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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

Chapter 11

DENNIS AND CATHERINE KOLODIN,

Case No. 15-bk-7843-BKM

Debtors.

**DISCLOSURE STATEMENT
FOR FIRST AMENDED PLAN**

NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE AUTHORIZED BY THE DEBTORS OTHER THAN THOSE STATED HEREIN. YOU SHOULD NOT RELY ON ANY REPRESENTATIONS OR INDUCEMENTS CONCERNING THE PLAN OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT.

AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTORS CANNOT WARRANT OR REPRESENT THAT THE INFORMATION IS WITHOUT ANY ERROR. HOWEVER, THE INFORMATION IS ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE AND BELIEF.

ARTICLE I

INTRODUCTION TO THE DISCLOSURE STATEMENT AND VOTING

1.1 Purpose of the Disclosure Statement.

This Disclosure Statement ("Disclosure Statement") is submitted by the Debtors and Debtors in Possession (**the "Debtor"**) pursuant to 11 U.S.C. Sec. 1125. Its purpose is to provide creditors with the information necessary to enable them to arrive at an informed decision for voting on the Debtors' First Amended Plan of Reorganization (**the "Plan"**), which is on file at the Bankruptcy Court. (A copy of the Plan is attached to this Disclosure Statement as **Exhibit "1"**). As a creditor, your acceptance of the Plan is important. Acceptance of the Plan by a class

1 of creditors requires a vote by at least two-thirds in claim amount and more than fifty percent in
2 number of the allowed claims in the class that actually cast votes. Failure to vote on the Plan
3 does not count as either an acceptance or rejection of the Plan.

4 **1.2 Definitions.**

5 Unless a word is otherwise defined in this Disclosure Statement, it has the meaning given
6 to it by the U.S. Bankruptcy Code and the U.S. Bankruptcy Court Rules, or in the Definition
7 section in the Plan.
8

9 **1.3 Authorized Representations.**

10 This Disclosure Statement is the only document authorized by the Bankruptcy Court to
11 be used for the solicitation of votes on the Plan.

12 **1.4 Voting Procedures.**

13 To be entitled to vote, a creditor must have an allowed claim that is impaired under the
14 Plan. The Bankruptcy Code defines whether a claim is impaired in 11 U.S.C. § 1124.
15 Summarily, a claim is impaired if the Plan modifies the legal, equitable or contractual rights of
16 the claimant, or if the Plan does not cure and reinstate the legal rights of the claimant upon
17 default. A creditor in a class that will not, under any circumstances, receive any distributions
18 under the Plan, is not entitled to vote because the class of which it is a member is deemed to have
19 rejected the Plan. If a creditor holds more than one claim in one class, all of the claims in such
20 class will be aggregated and the creditor will be entitled to one vote in the amount of all
21 aggregated claims in that class.
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24 **All creditors or parties in interest entitled to vote on the Plan may cast its votes for**
25 **or against the Plan by completing, dating, and signing the ballot which accompanies this**
26 **Disclosure Statement.**
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1 In order for the ballot to be considered, the original ballot must be mailed to the
2 Bankruptcy Court and the copies of the ballot must be sent to the attorneys for the Plan
3 proponents. The Court has issued an Order requiring that all votes for the acceptance or rejection
4 of the Plan be received by the close of business on _____. The ballots should be sent as
5 follows: The original to: Clerk, U.S. Bankruptcy Court, 230 North First Avenue, Suite 101,
6 Phoenix, Arizona 85003. A copy to: Ronald Ellett at Ellett Law Offices located at 2999 North
7 44th Street, Suite 330, Phoenix, Arizona 85012.
8

9 **Your ballot will not be counted if the Clerk of the Bankruptcy Court or the**
10 **proponent's counsel receives it after such deadline.** You may not change your vote after it is
11 cast, unless the Bankruptcy Court permits you to do so after notice and a hearing to determine
12 whether sufficient cause exists to permit the change.
13

