includes estimates of Claims that are contingent, disputed, and/or unliquidated. There can be no
 6 assurances that the estimated amounts below are correct; actual claim amounts could be materially
 7 different than the estimated amounts shown. This summary is qualified in its entirety by reference
 8 to the provisions of the Plan, a copy of which is attached hereto as Exhibit "A".
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Class	Type of Allowed Claim or Interest	Treatment	Entitled to Vote?	Estimated Recovery
--	Administrative Expense Claims	Paid in full on the Effective Date. All Administrative Expense Claims incurred in the ordinary course shall be paid in the ordinary course by the Debtor or the Reorganized Debtor without the need or requirement for the creditor to file a motion, application or claim for allowance of payment thereof.	No	100%
1	Priority Tax Claims	Existing claims in this category include the Priority Tax Claim of the Internal Revenue Service and the Arizona Department of Revenue. The holders of these claims shall receive, in full and complete satisfaction, settlement and release of and in exchange for such Allowed Claim, from the Debtor obligated for the payment of such claim, following the Effective Date, equal monthly payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with a rate of interest determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code or such other amount as determined by the Bankruptcy Court in the Confirmation Order, over a period not exceeding five (5) years after the Order For Relief which was March 4, 2015. In the event the Debtors default on any payment due to the Internal Revenue Service as required under the confirmed plan, and in the event the	Yes	100%

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		Debtors fail to cure said default within thirty days after written notice of the default is mailed to the Debtors and the Debtors' attorney, the entire imposed liability together with any unpaid current liabilities, shall become due and payable immediately. The Internal Revenue Service may collect unpaid liabilities that become due as a result of the default through the administrative collection provisions or the judicial remedies as set forth in the Internal Revenue Code and applicable state law. The Internal Revenue Service shall not be required to seek a modification from the automatic stay to collect any tax liabilities that were not discharged by the confirmation of the plan and from property that has reverted with the Debtor.		
2	Secured Tax Claims	Existing claims in this category may include the Secured Tax Claim of the Arizona Department of Revenue and the Internal Revenue Service. The holders of these claims shall receive, in full and complete satisfaction, settlement and release of and in exchange for such Allowed Secured Tax Claim, from the Debtors obligated for the payment of such Allowed Secured Tax Claim, following the Effective Date, equal quarterly payments, in an aggregate amount equal to such Allowed Secured Tax Claim, together with a rate of interest determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code or such other amount as determined by the Bankruptcy Court in the Confirmation Order, over a minimum period of fifty (50) months, but not exceeding five (5) years after the later of (a) the Commencement Date or (b) the date of assessment of such Allowed Secured Tax Claim.	Yes	100%
3	Secured Claim of Wells Fargo (Sylvia)	The Holder of this claim is Wells Fargo Bank N.A. The Debtor shall pay Wells Fargo's Secured Claim as an Allowed Secured claim in the amount of \$95,000, interest to accrue at 4% per annum, amortized over three hundred and sixty (360) months. Payment shall commence on the first day of the first full month after the Effective Date and continue thereafter of the first (1st) of each month until the earlier of (i) the Allowed Secured Claim is paid in full; (ii) the Debtor sells the Property and pays Wells Fargo in full or (iii) the Debtor refinances the Property and pays Wells Fargo in full.	Yes	100%
4	Secured Claim of	The Holder of this claim is Wells Fargo Bank N.A.		

	Wells Fargo (Alvin First Position Lien)	The Debtor shall pay Wells Fargo's Secured Claim as an Allowed Secured claim in the amount of \$375,000, with interest to accrue at 4 % per annum, amortized over three hundred and sixty (360) months. Payment shall commence on the first day of the first full month after the Effective Date and continue thereafter of the first (1st) of each month until the earlier of (i) the Allowed Secured Claim is paid in full; (ii) the Debtor sells the Property and pays Wells Fargo in full or (iii) the Debtor refinances the Property and pays Wells Fargo in full.	Yes	100%
5	Secured Claim of Wells Fargo (Alvin Second Position Lien)	The Holder of this claim is Wells Fargo Bank N.A. The treatment of this lien on the property will be avoided as the junior lien through an adversary proceeding. This is a condition of the Class 4 treatment stipulated and agreed to by both parties.	No	N/A
6	General Unsecured Claims	The Holders of Class 4 Claims shall receive their Pro Rata share of a total of \$6,000.00, to be paid \$100 per months for sixty (60) months, commencing on the Effective Date.	Yes	.13%
7	Contingent, Unliquidated and Disputed Claims	None	No	
8	Debtor's Interest	All Estate property shall vest in the Debtor at Confirmation of the Plan. Class 4 shall receive no Distributions under the Plan.	No	N/A

Section 1.3 Risk Factors Affecting the Debtor

(a) Certain Bankruptcy Law Considerations

Although the Debtor believes that the Plan will satisfy all requirements necessary for Confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for Confirmation or that such modifications would not necessitate the re-solicitation of votes. Although the Debtor believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to such timing. In the event the conditions precedent to Confirmation of the Plan have not been satisfied or waived (to the extent possible) by the Debtor or Plan Sponsor Group as of the Effective Date, then the Confirmation Order will be

1 vacated, no distributions under the Plan will be made, and the Debtor and all Holders of Claims
2 and Interests will be restored to the status quo ante as of the day immediately preceding the
3 Confirmation Date as though such Confirmation Date had never occurred.
4

5
6 **(b) Projected Operating and Financial Results**

7 The Debtor has prepared the financial projections attached as Exhibit "B" hereto. The
8 assumptions on which these projections are based, however, are subject to significant
9 uncertainties and, inevitably, some assumptions will not materialize. Also, unanticipated events
10 and circumstances beyond Reorganized Debtor's control may affect the actual financial results.
11

12 Neither the Debtor nor Reorganized Debtor makes any representation as to the accuracy
13 of the projections or Reorganized Debtor's ability to achieve projected results. The actual results
14 achieved could vary from the projected results and the variations may be material. It is urged that
15 all of the assumptions and other caveats regarding the projections set forth on Exhibit "B" hereto
16 be examined carefully in evaluating the Plan.

17 The projections were not prepared with a view toward public disclosure or compliance
18 with the published guidelines of the American Institute of Certified Public Accountants
19 regarding projections or forecasts. No independent auditors have been retained by the Debtor to
20 examine the projections.
21

22
23 **Section 1.4 Tax Consequences of Plan**

24 CREDITORS AND EQUITY INTEREST HOLDERS CONCERNED WITH HOW THE
25 PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
26 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.

27 NO ANALYSIS OF THE FEDERAL TAX CONSEQUENCES OF CONFIRMATION OF THE
28 PLAN HAS BEEN MADE AND YOU SHOULD CONSULT WITH YOUR OWN TAX

1 EXPERT TO DETERMINE WHAT, IF ANY, TAX CONSEQUENCES MAY RESULT FROM
2 CONFIRMATION OF THE DEBTOR'S PLAN OF REORGANIZATION.

3 **ARTICLE II**
4 **GENERAL BACKGROUND**

5 **Section 2.1 Introduction**

6 The Debtor submits the following Disclosure Statement pursuant to section 1125 of the
7 Bankruptcy Code for the purpose of soliciting votes to accept or reject the Debtor's Plan. A copy
8 of the Plan is attached hereto as Exhibit A. The Disclosure Statement describes certain aspects of
9 the Plan, including the treatment of Holders of Claims and Interests, and also describes certain
10 aspects of the Debtor's operations, financial projections, and other related matters.

11
12 On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of
13 the Bankruptcy Code in the Bankruptcy Court. Pursuant to sections 1107 and 1108 of the
14 Bankruptcy Code, the Debtor is continuing to operate its business and manage its properties as a
15 debtor in possession in this Chapter 11 Case.

16
17 **Section 2.2 Sources of Information**

18 THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECTED TO A
19 CERTIFIED AUDIT AND IS BASED, IN PART, UPON INFORMATION PREPARED BY
20 PARTIES OTHER THAN THE DEBTOR. THEREFORE, ALTHOUGH THE DEBTOR HAS
21 MADE EVERY REASONABLE EFFORT TO BE ACCURATE IN ALL MATERIAL
22 MATTERS, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT ALL THE
23 INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE.

24 Except as otherwise expressly indicated, the portions of this Disclosure Statement
25 describing the Debtor, its business, properties and management, and the Plan, have been
26 prepared from information furnished by the Debtor.

27 Certain of the materials contained in this Disclosure Statement are taken directly from
28

1 other readily accessible documents or are digests of other documents. While the Debtor has made
2 every effort to retain the meaning of such other documents or portions that have been
3 summarized, the Debtor urges that any reliance on the contents of such other documents should
4 depend on a thorough review of the documents themselves. In the event of a discrepancy
5 between this Disclosure Statement and the actual terms of a document, the actual terms of such
6 document shall apply.
7

8 The authors of the Disclosure Statement have compiled information from the Debtor
9 without professional comment, opinion or verification and do not suggest comprehensive
10 treatment has been given to matters identified herein. Each Holder of a Claim or Interest is urged
11 to independently investigate any such matters prior to reliance. No statements concerning the
12 Debtor, the value of its property, or the value of any benefit offered to the Holder of a Claim or
13 Interest in connection with the Plan should be relied upon other than as set forth in this
14 Disclosure Statement. In arriving at your decision, you should not rely on any representation or
15 inducement made to secure your acceptance or rejection that is contrary to information contained
16 in this Disclosure Statement, and any such additional representations or inducements should be
17 reported to Counsel for the Debtor:
18
19

20
21 **The Law Offices of C.R. Hyde, PLC,**
22 **325 West Franklin Street, Suite 103,**
23 **Tucson, Arizona 85701.**
24 **Attn: C.R. Hyde**

25 Attached as Exhibits to this Disclosure Statement are copies of the following documents:

- 26 (a) The Plan (Exhibit "A")
27 (b) Debtor's Financial Projections (Exhibit "B")
28 (c) Liquidation Analysis (Exhibit "C")

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3 **ARTICLE III**
4 **SOLICITATION; VOTING INSTRUCTIONS AND PROCEDURES**

5 On [_____], the Bankruptcy Court approved the Disclosure Statement as
6 containing adequate information of a kind and in sufficient detail to enable hypothetical,
7 reasonable investors typical of the Debtor’s creditors and interest holders to make an informed
8 judgment whether to accept or reject the Plan. **APPROVAL OF THIS DISCLOSURE**
9 **STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE**
10 **BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

11
12
13 **Section 3.1 Holders of Claims and Interests Entitled to Vote**

14 Pursuant to the provisions of the Bankruptcy Code, only classes of claims or equity
15 interests which (i) are “Impaired” by a chapter 11 plan and (ii) entitled to receive a distribution
16 under such a plan are entitled to vote to accept or reject a proposed plan. Classes of claims or
17 equity interests in which the holders of claims or equity interests are unimpaired are deemed to
18 have accepted the Plan and are not entitled to vote to accept or reject the Plan.

19
20 Classes 1 through 3, inclusive, are Impaired under the Plan. To the extent Claims or
21 Interests in such Classes are Allowed Claims or Allowed Interests, the Holders of such Claims or
22 Interests are entitled to vote to accept or reject the Plan.

23 The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance
24 by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in
25 number of the claims that cast ballots for acceptance or rejection of the plan. The Bankruptcy
26 Code defines “acceptance” of a plan by a class of equity interests as acceptance by holders of
27

1 equity interests in that class that hold at least two-thirds in amount of the allowed equity interests
2 of such class that cast ballots for acceptance or rejection of the plan. Thus, acceptance of the Plan
3 by a class will occur only if at least two-thirds in dollar amount and a majority in number of the
4 holders of Claims and two-thirds of the amount of Interests in each Class that cast their ballots
5 vote in favor of acceptance. A vote may be disregarded if the Bankruptcy Court determines, after
6 notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith
7 or in accordance with the provisions of the Bankruptcy Code.
8

9
10 If the Classes of Claims or Interests entitled to vote on the Plan reject the Plan, the Debtor
11 reserves the right to amend the Plan or request confirmation of the Plan pursuant to section
12 1129(b) of the Bankruptcy Code or both. Section 1129(b) permits confirmation of a plan of
13 reorganization notwithstanding the non-acceptance of a plan by one or more impaired classes of
14 claims or equity interests if the plan does not “discriminate unfairly” and is “fair and equitable”
15 with respect to each non-accepting class.
16

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18 **EVEN IF YOU ARE NOT ENTITLED TO VOTE ON THE PLAN, YOU HAVE A
19 RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN AND TO THE ADEQUACY
20 OF THE DISCLOSURE STATEMENT.**

21 **Section 3.2 Voting Procedures**

22 If you are entitled to vote to accept or reject the Plan, a ballot is enclosed for the purpose
23 of voting on the Plan. If you hold Claims or Interests in more than one Class and you are entitled
24 to vote such Claims or Interests, you will receive separate ballots, which must be used for each
25 separate Class of Claims and Interests. Please vote and return your ballot(s) in the return
26 envelope provided.

27 // // //

1 **TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR**
2 **REJECTION OF THE PLAN MUST BE RECEIVED BY NO LATER THAN 5:00**
3 **P.M., ARIZONA LOCAL TIME, ON [____], 2016.**

4 Any Claim or Interest in an impaired Class as to which an objection or request for
5 estimation is pending or which was scheduled by the Debtor in its statements of financial affairs
6 as unliquidated, disputed or contingent and for which no timely proof of claim has been filed is
7 not entitled to vote unless the holder of such Claim or Interest has obtained an order of the
8 Bankruptcy Court temporarily allowing such Claim for the purpose of voting on the Plan.
9

10 If you are a holder of a Claim or Interest entitled to vote on the Plan and did not receive a
11 ballot, received a damaged ballot or lost your ballot, or if you have any questions concerning the
12 Disclosure Statement, the Plan or the procedures for voting on the Plan, please contact Debtor's
13 counsel at the address indicated above.
14

15 **Section 3.3 Solicitation Package**

16 Accompanying this Disclosure Statement for the purpose of soliciting votes (the
17 "**Solicitation**") on the Plan are copies of (i) the Plan; (ii) the notice of, among other things, the
18 time for submitting Ballots to accept or reject the Plan, the date, time, and place of the hearing to
19 consider Confirmation of the Plan and related matters, and the time for filing objections to
20 Confirmation of the Plan; and, as applicable, (iii) a Ballot or Ballots (and return envelope(s)) that
21 you may use in voting to accept or to reject the Plan), or a notice of non-voting status,
22 (collectively, the "**Solicitation Package**"). Only Holders eligible to vote in favor of or against the
23 Plan will receive a Ballot(s) as part of their Solicitation Packages. If you did not receive a Ballot
24 and believe that you should have, please contact the Debtor's counsel.
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1 **Section 3.4 Voting Instructions**

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3 After carefully reviewing the Plan and this Disclosure Statement, and the Exhibits
4 thereto, and the detailed instructions accompanying your Ballot, please indicate your acceptance
5 or rejection of the Plan on the enclosed Ballot. Please complete and sign your Ballot and return it
6 in the envelope provided so that it is RECEIVED by Debtor’s counsel on or before the Plan
7 Voting Deadline set forth on the Ballot.

8 If you have any questions about the procedure for voting your eligible Claim or with
9 respect to the Solicitation Package that you have received, please contact Debtor’s counsel:
10

11
12 The Law Offices of C.R. Hyde, PLC
13 325 W. Franklin Street, Suite 103
14 Tucson, AZ 85701
Attn: C.R. Hyde

15 **IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE ACTUALLY**
16 **RECEIVED ON OR BEFORE 5:00 P.M., ARIZONA LOCAL TIME, ON [_____], 2016,**
17 **AT THE ABOVE ADDRESS. EXCEPT TO THE EXTENT ALLOWED BY THE**
18 **BANKRUPTCY COURT OR DETERMINED OTHERWISE BY THE DEBTOR,**
19 **BALLOTS RECEIVED AFTER THE PLAN VOTING DEADLINE WILL NOT BE**
20 **ACCEPTED OR USED IN CONNECTION WITH THE DEBTOR’S REQUEST FOR**
21 **CONFIRMATION OF THE PLAN OR ANY MODIFICATION THEREOF.**

22 **ONLY BALLOTS WITH ORIGINAL SIGNATURES WILL BE COUNTED. BALLOTS**
23 **WITH COPIED SIGNATURES WILL NOT BE ACCEPTED OR COUNTED. YOU MAY**
24 **NOT SUBMIT A BALLOT ELECTRONICALLY, INCLUDING VIA EMAIL OR**
25 **FACSIMILE. ONLY ORIGINAL BALLOTS RECEIVED BY THE PLAN VOTING**
26 **DEADLINE WILL BE COUNTED.**

27 **Section 3.5 Voting Tabulation**

28 Under the Bankruptcy Code, for purposes of determining whether the requisite
acceptances have been received, only Holders who actually vote will be counted. The failure of a
Holder to deliver a duly executed Ballot will be deemed to constitute an abstention by such

1 Holder with respect to voting on the Plan and such abstentions will not be counted as votes for or
2 against the Plan.
3

4 Unless otherwise ordered by the Bankruptcy Court, Ballots that are signed, dated, and
5 timely received, but on which a vote to accept or reject the Plan has not been indicated, will not
6 be counted. The Debtor, in its sole discretion, may request that the Debtor's counsel attempt to
7 contact such voters to cure any such defects in the Ballots.