14 **1.5 Confirmation of the Plan.**

15 In order for the Plan to be effective, it has to be confirmed. Confirmation of the Plan
16 means that the Court has approved the Plan. For the Plan to be confirmed, votes by each
17 impaired class representing at last two-thirds in amount of the allowed claims voting in each
18 class and greater than one-half in number of individual creditors for such class (of those casting
19 votes) must be submitted in favor of acceptance of the proponent's Plan. If the requisite
20 acceptances are not obtained from one or more impaired classes, the Court may nonetheless
21 confirm the proponent's Plan pursuant to 11 U.S.C. § 1129(b). If one impaired class accepts the
22 Plan and the Court finds that the Debtors' Plan provides, among other things, fair and equitable
23 treatment of the classes rejecting the Plan and that creditors receive as much or more under the
24 Plan than they would receive in a Chapter 7 liquidation (discussed more fully below), the Court
25 may confirm the Plan. When confirmed by the Bankruptcy Court, this Plan will bind all holders
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1 of claims or equity interest in the Debtors, whether or not they are entitled to vote, or did vote, on
2 the Plan, and whether or not they received or retained any distributions of property under the
3 Plan.

4 **ARTICLE II**
5 **INFORMATION ABOUT THE DEBTORS**

6 **2.1 Pre-Bankruptcy Filing Factual Background.**

7
8 On June 24, 2015 (the "Filing Date"), the Debtors filed a voluntary petition under
9 Chapter 11 of the Bankruptcy Code (the "Code") with the Bankruptcy Court for the District of
10 Arizona. The Debtors continue in possession of their assets and management of their property as
11 a Debtors-in-possession pursuant to §§ 1107(a) and 1108.

12 **2.2 Post-Bankruptcy Filing Events.**

13 **Retention of Professionals**

14
15 The Debtors retained Ellett Law Offices, P.C., to act as its bankruptcy counsel. The Court
16 signed an Order approving the retention on July 6, 2015.

17 **Appointment of Unsecured Creditors Committee**

18 On October 8, 2015 the United States Trustee's office filed a statement concerning its
19 inability to appoint a committee of unsecured creditors.

20 **Claims Bar Date**

21 The Court has set October 26, 2015 as the last day to file Proof of Claims.

22 **2.3 Financial Information About the Debtors.**

23
24 The Debtors' assets and liabilities are fully disclosed in the Debtors' Schedules and
25 Statement of Financial Affairs filed in this matter. During the course of this bankruptcy case, the
26 Debtors will file all Monthly Operating Reports required by the Office of the U.S. Trustee and by
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1 the Bankruptcy Code and Rules, and it has paid all quarterly fees due. The Debtors do not intend
2 to incur any non-ordinary course of business or financial affairs post-petition debt.

3 **ARTICLE III**

4 **DESCRIPTION OF THE REORGANIZATION PLAN AND CLASSIFICATION AND** 5 **TREATMENT OF CLAIMS**

6 As required by § 1112 of the Bankruptcy Code, creditors are divided into classes, each
7 of which includes creditors who are similarly situated with the other creditors in the class. The
8 classes provided for by the Plan and their treatment under the Plan is as follows:

9 Administrative claims will be paid in full on the effective date unless the holder of the
10 claim agrees to a different treatment. It is estimated the total attorney's fees for this case, up
11 through confirmation, will be between \$35,000.00 and \$55,000.00.

12 Classified Claims - Under the Plan, Allowed Secured Claims, Allowed Unsecured
13 Claims, and any Interest in Debtors or any Interest or Claim held by the Debtors' Equity Holder
14 constitute classified claims which are treated under the Plan as follows:

15 Class 1: This Class shall consist of the Secured Claim of Nationstar Bank. Nationstar
16 Bank holds a Secured Claim in the Debtors' homestead in the amount of approximately
17 \$456,362.33. The Debtors will pay this claim in full pursuant to the terms of the note with
18 Nationstar Bank. Nationstar Bank will receive monthly adequate protection payments of
19 \$1,357.04. Nationstar Bank will retain its lien rights. Nationstar Bank will not be paid any late
20 fees. This claim is impaired.