8 Except as provided below, unless the applicable Ballot is timely submitted to the
9 Debtor's counsel before the Voting Deadline, together with any other documents required by
10 such Ballot, the Debtor may, in its sole discretion, reject such Ballot as invalid and decline to
11 utilize it in connection with seeking Confirmation of the Plan.
12

13 A vote may be disregarded if the Bankruptcy Court determines, pursuant to Bankruptcy
14 Code section 1126(e), that it was not solicited or procured in good faith or in accordance with the
15 provisions of the Bankruptcy Code.
16

17 If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact,
18 officer of a corporation, or another acting in a fiduciary or representative capacity, such Person
19 should indicate such capacity when signing and, unless otherwise determined by the Debtor,
20 must submit proper evidence satisfactory to the Debtor of authority to so act.
21

22 **Section 3.6 Agreements Upon Furnishing Ballots**

23 The delivery of an accepting Ballot by a Holder pursuant to one of the procedures set
24 forth above will constitute the agreement of such Holder to accept (i) all of the terms of, and
25 conditions to, the solicitation and voting procedures and (ii) the terms of the Plan, but subject to
26 rights of such Holder under section 1128 of the Bankruptcy Code.
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2 **Section 3.7 Confirmation Hearing**

3 Pursuant to Section 1128 of the Bankruptcy Code, the Confirmation Hearing will be held
4 on [____], 2016, commencing at []:[] [a.m.] [p.m.] prevailing Arizona Local Time, before
5 the Honorable Scott Gan, United States Bankruptcy Judge, at the United States Bankruptcy
6 Court for the District of Arizona, 38 South Scott Avenue, Courtroom No. 329, Tucson, Arizona
7 85701. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be
8 served and filed so that they are received on or before [____], 2016 at 5:00 p.m., Arizona
9 Local Time. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy
10 Court without further notice except for the announcement of the adjournment date made at the
11 Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.
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14 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE
15 MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN,
16 AND THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN
17 IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED
18 SINCE THE DATE HEREOF. HOLDERS OF CLAIMS AND INTERESTS SHOULD
19 CAREFULLY READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING
20 THE PLAN, PRIOR TO VOTING ON THE PLAN.

21 FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS ENTITLED
22 TO VOTE, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN.
23 IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE
24 STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. THE DISCLOSURE
25 STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO
26 DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING
27 STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY
28 BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR
OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR
OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS
OR INTERESTS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE
STATEMENT, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES
AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS
WILL BE REFLECTIVE OF ACTUAL OUTCOMES. ALL HOLDERS OF CLAIMS AND

1 INTERESTS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS
2 SET FORTH IN ARTICLE XI OF THIS DISCLOSURE STATEMENT BEFORE VOTING TO
3 ACCEPT OR REJECT THE PLAN.

4 SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN
5 THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE
6 SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE
7 FULL TEXT OF THE APPLICABLE AGREEMENT, INCLUDING THE DEFINITIONS OF
8 TERMS CONTAINED IN SUCH AGREEMENT.

9 THE DEBTOR BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST
10 INTERESTS OF THE DEBTOR, ITS CREDITORS AND ALL PARTIES IN INTEREST.

11 **ARTICLE IV**
12 **GENERAL INFORMATION**

13 **Section 4.1 Description of Debtor and Debtor's Assets**

14 David Karmel is ("David") is in real estate agent who owns and operates David Karmel
15 Realty & Investments in Tucson, Arizona. Clint has been employed at Switchgear for the past 3
16 years in the capacity of shop manager. As set forth in Schedules A through C of the Debtor's
17 bankruptcy case, the Debtor's property consists of largely household goods, small personal
18 property and assorted tools.

19 **Section 4.2 Events Leading to Bankruptcy Filing**

20 Debtor filed the instant case on the heels of an involuntary dismissal of a predecessor
21 bankruptcy, identified as 4:12-bk-080507-JMM ("Prior Case"). The Prior Case was dismissed for
22 failure to confirm a plan under subchapter 13 of the Bankruptcy Code. Debtor's previous counsel
23 advised that rather than reinstate the Prior Case he should refile the instant case.

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Section 4.3 Anticipated Future of the Debtor

The majority of the Debtor’s obligations stem from the secured claims of Wells Fargo in connection with mortgages on Debtor’s two pieces of residential real property, respectively referred to under the Plan as the Alvin Property and the Sylvia Property, as well as the tax claims of the Internal Revenue Service and Arizona Department of Revenue. The likelihood of future reorganization is dependent upon Debtor’s future income sources providing enough income to pay the priority and secured tax claims in full. Reorganization does not hinge on the retention of the residential properties and the reorganization of those secured claims although it is a goal of this Debtor. As the financial projections reflect, the Debtor anticipates a year-over-year increase in income from his work as both a contractor and realtor.

Section 4.4 Avoidance Actions, Insider Transfers & Non Bankruptcy Litigation

The Debtor has conducted a preliminary investigation of pre-petition transfers that may potentially be subject to avoidance and recovery, including transfers involving insiders and affiliates. To date, the Debtor has not encountered any transfers of property of this estate which would allow an avoidable transfer action for the benefit of the estate. Debtor anticipates no non-bankruptcy litigation will occur after confirmation of the Plan, but reserves its causes of actions and claims.

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ARTICLE V
THE CHAPTER 11 CASE

Section 5.1 Overview of Chapter 11

Although Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code, the US Supreme Court has made it clear the individuals not engaged in business are also eligible for Chapter 11 relief. Chapter 11 serves several purposes for individuals. For some, Chapter 11 enables individuals to reject oppressive executory contracts and start anew. For some, it allows them to pay non-dischargeable debts over time in accordance with their reorganization plan. Creditors also benefit when individual debtors choose Chapter 11 over Chapter 7, since creditors' recoveries are typically greater than they would have been in a Chapter 7 liquidation because in order to confirm a plan, debtors often contributed exempt assets or future earnings that would be unavailable to creditors in a Chapter 7 case. Commencing a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to remain in possession of his or her property as a "debtor in possession."

The principal objective of a chapter 11 case is to consummate a plan of reorganization. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court binds a debtor, any issuer of securities thereunder, any person acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity the bankruptcy court may find to be bound by such plan. Chapter 11 requires that a plan treat similarly situated creditors and similarly situated equity interest holders equally, subject to the priority provisions of the Bankruptcy Code.

1 Subject to certain limited exceptions, the bankruptcy court order confirming a plan of
2 reorganization discharges a debtor from any debt that arose prior to the date of confirmation of
3 the plan and provides for the treatment of such debt in accordance with the terms of the
4 confirmed plan of reorganization.
5

6 Prior to soliciting acceptances of a proposed plan of reorganization, Bankruptcy Code
7 section 1125 requires a debtor to prepare a disclosure statement containing information of a kind,
8 and in sufficient detail, to enable a hypothetical reasonable investor to make an informed
9 judgment regarding acceptance of the plan of reorganization. This Disclosure Statement is
10 submitted in accordance with Bankruptcy Code section 1125.
11

12 **Section 5.2 Administration of the Chapter 11 Case**

13 *(a) Filing of Schedules and Statement of Financial Affairs*

14 On April 22, 2015 the Debtor (through his prior attorney of record) filed its Schedules of
15 Assets and Liabilities and Statement of Financial Affairs in compliance with section 521 of the
16 Bankruptcy Code and Rule 1007 of the Federal Rules of Bankruptcy Procedure. The Schedules
17 and Statement set forth, among other things, the Debtor's assets and liabilities, current income
18 and expenditures, and executory contracts and unexpired leases. The Schedules failed to capture
19 any changes between the Prior Case and the instant case, notably that Debtor did not reside in the
20 property located on Alvin Road.
21

22 During the Prior Case, debtor vacated the Alvin Road property. At the time of the
23 Petition in the instant case, Debtor resided at 3301 East Camino Campestre, Tucson, AZ 85716.
24 Upon discovery of this information in May 2016, Debtor's counsel amended the Petition to
25 reflect his residential address, and amended schedule C to remove the homestead exemption
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1 election from the Alvin Road property.
2

3 (b) *Establishment of the Bar Date*

4 A motion for establishing a bar date for Proof of Claims will be filed with the Clerk of
5 The Bankruptcy Court with the intention that the Bar Date be on the same day as the Disclosure
6 Statement Hearing Date. The Bar Date Order will require, among other things, all persons and
7 entities (except Governmental Units) holding or wishing to assert a Claim against the Debtor to
8 file a proof of claim on or before that forthcoming date (the "**Bar Date**"). The procedures for
9 filing proofs of claim are detailed in the Bar Date Order and parties are encouraged to review the
10 order.
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13 (c) *Adversary Complaints*

14 Debtor intends to file an adversary complaint to avoid the consensual junior lien in favor
15 of Wells Fargo in connection with the Alvin Road property.
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18 **ARTICLE VI**
19 **CLASSIFICATION AND TREATMENT**
20 **OF CLAIMS AND INTERESTS**

21 **Introduction**

22 The categories of Claims and Interests set forth below classify Claims and Interests for all
23 purposes, including for purposes of voting, Confirmation and distribution pursuant to the Plan
24 and sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest shall be deemed
25 classified in a particular Class only to the extent that it qualifies within the description of such
26 Class, and shall be deemed classified in other Classes to the extent that any portion of such
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1 Claim or Interest qualifies within the description of such other Classes. Notwithstanding
2 anything to the contrary in the Plan, a Claim or Interest shall be deemed classified in a Class only
3 to the extent that such Claim or Interest has not been paid, released, or otherwise settled prior to
4 the Effective Date.
5

6 All Claims (except for Administrative Expense Claims, which are not classified pursuant
7 to Bankruptcy Code section 1123(a)(1)) are classified in the Plan as described below.
8
9

10 **Section 6.1 Administrative Expense Claims**

11 Administrative Expense Claims are Claims constituting a cost or expense of
12 administration of the Chapter 11 Case allowed under Section 503(b) and 507(a)(1) of the
13 Bankruptcy Code. Such Claims include, without limitation, all actual and necessary costs and
14 expenses of preserving the Debtor's estate, all actual and necessary costs and expenses of
15 operating the Debtor's businesses, any indebtedness or obligations incurred or assumed by the
16 Debtor, as debtor in possession, during its bankruptcy case, all allowances of compensation and
17 reimbursement of expenses to the extent allowed by Final Order under Sections 330 or 503 of the
18 Bankruptcy Code, and all fees or charges assessed against the estate of the Debtor under Section
19 1930 of title 28 of the United States Code.
20
21

22 Except for the proviso with respect to ordinary course obligations or as otherwise
23 provided for in the Plan, and subject to the requirements of Section 2.1 of the Plan, each Holder
24 of an Allowed Administrative Expense Claim shall, in full satisfaction, release, settlement, and
25 discharge of such Allowed Administrative Expense Claim: (a) to the extent such Claim is due
26 and owing on the Effective Date, be paid in full, in Cash, on the Effective Date; (b) to the extent
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1 such Claim is not due and owing on the Effective Date, be paid in full, in Cash, (i) in accordance
 2 with the terms of any agreement among the Debtor or Reorganized Debtor and such Holder, (ii)
 3 on the later of ten (10) Business Days after such Claim becomes due and payable under
 4 applicable non-bankruptcy law or ten (10) Business Days after such Claim becomes an Allowed
 5 Administrative Expense Claim pursuant to a Final Order of the Bankruptcy Court or (c) receive
 6 such other treatment as to which such Holder may agree with the Debtor or Reorganized Debtor;
 7 provided, however, that Allowed Administrative Claims representing obligations incurred in the
 8 ordinary course of business (including, without limitation, amounts owed to vendors and
 9 suppliers since the Petition Date) will be paid in full by Reorganized Debtor in the ordinary
 10 course, consistent with past practice of the Debtor and consistent with the terms and subject to
 11 the conditions of any agreements governing, or other documents relating to, such transactions.
 12

13 Allowed Administrative Expense Claims shall be paid from the proceeds of available cash.

14 Below are estimates of administrative expenses in the Debtor's case to date:

Type	Estimated Amount Owed	Treatment Under the Plan
Expenses Arising in the Ordinary Course of Business After the Petition Date	N/A	
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	N/A	

Professional Fees, as approved by the Court	Before applying any advanced fee paid to attorney in advance of the petition date, Debtor estimates attorney's fees and costs will total approximately \$12,000 to \$20,000.	Attorney's Fees shall be either paid during the first full month following the Effective Date or as the Debtor and such allowed administrative claimant shall agree.
Office of the U.S. Trustee Fees	Current as of the date of filing	To be paid in full on the effective date of the plan should there be any fees outstanding.

Section 6.2 Class 1 - Priority Tax Claims

(a) Classification, Impairment and Voting. Class 1 consists of Allowed Priority Tax Claims. Class 1 is Impaired by this Plan. Each Holder of an Allowed Priority Tax Claim is entitled to vote to accept or reject the Plan.

(b) Treatment. Existing claims in this Class include the Priority Tax Claim of the Internal Revenue Service and the Arizona Department of Revenue (“AZDOR”). The holders of claims in this Class shall receive, in full and complete satisfaction, settlement and release of such Claims payments, beginning on the first business day of the month following the Effective Date monthly payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with a rate of interest determined under applicable non-bankruptcy law pursuant to section 511 of the Bankruptcy Code or such other amount as determined by the Bankruptcy Court in the Confirmation Order, over a period not exceeding five (5) years after the Order For Relief which was March 4, 2015. Payments to the AZDOR shall be made in graduated increments, with the first twelve (12) payments under the Plan in the amount of \$1,000 per month, the next twelve (12) payments under the Plan in the amount of \$1,500 per month, the next (12) twelve payments in the amount of \$2,000 per month, and continuing thereafter in the amount of \$2,500 per month until paid in full.

1 In the event the Debtor defaults on any payment due to the holder of a Class 2 Claim as
2 required under the confirmed plan, and in the event the Debtor fails to cure said default within
3 thirty days after written notice of the default is mailed to the Debtor and the Debtor's attorney,
4 the entire imposed liability together with any unpaid current liabilities, shall become due and
5 payable immediately. The holders of Class 1 Claims may collect unpaid liabilities that become
6 due as a result of the default through the administrative collection provisions or the judicial
7 remedies as set forth in the Internal Revenue Code and applicable state law. Holders of Class 1
8 claims shall not be required to seek a modification from the automatic stay to collect any tax
9 liabilities that were not discharged by the confirmation of the plan and from property that has
10 revested with the Debtor.
11

12
13 **Section 6.3 Class 2 - Secured Tax Claims**

14 (a) Classification, Impairment and Voting. Class 2 consists of Allowed Secured Tax
15 Claims. Class 2 is Impaired by this Plan. Each Holder of an Allowed Secured Tax Claim is
16 entitled to vote to accept or reject the Plan.
17

18 (b) Treatment. Existing claims in this Class include the Secured Tax Claim of the
19 Arizona Department of Revenue. The holders of claims in this Class shall receive, in full and
20 complete satisfaction, settlement and release of such Claims payments, beginning on the first
21 business day of the month following the Effective Date monthly payments in an aggregate
22 amount equal to such Allowed Secured Tax Claim, together with a rate of interest determined
23 under applicable non-bankruptcy law pursuant to section 511 of the Bankruptcy Code or such
24 other amount as determined by the Bankruptcy Court in the Confirmation Order, over a period
25 not exceeding five (5) years after the Order For Relief which was March 4, 2015.
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1 In the event the Debtor defaults on any payment due to the holder of a Class 2 Claim
2 as required under the confirmed plan, and in the event the Debtor fails to cure said default within
3 thirty days after written notice of the default is mailed to the Debtor and the Debtor's attorney,
4 the entire imposed liability together with any unpaid current liabilities, shall become due and
5 payable immediately. The holders of Class 2 Claims may collect unpaid liabilities that become
6 due as a result of the default through the administrative collection provisions or the judicial
7 remedies as set forth in the Internal Revenue Code and applicable state law. Holders of Class 2
8 claims shall not be required to seek a modification from the automatic stay to collect any tax
9 liabilities that were not discharged by the confirmation of the plan and from property that has
10 revested with the Debtor.
11

12
13 **Section 6.4 Class 3 – Secured Claim of Wells Fargo (Sylvia)**

14 (a) Impairment and Voting. Class 3 is impaired by the Plan. Holders of claims in
15 Class 3 are entitled to vote to accept or reject the Plan.
16

17 (b) Treatment. Existing claims in this Class include the Secured Claim of Wells
18 Fargo Bank, N.A. ("Wells Fargo") with respect to the Debtor's real property at 2534 Sylvia
19 Street, Tucson, AZ 85716 ("Sylvia"). Wells Fargo shall have an allowed secured claim in the
20 amount of \$95,000.00. Commencing on the first day of the month following the Effective Date,
21 and for a period of thirty (30) years thereafter, the Debtor shall tender monthly payments to
22 Wells Fargo in the amount equal to an amortization of Wells Fargo's secured claim at four (4)
23 percent interest per annum. Wells Fargo filed a Proof of Claim (Claim #6) for a mortgage on the
24 property in the amount of \$134,762.85. Therefore, Wells Fargo shall have an allowed unsecured
25 claim of \$39,762.85 and shall be entitled to participate in Class 6 as a General Unsecured
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28

1 Creditor.

2
3 **Section 6.5 Class 4 – Secured Claim of Wells Fargo (Alvin First Position Lien)**

4 (a) Impairment and Voting. Class 4 is impaired by the Plan. Holders of claims in
5 Class 4 are entitled to vote to accept or reject this Plan.

6 (b) Treatment. Existing claims in this Class include the Secured Claim of Wells
7 Fargo Bank, N.A. (“Wells Fargo”) with respected to Wells Fargo’s First Position lien in the
8 Debtor’s real property at 8041 E. Alvin Rd. Tucson, AZ 85750 (“Alvin”). Wells Fargo shall
9 have an allowed secured claim in the amount of \$375,000.00. Commencing on the first day of
10 the month following the Effective Date, and for a period of thirty (30) years thereafter, the
11 Debtor shall tender monthly payments to Wells Fargo in the amount equal to an amortization of
12 Wells Fargo’s secured claim at four (4) percent interest per annum. Wells Fargo filed a Proof of
13 Claim (Claim #8) with respect to its Class 4 Claim in the amount of \$396,066.72. Therefore,
14 Wells Fargo shall have an allowed unsecured claim of \$21,066.72 and shall be entitled to
15 participate in Class 6 as a General Unsecured Creditor.
16
17

18 **Section 6.6 Class 5 – Secured Claim of Wells Fargo (Alvin Second Position Lien)**

19 (a) Impairment and Voting. Class 5 is not given any treatment under the plan and
20 Holders of Class 5 claims shall not be entitled to Vote as a member of Class 5. Holders of claims
21 of Class 5 are entitled to vote to accept or reject this Plan as members of Class 6.