21 Class 2: This Class shall consist of the Unsecured Claim of PNC Bank. PNC Bank holds
22 an Unsecured Claim in the Debtors' homestead in the amount of approximately \$119,911.90.
23 Pursuant to Court's September 4, 2016 Order (DCKT. 62), PNC's claim is wholly unsecured and
24

1 its lien will be avoided. The lien of PNC Bank against the Debtors' homestead will be avoided
2 and PNC Bank will not receive any payment for its lien. The balance of PNC Bank's claim
3 relating to the second mortgage will be treated as a class 8 claim and will be entitled to vote as
4 part of that class and receive a pro rata distribution. Class 2 is impaired.

5 Class 3: This Class shall consist of the Secured Claim of Seterus, Inc. Seterus, Inc. holds
6 a Secured Claim in the Debtors' real property located at 675 North Ash Drive, Chandler, Arizona
7 85224 in the amount of approximately \$357,364.94. The Debtors will strip down this claim to
8 the value of the real property and pay Seterus, Inc. the value of the real property, \$310,007.00.
9 Seterus, Inc. will receive monthly adequate protection payments of \$1,569.92. Seterus, Inc. will
10 retain its lien rights. The balance of Seterus's claim will be treated as a class 8 claim and will be
11 entitled to vote as part of that class and receive a pro rata distribution This claim is impaired.
12

13 Class 4: This Class shall consist of the Claim of Emerald Isle Lending Co., in the amount
14 of approximately \$105,000.00. Emerald Isle Lending Co holds a Secured Claim in the Debtors'
15 five acres of real property located at corner Sheed/Hanhn Road, Casa Grande, Arizona. The
16 Debtors will surrender this property to Emerald Isle Lending Co. in full satisfaction of its claim.
17 Emerald Isle Lending Co. will not have any deficiency claim. This claim is impaired.
18

19 Class 5: This Class shall consist of the Secured Claim of US Bank in the amount of
20 approximately \$361,110.50. US Bank holds a Secured Claim in the Debtors' real property
21 located at 2302 North Central Avenue, Suite 12, Phoenix, Arizona 85004. The Debtors will strip
22 down this claim to the value of the real property and pay US Bank the value of the real property,
23 \$290,000.00. US Bank will receive monthly adequate protection payments of \$3,191.00. US
24 Bank will retain its lien rights. The balance of US Bank's claim will be classified as a general
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1 unsecured claim and will be entitled to vote as part of class 8 and receive a pro rata distribution.
2 This claim is impaired.

3 Class 6: This Class shall consist of the Unsecured Claim of US Bank in the amount of
4 approximately \$121,904.90 relating to the note secured by a second mortgage. The lien of US
5 Bank's second mortgage against the real property located at 2302 North Central Avenue, Suite
6 12, Phoenix, Arizona 85004 will be avoided and US Bank will not receive any payment for its
7 lien. The balance of US Bank's claim relating to the second mortgage will be treated as a class 8
8 claim and will be entitled to vote as part of that class and receive a pro rata distribution. Class 6
9 is impaired.

11 Class 7: This Class shall consist of the Secured Claim of Internal Revenue Services,
12 which is Proof of Claim number 5. The Internal Revenue Service will receive a secured claim of
13 \$17,149.59, plus statutory interest. The Internal Revenue Service will be paid monthly
14 installments of \$750.00 per month.

16 Class 8: This Class shall consist of all Allowed General Unsecured Claims. Class 8 will
17 be paid the sum of \$1,000.00, pro rata. Class 8 is impaired.