22 (b) Treatment. The treatment of the Wells Fargo Second Position Lien on the Alvin
23 Property shall be avoided as an unsecured junior lien through an adversary proceeding. This is a
24 condition of the Class 4 treatment as shall be stipulated and agreed to by Wells Fargo and the
25 Debtor.
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3 **Section 6.7 Class 6 – General Unsecured Claims**

4 (a) Classification, Impairment and Voting. Class 6 consists of the Allowed General
5 Unsecured Claims of Unsecured Creditors. Class 6 is Impaired under the Plan. Holders of a
6 Class 6 Claims are entitled to vote to accept or reject this Plan.

7 (b) Treatment. The Holders of Class 6 Claims shall receive their Pro Rata share of a
8 total of \$6,000.00, to be paid \$100 per month for sixty (60) months, commencing on the
9 Effective Date. Payment on Class 6 Claims shall be mailed to the address of the creditor on the
10 Proof of Claim (or, if Allowed pursuant to the Debtor’s Schedules, to the address on the
11 Schedules), unless the creditor Files a change of address notice with the Bankruptcy Court. Any
12 check mailed to the proper address and returned by the post office as undeliverable, or not
13 deposited within 180 days, shall be void and the funds may be retained by Debtor.
14

15 **Section 6.8 Class 7 – Contingent, Unliquidated and Disputed Claims**

16 (a) Impairment and Voting. Class 7 consists of the Allowed Claims that are either
17 contingent, unliquidated, disputed, or any combination of the foregoing, claims in the Debtor.
18 No known claims in this category are known to the Debtor.
19

20 (b) Treatment. Class 7 creditors shall receive no distribution under the Plan. In the
21 event that any claims in Class 7 become non-contingent and unliquidated prior to the Effective
22 Date, such claims shall be entitled to participate in Class 6.
23

24 **Section 6.9 Class 8 – Debtor’s Interest**

25 (a) Classification, Impairment and Voting. Class 8 consists of the interests of the
26 individual Debtor in property of the Estate. Class 8 is Impaired under the Plan, but is not entitled
27
28

1 to vote to accept or reject this Plan.
2

3 (b) Treatment. All Estate property shall vest in the Debtor at Confirmation of the
4 Plan. Class 8 Holder(s) shall receive no Distributions under the Plan.
5

6 **ARTICLE VII**
7 **MEANS FOR IMPLEMENTATION OF THE PLAN**

8 Debtor shall fund the Plan using his projected disposable income earned through Debtor's
9 wages to fund Plan payments.
10

11 **ARTICLE VIII**
12 **FEASIBILITY, BEST INTEREST OF THE CREDITORS, AND LIQUIDATION**

13 **Section 8.1 Feasibility of the Plan.**

14 Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the Plan is not
15 likely to be followed by the liquidation, or the need for further financial reorganization, of the
16 Debtor or any successors to the Debtor under the Plan, unless such liquidation or reorganization
17 is proposed in the Plan. The Plan proposed by the Debtor provides for a reorganization of the
18 Debtor's debt and equity, and for the Debtor and its profitable Rental Properties to continue as
19 going concerns. Distributions under the Plan will be made from proceeds of the Debtor's income
20 and income derived from the Rental Properties in accordance with the priority scheme under the
21 Bankruptcy Code and the terms of the Plan. Accordingly, the Debtor believes that the Plan is
22 feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.
23

24 In addition, set forth on Exhibit "B" attached hereto are the Debtor's projections for
25 Reorganized Debtor through December 2009. Based upon these projections (but subject to the
26 assumptions made in connection therewith), the Debtor submits that further reorganization of
27
28

1 Reorganized Debtor is not likely to be required.

2
3 **Section 8.2 Best Interest of Creditors Test.**

4 Before the Plan may be confirmed, the Bankruptcy Court must find (with certain
5 exceptions) that the Plan provides, with respect to each Class, that each Holder of a Claim or
6 Interest in such Class either: (a) has accepted the Plan; or (b) will receive or retain under the Plan
7 property of a value, as of the Effective Date, that is not less than the amount that such person
8 would receive or retain if the Debtor liquidated under chapter 7 of the Bankruptcy Code. In
9 chapter 7 liquidation cases, unsecured creditors and interest holders of a debtor are paid from
10 available assets generally in the following order, with no junior class receiving any payments
11 until all amounts due to senior classes have been paid fully or any such payment is provided for:

- 12
13 (a) Secured Creditors (not applicable in this case);
14 (b) Administrative and other priority creditors;
15 (c) Unsecured Creditors; and
16 (d) Interest Holders.

17 As described in the liquidation analysis set forth in Exhibit "C" hereof, the Debtor
18 believes that the value of any distributions if the Chapter 11 Case were converted to a chapter 7
19 case would be less than the value of distributions under the Plan. To the contrary, in such a
20 scenario, as per the liquidation analysis set forth in Exhibit "C", it is unlikely that sufficient
21 funds will remain from the disposition of assets to satisfy General Unsecured Claims to the
22 extent provided in the Plan. In addition, proceeds received in a chapter 7 liquidation are likely to
23 be significantly discounted due to the distressed nature of the sale, and the Debtor's estate would
24 have to pay the fees and expenses of a chapter 7 trustee in addition to the Professionals' pre-
25 conversion fees and expenses (thereby further reducing cash available for distribution).

26 Accordingly, it is likely there will be no distributions on account of Interests and other
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28

1 subordinated claims in a chapter 7 proceeding.
2

3 **ARTICLE IX**
4 **CONFIRMATION PROCEDURES**

5 **Section 9.1 The Confirmation Hearing**

6 Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a
7 Confirmation Hearing.

8 The Bankruptcy Court has scheduled the Confirmation Hearing for [____], **2016 at**
9 **[]:[] a.m., Arizona Local Time**, before the Honorable Scott H. Gan, United States
10 Bankruptcy Judge, United States Bankruptcy Court for the District of Arizona, 38 South Scott
11 Avenue, Courtroom No. 329, Tucson, Arizona 85701.

12
13 Objections to Confirmation of the Plan must be filed and served on the Debtor and the
14 other required parties, by no later than [____], **2016 at 5:00 p.m., Arizona Local Time** all in
15 accordance with the order approving the Disclosure Statement. **THE BANKRUPTCY COURT**
16 **MAY NOT CONSIDER OBJECTIONS TO CONFIRMATION OF THE PLAN IF ANY SUCH**
17 **OBJECTIONS HAVE NOT BEEN TIMELY SERVED AND FILED IN COMPLIANCE WITH**
18 **THE ORDER APPROVING THE DISCLOSURE STATEMENT.**

19
20 The Debtor will distribute a notice of the Confirmation Hearing, which will contain,
21 among other things, the deadline to object to Confirmation of the Plan, and the date and time of
22 the Confirmation Hearing.

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1 **Section 9.2 Statutory Requirements for Confirmation of the Plan**

2
3 At the Confirmation Hearing, the Bankruptcy Court will be asked to determine whether
4 the requirements of Bankruptcy Code section 1129 have been satisfied. The Debtor believes that
5 the Plan satisfies or will satisfy the applicable requirements, as follows:

- 6
7 (a) The Plan complies with the applicable provisions of the Bankruptcy Code.
- 8 (b) The Debtor and the Plan Support Group, as Plan proponents, will have complied with
9 the applicable provisions of the Bankruptcy Code.
- 10 (c) The Plan has been proposed in good faith and not by any means forbidden by law.
- 11 (d) Any payment made or promised under the Plan for services or for costs and expenses
12 in, or in connection with, the Chapter 11 Case, or in connection with the Plan and
13 incident to the case, has been disclosed to the Bankruptcy Court, and any such
14 payment: (i) made before Confirmation of the Plan is reasonable; or (ii) is subject to
15 approval of the Bankruptcy Court as reasonable if it is to be fixed after Confirmation
16 of the Plan.
- 17 (e) Either each Holder of an Impaired Claim or Interest has accepted the Plan, or will
18 receive or retain under the Plan on account of that Claim or Interest, property of a
19 value, as of the Effective Date of the Plan, that is not less than the amount that the
20 Holder would receive or retain if the Debtor were liquidated on that date under chapter
21 7 of the Bankruptcy Code.
- 22 (f) Each Class of Claims that is entitled to vote on the Plan has either accepted the Plan
23 or is not Impaired under the Plan, or the Plan can be confirmed without the approval
24 of each voting Class pursuant to Bankruptcy Code section 1129(b).
- 25 (g) Except to the extent that the Holder of a particular Claim will agree to a different
26 treatment of its Claim, the Plan provides that Administrative Claims will be paid in
27 full, in Cash, on the Effective Date, or as soon thereafter as practicable.
- 28 (h) At least one Class of Impaired Claims will accept the Plan, determined without
including any acceptance of the Plan by any insider holding a Claim of that Class.
- (i) Confirmation of the Plan is not likely to be followed by the liquidation or the need for
further financial reorganization of the Debtor or any successors thereto.

1 (j) All fees of the type described in 28 U.S.C. § 1930, including the fees of the United
2 States Trustee, will be paid as of the Effective Date.

3 The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory
4 requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have
5 complied with all of the requirements of chapter 11; and (iii) the Plan has been proposed in good
6 faith.
7

8 9.1.1 *Acceptance by Impaired Classes*

9 The Bankruptcy Code requires, as a condition to Confirmation, that, except as described
10 in the following section, each Class of Claims or Interests that is Impaired under the Plan accept
11 the Plan. A class that is not impaired under a plan of reorganization is deemed to have accepted
12 the plan and, therefore, solicitation of acceptances with respect to such class is not required. A
13 class is impaired unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to
14 which the claim or interest entitles the holder of that claim or equity interest; or (b)
15 notwithstanding any contractual provision or applicable law that entitles the holder of such claim
16 or interest after the occurrence of a default—(1) cures any such default that occurred before or
17 after the commencement of the case under this title, other than a default of a kind specified in
18 section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be
19 cured; (2) reinstates the maturity of such claim or interest as such maturity existed before such
20 default; (3) compensates the holder of such claim or interest for any damages incurred as a result
21 of any reasonable reliance by such holder on such contractual provision or such applicable law;
22 and (4) if such claim or such interest arises from any failure to perform a nonmonetary
23 obligation, other than a default arising from failure to operate a nonresidential real property lease
24 subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than
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1 the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such
2 failure; and (5) does not otherwise alter the legal, equitable, or contractual rights to which such
3 claim or interest entitles the holder of such claim or interest.
4

5 **9.1.2 Confirmation Without Acceptance by All Impaired Classes**

6
7 Bankruptcy Code section 1129(b) allows a bankruptcy court to confirm a plan, even if an
8 impaired class entitled to vote on the plan has not accepted it, provided that the plan has been
9 accepted by at least one impaired class. In this case, no Classes are deemed to reject the Plan.
10 However, the Debtor cannot guarantee that all impaired Classes will accept the Plan. If any
11 Impaired Class does not accept the Plan, the Debtor intends to seek Confirmation of the Plan
12 pursuant to Bankruptcy Code section 1129(b). Bankruptcy Code section 1129(b) states that,
13 notwithstanding an Impaired class' failure to accept a plan of reorganization, the plan may still
14 be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down,"
15 so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to
16 each class of claims or equity interests that is impaired under, and has not accepted, the Plan.
17

18 The condition that a plan be "fair and equitable" with respect to a non-accepting class of
19 secured creditors includes the following requirements: either: (a) the plan provides that holders
20 of such claims retain the liens securing such claims, whether the property subject to such liens is
21 retained by the debtor or transferred to another entity, to the extent of the allowed amount of
22 such claims and that each holder of a claim of such class receive on account of such claims
23 deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the
24 effective date of the plan, of at least the value of such holder's interest in the estate's interest in
25 such property; (b) the plan provides for the sale, subject to 363(k) of this title, of any property
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1 that is subject to the liens securing such claims, free and clear of such liens, with such liens to
2 attach to the proceeds of such sale, and the treatment of such liens on proceeds under (a) or (c) of
3 this paragraph; or (c) the plan provides for the realization by such holders of the indubitable
4 equivalent of such claims.
5

6 The condition that a plan be “fair and equitable” with respect to a non-accepting class of
7 unsecured claims includes the requirement that either: (a) the plan provides that each holder of a
8 claim of such class receive or retain on account of such claim property of a value, as of the
9 effective date of the plan, equal to the allowed amount of such claim; or (b) the holder of any
10 claim or equity interest that is junior to the claims of such class will not receive or retain under
11 the plan on account of such junior claim or equity interest any property.
12

13 The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan or any
14 Exhibit, including to amend or modify it to satisfy Bankruptcy Code section 1129(b), if
15 necessary.
16

17
18 **ARTICLE X**
19 **ALTERNATIVES TO CONFIRMATION**
20 **AND CONSUMMATION OF THE PLAN**

21 If the Plan is not confirmed and consummated, the alternatives to the Plan include: (a)
22 liquidation of the Debtor under chapter 7 of the Bankruptcy Code; and (b) an alternative plan of
23 reorganization.

24 **Section 10.1 Liquidation Under Chapter 7**

25 If no plan can be confirmed, the Debtor’s Chapter 11 Case may be converted to a case under
26 chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed (or elected) to
27 liquidate the Debtor’s assets for distribution in accordance with the priorities established by the
28

1 Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the
2 recoveries of Holders of Claims and Interests is set forth below. The Debtor believes that
3 liquidation under chapter 7 would result in smaller distributions to creditors than those provided
4 for in the Plan.
5

6 Specifically, the Debtor's costs of liquidation under chapter 7 of the Bankruptcy Code
7 would include the fees payable to a chapter 7 trustee, as well as those fees that might be payable
8 to attorneys and other professionals that such a trustee might engage. In addition, claims would
9 arise by reason of the breach or rejection of obligations incurred and leases and executory
10 contracts assumed or entered into by the Debtor during the pendency of the Chapter 11 Case.
11 The foregoing types of claims and other claims that might arise in a liquidation case or result
12 from the pending Chapter 11 Case, including any unpaid expenses incurred by the Debtor during
13 the Chapter 11 Case such as compensation for attorneys, would be paid in full from the
14 liquidation proceeds before the balance of those proceeds would be made available to pay
15 Allowed General Unsecured Claims. Furthermore, if the case was converted, it is highly likely
16 that secured creditors would seek to lift the automatic stay in order to pursue their rights under
17 state law, namely, foreclosure. Any foreclosure of the Debtor's assets is likely to result in a
18 diminished or zero return to unsecured creditors.
19

20 After considering the effects that a chapter 7 liquidation would have on the ultimate
21 proceeds available for distribution to the Holders of Claims and Interests in the Chapter 11 Case,
22 including (i) the increased costs and expenses of a liquidation under chapter 7 of the Bankruptcy
23 Code arising from fees payable to a trustee in bankruptcy and professional advisors to such
24 trustee, (ii) the likely erosion in value of assets in a chapter 7 case in the context of an
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1 expeditious liquidation and the “forced sale” atmosphere that would prevail under a chapter 7
2 liquidation and (iii) the substantial increases in Claims which would have to be satisfied on a
3 priority basis or on parity with creditors in the Chapter 11 Case, the Debtor has determined that
4 Confirmation of the Plan will provide each holder of an Allowed Claim or Interest with a
5 recovery that is not less than such holder would receive pursuant to a liquidation of the Debtor
6 under chapter 7 of the Bankruptcy Code.
7

8 The Debtor’s Liquidation Analysis is attached hereto as Exhibit “C”. The information set
9 forth in Exhibit “C” provides a summary of the liquidation values of the Debtor’s assets,
10 assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would
11 liquidate the assets of the Debtor’s Estate. The liquidation analysis was prepared by Debtor’s
12 counsel, with input from the Debtor.
13

14 Underlying the liquidation analysis is a number of estimates and assumptions that,
15 although developed and considered reasonable by Debtor, are inherently subject to significant
16 economic and competitive uncertainties and contingencies beyond the control of the Debtor. The
17 liquidation analysis is also based on assumptions with regard to liquidation decisions that are
18 subject to change. Accordingly, the values reflected might not be realized if the Debtor were, in
19 fact, to undergo such a liquidation.
20

21 **Section 10.2 Alternative Plan of Reorganization**

22 If the Plan is not confirmed, the Bankruptcy Court could confirm a different plan. A
23 different plan might involve either a reorganization or an orderly liquidation of the Debtor’s
24 assets, or some combination of the two. The Debtor believes that the Plan, as described herein,
25 enables Holders of Claims and Interests to realize the highest and best value under the
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1 circumstances. The Debtor believes that any alternative form of a chapter 11 plan is a much less
2 attractive alternative to Creditors than the Plan because of the far greater returns and certainty
3 provided by the Plan. Other alternatives could involve diminished recoveries, significant delay,
4 uncertainty, and substantially increased administrative costs.
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7 **ARTICLE XI**
8 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

9 **Section 11.1 Assumption/Rejection**

10 On the Effective Date, and to the extent permitted by applicable law, all of the Debtor's
11 executory contracts and unexpired leases will be assumed unless such executory contract or
12 unexpired lease (a) is being rejected pursuant to the Plan; (b) is the subject of a motion to reject
13 filed on or before the Confirmation Date, or (c) has been previously rejected by an order of the
14 Bankruptcy Court.
15

16 **ARTICLE XII**
17 **PROCEDURES FOR RESOLVING DISPUTED,**
18 **CONTINGENT, AND UNLIQUIDATED CLAIMS**

19 **Section 12.1 Objections to Claims**

20 12.1.1 Authority. The Debtor, prior to the Effective Date, and Reorganized
21 Debtor, after the Effective Date, shall have the exclusive authority to (i) file objections to any
22 Claim, and to withdraw any objections to any Claim that it may file; (ii) settle, compromise, or
23 litigate to judgment any objections to any Claim; and (iii) settle or compromise any Disputed
24 Claim. Except as set forth above, Reorganized Debtor also shall have the right to resolve any
25 Disputed Claim outside the Bankruptcy Court under applicable governing law.
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2 12.1.2 Objection Deadline. As soon as practicable, but no later than the Claim
3 Objection Deadline, the Debtor, or Reorganized Debtor if after the Effective Date, may file
4 objections with the Bankruptcy Court and serve such objections on the Creditors holding the
5 Claims to which such objections are made. Nothing contained herein, however, shall limit the
6 right of Reorganized Debtor to object to Claims, if any, filed or amended after the Claim
7 Objection Deadline. The Claim Objection Deadline may be extended by the Bankruptcy Court
8 upon motion by Reorganized Debtor.
9

10 12.1.3 Estimation of Claims. The Debtor or Reorganized Debtor, as the case may
11 be, may at any time request that the Court estimate, subject to 28 U.S.C. § 157, any Disputed
12 Claim pursuant to § 502(c) of the Bankruptcy Code regardless of whether the Debtor or
13 Reorganized Debtor has previously objected to such Claim. The Bankruptcy Court will retain
14 jurisdiction to estimate any Claim at any time, including during proceedings concerning any
15 objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim,
16 such estimated amount may constitute either (a) the Allowed amount of such Claim, (b) the
17 estimate to be used by the Debtor in calculating potential Plan Distributions under the Plan, or
18 (c) a maximum limitation on such Claim, as determined by the Bankruptcy Court. In the case of
19 Claims arising from personal injury tort or wrongful death actions, the Bankruptcy Court may
20 estimate such Claims for the purpose of confirming the Plan. If the estimated amount constitutes
21 a maximum limitation on such Claim, the Debtor or Reorganized Debtor may elect to object to
22 ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and
23 resolution procedures are cumulative and not necessarily exclusive of one another.
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2 12.1.4 No Distributions Pending Allowance. Notwithstanding any other
3 provision of the Plan, no payments or distributions shall be made with respect to all or any
4 portion of a Disputed Claim unless and until all objections to such Disputed Claim have been
5 settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some
6 portion thereof, has become an Allowed Claim.

7 12.1.5 Distributions After Allowance. The Debtor shall make payments and
8 distributions to each Holder of a Disputed Claim that has become an Allowed Claim in
9 accordance with the provisions of the Plan governing the class of Claims to which such Holder
10 belongs. As soon as reasonably practicable after the date that the order or judgment of the
11 Bankruptcy Court allowing all or part of any Disputed Claim becomes a Final Order, there shall
12 be Distributions to the Holder of such Claim the distribution (if any) that would have been made
13 to such Holder on the Distribution Date had such Allowed Claim been allowed on the
14 Distribution Date. After a Disputed Claim is Allowed or otherwise resolved, the excess cash or
15 other property that was reserved on account of such Disputed Claim, if any, shall revert to
16 Reorganized Debtor.
17

18 12.1.6 Reduction of Claims. Notwithstanding the contents of the Bankruptcy
19 Schedules or the Bankruptcy SOFA, Claims listed therein as undisputed, liquidated and not
20 contingent shall be reduced by the amount, if any, that was paid by the Debtor before the
21 Effective Date, including pursuant to orders of the Bankruptcy Court. To the extent such
22 payments are not reflected in the Bankruptcy Schedules or the Bankruptcy SOFA, the
23 Bankruptcy Schedules and Bankruptcy SOFA will be deemed amended and reduced to reflect
24 that such payments were made. Nothing in the Plan shall preclude the Debtor from paying
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1 Claims that the Debtor was authorized to pay pursuant to any Final Order entered by the
2 Bankruptcy Court before the Effective Date.
3

4 **ARTICLE XIII**
5 **CONDITIONS PRECEDENT TO CONFIRMATION**
6 **AND CONSUMMATION OF THE PLAN**

7 **Section 13.1 Conditions Precedent to Confirmation**

8 The following are conditions precedent to the occurrence of Confirmation, each of which
9 must be satisfied or waived:

10 (a) The Bankruptcy Court shall have entered an order, in form and substance
11 reasonably acceptable to the Debtor, approving the adequacy of the Disclosure Statement, and
12 such Order shall have become a Final Order.
13

14 (b) The Confirmation Order approving and confirming the Plan, as such Plan may
15 have been modified, amended or supplemented, shall (i) be in form and substance reasonably
16 acceptable to the Debtor; and (ii) include a finding of fact that Reorganized Debtor, and his
17 advisors, attorneys and agents, acted in good faith within the meaning of and with respect to all
18 of the actions described in Bankruptcy Code § 1125(e) and are therefore not liable for the
19 violation of any applicable law, rule, or regulation governing such actions.
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2 **Section 13.2 Occurrence of the Effective Date**

3 The following are conditions precedent to the occurrence of the Effective Date, each of
4 which must be satisfied or waived in accordance with Section 15.3 below:

5 (a) The Confirmation Order shall have been entered in form and substance
6 reasonably acceptable to the Debtor, and such order shall have become a Final Order.

7 (b) There shall not be in effect any (i) order entered by any court of any competent
8 jurisdiction; (ii) order, opinion, ruling or other decision entered by any administrative or
9 governmental entity or (iii) applicable law, staying, restraining, enjoining or otherwise
10 prohibiting or making illegal the consummation of any of the transactions contemplated by the
11 Plan.
12

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14 **Section 13.3 Waiver of Conditions**

15 Each of the conditions set forth in Section 13.1 or Section 13.2 hereof may be waived in
16 whole or in part by the Debtor. The failure to satisfy or waive any condition to Confirmation or
17 the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to
18 the failure of such condition to be satisfied.
19

20 **Section 13.4 Revocation, Withdrawal, or Non-Consummation**

21 The Debtor reserves the right to revoke or withdraw the Plan at any time before the
22 Confirmation Date and to file subsequent plans of reorganization. If the Debtor revokes or
23 withdraws the Plan, or if Confirmation or Consummation of the Plan does not occur, then (i) the
24 Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in them
25 Plan (including the fixing, allowance or limiting to an amount certain of any Claim or Interests
26 or Class of Claims or Interests), unless otherwise agreed to by the Debtor and any counterparty
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1 to such settlement or compromise, and any document or agreement executed pursuant to the
2 Plan, shall be deemed null and void; and (iii) nothing contained in the Plan, and no acts taken in
3 preparation for Consummation of the Plan, shall (a) constitute or be deemed to constitute a
4 waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person,
5 (b) prejudice in any manner the rights of the Debtor or any Person in any further proceedings
6 involving the Debtor, or (c) constitute an admission of any sort by the Debtor or any other
7 Person.
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11 **ARTICLE XIV**
AMENDMENTS AND MODIFICATIONS

12 The Debtor may alter, amend, or modify the Plan, the Plan Documents, or any Exhibits
13 thereto under Bankruptcy Code § 1127(a) at any time before the Confirmation Date. After the
14 Confirmation Date and before “substantial consummation” of the Plan, as defined in Bankruptcy
15 Code § 1101(2), the Debtor may, under Bankruptcy Code § 1127(b), institute proceedings in the
16 Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan,
17 the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to
18 carry out the purposes and effects of the Plan, so long as such proceedings do not materially
19 adversely affect the treatment of Holders of Claims or Interests under the Plan; provided,
20 however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy
21 Rules or order of the Bankruptcy Court.
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2 **ARTICLE XV**
3 **RETENTION OF JURISDICTION**

4 Under Bankruptcy Code §§ 105(a) and 1142, and notwithstanding entry of the
5 Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain
6 exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the
7 Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:
8

9 (A) allow, disallow, determine, liquidate, classify, estimate or establish the priority or
10 secured or unsecured status of any Claim or Interest, including the resolution of any request
11 for payment of any Administrative Expense Claim and the resolution of any objections to
the secured or unsecured status, priority, amount or allowance of Claims or Interests;

12 (B) hear and determine all applications for compensation and reimbursement of
13 expenses of Professionals under Bankruptcy Code §§ 327, 328, 330, 331, 503(b), 1103 or
14 1129(a)(4); provided, however, that from and after the Effective Date, the payment of fees
and expenses of professionals retained by Reorganized Debtor shall be made in the
15 ordinary course of business and shall not be subject to the approval of the Bankruptcy Court
except as otherwise set forth in the Plan;

16 (C) hear and determine all matters with respect to the assumption or rejection of any
17 executory contract or unexpired lease to which the Debtor is a party or with respect to
18 which the Debtor may be liable, including, if necessary, the nature or amount of any
required cure or the liquidating of any claims arising therefrom;

19 (D) hear and determine any and all adversary proceedings, motions, applications, and
20 contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;

21 (E) enter and enforce such orders as may be necessary or appropriate to execute,
22 implement, or consummate the provisions of the Plan and all contracts, instruments,
23 releases, and other agreements or documents created in connection with the Plan, the
Disclosure Statement, and/or the Confirmation Order;

24 (F) hear and determine disputes arising in connection with the interpretation,
25 implementation, Consummation, or enforcement of the Plan, including disputes arising
under agreements, documents or instruments executed in connection with the Plan;

26 (G) consider any modifications of the Plan, cure any defect or omission, or reconcile
27 any inconsistency in any order of the Bankruptcy Court, including, without limitation, the
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1 Confirmation Order;

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3 (H) issue injunctions, enter and implement other orders, or take such other actions as
4 may be necessary or appropriate to restrain interference by any entity with implementation,
Consummation, or enforcement of the Plan, and/or the Confirmation Order;

5 (I) enter and implement such orders as may be necessary or appropriate if the
6 Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

7 (J) hear and determine any matters arising in connection with or relating to the Plan,
8 the Disclosure Statement, and/or the Confirmation Order or any other contract, instrument,
9 release, or other agreement or document created in connection with the Plan, the Disclosure
Statement, and/or the Confirmation Order;

10 (K) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications
and rulings entered in connection with the Chapter 11 Case or pursuant to the Plan;

11 (L) recover all assets of the Debtor and property of the Estate, wherever located;

12 (M) hear and determine matters concerning state, local, and federal taxes in accordance
13 with Bankruptcy Code §§ 346, 505 and 1146;

14 (N) hear and determine all disputes involving the existence, nature, or scope of Debtor's
15 discharge or any releases granted in the Plan;

16 (O) hear and determine such other matters as may be provided in the Confirmation
17 Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy
Code;

18 (P) enter an order or final decree concluding or closing the Chapter 11 Case; and

19 (Q) enforce all orders previously entered by the Bankruptcy Court.
20

21 **ARTICLE XVI**
22 **EFFECT OF THE PLAN ON CLAIMS AND INTERESTS**

23 **Section 16.1 Satisfaction of Claims**

24 The rights afforded in the Plan and the treatment of all Claims and Interests herein shall
25 be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests
26 of any nature whatsoever against the Debtor or its Estate, assets, properties, or interests in
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1 property. Except as otherwise provided in the Plan and/or the Confirmation Order, on the
2 Effective Date and upon completion of all Plan payments, all Claims against and Interests in the
3 Debtor shall be satisfied, discharged, and released in full. None of the Debtor or Reorganized
4 Debtor, shall be responsible for any pre-Effective Date obligations of the Debtor or Reorganized
5 Debtor, except those expressly assumed by the Debtor or Reorganized Debtor, as applicable.
6

7 Except as otherwise provided in the Plan and/or the Confirmation Order, all Persons and Entities
8 shall be precluded and forever barred from asserting against the Debtor or Reorganized Debtor,
9 or his respective successors or assigns, or their estates, assets, properties, or interests in property
10 any event, occurrence, condition, thing, or other or further Claims or causes of action based upon
11 any act, omission, transaction, or other activity of any kind or nature that occurred or came into
12 existence before the Effective Date, whether or not the facts of or legal bases therefore were
13 known or existed before the Effective Date.
14

15 **Section 16.2 Discharge of Liabilities**

16
17 Except as otherwise expressly provided in the Plan or in the Confirmation Order, upon
18 the Effective Date and in consideration of the distributions to be made under the Plan, each
19 holder of a Claim and any affiliate of such holder (and any trustee or agent on behalf of such
20 holder or affiliate) will be deemed to have forever waived, released, and discharged the Debtors
21 and the Reorganized Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy
22 Code, of and from any and all Claims, Equity Interests, rights, and liabilities that arose prior to
23 the Confirmation Date. Upon the Effective Date, all such Persons will be forever precluded and
24 enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting against
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1 the Debtors or Reorganized Debtors or their respective properties or interests in property, any
2 such discharged Claim against any Debtor or Reorganized Debtor.

3 4 **ARTICLE XVII**

5 **MISCELLANEOUS PROVISIONS**

6 **Section 17.1 Amendment or Modification of Plan.**

7 Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections
8 1122, 1123 and 1125 of the Bankruptcy Code, the Debtor reserves the right to alter, amend or
9 modify this Plan at any time prior to or after the Confirmation Date but prior to the substantial
10 consummation of this Plan. A Holder of a Claim that has Accepted this Plan shall be deemed to
11 have Accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment
12 or modification does not materially and adversely change the treatment of the Claim of such
13 Holder.
14

15 **Section 17.2 Headings.**

16 Headings are utilized in the Plan for convenience and reference only and shall not
17 constitute a part of the Plan for any other purpose.
18

19 **Section 17.3 Due Authorization by Holders of Claims.**

20 Each and every Holder of a Claim who elects to participate in the Distributions provided for
21 herein warrants that such Holder is authorized to accept, in consideration of such Holder's Claim
22 against the Debtor, the Distributions provided for in the Plan and that there are no outstanding
23 commitments, agreements, or understandings, express or implied, that may or can in any way
24 defeat or modify the rights conveyed, or obligations undertaken, by such Holder under the Plan.
25

26 **Section 17.4 Payment on Distribution Dates.**

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1 Whenever any payment or Distribution to be made under the Plan shall be due on a day
2 other than a Business Day, such payment or Distribution shall, instead, be made, without interest,
3 on the next Business Day thereafter.
4

5 **Section 17.5 Quarterly Fees and Reports.**

6 All fees required to be paid by 28 U.S.C. §1930 will be paid as required therein until such
7 time as the within Bankruptcy Case is dismissed, converted or closed by order of the Bankruptcy
8 Court. The Reorganized Debtor shall file quarterly post-confirmation reports until the case is
9 closed.
10

11 **Section 17.6 Final Report.**

12 Provided all motions, contested matters, and adversary proceedings have been finally
13 resolved, the Debtor will file its Final Report and seek to obtain a Final Decree administratively
14 closing its Chapter 11 proceeding within 180 days following the Effective Date. The Reorganized
15 Debtor will make quarterly post-confirmation reports to the Court and the U.S. Trustee until such
16 time as the Final Decree is entered by the Court.
17

18 **Section 17.7 Governing Law.**

19 Except to the extent that federal law (including, but not limited to, the Bankruptcy Code
20 and the Bankruptcy Rules) is applicable, the rights and obligations arising under the Plan shall be
21 governed by, and construed and enforced in accordance with, the laws of the State of Arizona,
22 without giving effect to the principles of conflicts of law thereof.
23

24 **Section 17.8 Severability.**

25 Should the Bankruptcy Court determine, prior to the Confirmation Date, that any
26 provision in the Plan is either illegal on its face or illegal as applied to any Claim or Interest, such
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1 provision shall be unenforceable either as to all Holders of Claims or Interests or as to the Holder
2 of such Claim or Interest as to which the provision is illegal, respectively. Such a determination of
3 unenforceability shall in no way limit or affect the enforceability and operative effect of any other
4 provision of the Plan.
5

6 **Section 17.9 No Interest.**

7 Except as expressly stated in the Plan or otherwise Allowed by Final Order of the
8 Bankruptcy Court, no interest, penalty, or late charge arising after the Petition Date is to be
9 Allowed on any Claim.
10

11 **Section 17.10 No Admissions.**

12 Notwithstanding anything herein to the contrary, nothing in the Plan shall be deemed as an
13 admission by the Debtors with respect to any matter set forth herein, including liability on any
14 Claim.
15

16 **Section 17.11 Revocation, Withdrawal, or Non-Consummation.**

17 The Debtor reserves the right to revoke or withdraw this Plan as to any or all of the Debtor
18 prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtor
19 revokes or withdraw this Plan as to any or all of the Debtor, or if confirmation or consummation
20 does not occur, then, except as otherwise provided by the Debtor, (a) this Plan shall be null and
21 void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing
22 or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity
23 Interests), assumption or rejection of executory contracts or leases affected by this Plan, and any
24 document or agreement executed pursuant to this Plan shall be deemed null and void and (c)
25 nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against,
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1 or any Equity Interests in, such Debtors or any other Person, (ii) prejudice in any manner the
2 rights of the Debtor or any other Person or (iii) constitute an admission of any sort by the Debtor
3 or any other Person.
4

5 **Section 17.12 Notices.**

6 All notices, requests, elections, or demands in connection with the Plan shall be in writing and
7 shall be mailed by registered or certified mail, return receipt requested to:

8 If to the Debtor:

9
10 David Karmel
11 P.O. Box 31135
12 Tucson, AZ 85751-1135

13 With mandatory copies to:

14 The Law Offices of C.R. Hyde, PLC
15 325 W. Franklin St., Ste. 103
16 Tucson, AZ 85701
17 Attn: C.R. Hyde

18 **ARTICLE XVIII**
19 **CONCLUSION AND RECOMMENDATION**

20 The Debtor believes that the Plan is in the best interests of all Holders of Claims, and
21 urges those Holders of Claims entitled to vote to accept the Plan and to evidence such acceptance
22 by returning their Ballots so they will be RECEIVED by the Debtor's counsel no later than 5:00
23 p.m., prevailing Arizona Local Time on [_____], 2016. If the Plan is not confirmed, or if
24 Holders in those Classes do not vote to accept the Plan, the Holders in those Classes may not
25 receive a Distribution.
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