18 **ARTICLE IV**

19 **ADDITIONAL PLAN PROVISIONS**

20 In addition to the provisions outlined in Article III above, there may be additional
21 provisions and details contained in the Reorganization Plan which should be reviewed before
22 voting. A copy of the Plan is attached to this Disclosure Statement as Exhibit 1. This Article
23 outlines some of the additional provisions of the Plan.
24

1 **4.1 Effect of Confirmation**

2 Any pre-confirmation obligations of the Debtors dealt with in this Plan shall be
3 considered New Obligations of the Debtors, and these New Obligations shall not be considered
4 in default unless and until the Debtors default on the New Obligations pursuant to the terms of
5 the Plan. The New Obligations provided for in the Plan shall be in the place of, and completely
6 substitute for, any pre-Confirmation obligations of the Debtors and, once the Plan is confirmed,
7 the only obligations of the Debtors shall be such New Obligations as provided for under the
8 Plan.
9

10 **4.2 Revesting**

11 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date the
12 Debtors shall be vested with all of the property of the estate free and clear of all claims, liens,
13 charges and other interests of creditors arising prior to the filing date.
14

15 **4.3 Executory Contracts and Unexpired Leases**

16 Upon confirmation of the Plan, all executory contracts of the Debtors will be rejected
17 pursuant to the provisions of §§ 365 and 1123 of the Bankruptcy Code, except for those assumed
18 pursuant to Bankruptcy Court approval. This Plan provision does not alter in any way orders of
19 the Bankruptcy Court approving the assumption of executory contracts and leases. All such
20 orders are reaffirmed without modification and incorporated fully in the Plan so that the Plan is
21 in compliance with those orders.
22

23 **4.4 Modification of The Plan**

24 In addition to its modification rights under Section 1127 of the Bankruptcy Code, the
25 Debtors may amend or modify this Plan at any time prior to Confirmation without leave of the
26 Court. The Debtors may propose amendments and/or modifications of this Plan at any time
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1 subsequent to Confirmation with leave of the Court and upon notice to Creditors. After
2 Confirmation of the Plan, the Debtors may, with approval of the Court, as long as it does not
3 materially or adversely affect the interests of Creditors, remedy any defect or omission or
4 reconcile any inconsistencies of the Plan, or in the Confirmation Order, if any may be necessary
5 to carry out the purposes and intent of this Plan.

6 **4.5 Default**

7
8 If Debtors are unable to perform the terms and conditions of this Plan, then they will be
9 in default. Any creditor may seek to enforce the Plan. Before doing so, however, a creditor must
10 first provide at least twenty (20) days-notice to Debtors specifying the nature of the alleged
11 default and providing Debtors a twenty (20) day period to cure such default. Any such notice
12 shall be in writing and sent to Debtors at its address with a copy to: Ronald J. Ellett, 2999 North
13 44th Street, Suite 330 Phoenix, Arizona 85018.

14 **4.6 Retention of Jurisdiction.**

15
16 Notwithstanding confirmation of this Plan, the Bankruptcy Court shall retain its
17 jurisdiction of this bankruptcy to the full extent allowed by law, including for the following
18 purposes:

- 19 1. Determination of claims and interests upon objection to such claims by the Debtor or
20 by any other party in interest.
- 21 2. Determination of requests for payment of claims entitled to priority under §507(a)(2)
22 of the Bankruptcy Code, including compensation of parties entitled thereto.
- 23 3. Resolution of controversies and disputes regarding the interpretation or enforcement of
24 the terms of the Plan.
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1 4. Implementation of the provisions of the Plan and entry of orders in aid of confirmation
2 of the Plan, including, without limitation, appropriate orders to protect the Debtors.

3 5. Entry of a Final Decree closing the case.

4 6. Entry of a discharge pursuant to 11 U.S.C. §141(d)(5).

5 **ARTICLE V**

6 **FEASIBILITY OF THE PLAN AND FINANCIAL PROJECTIONS**

7
8 The Debtors believe that the proposed Plan is feasible and is unlikely to be followed by
9 the liquidation or need for further financial reorganization of the Debtors except as proposed in
10 the Plan.

11 **ARTICLE VI**

12 **LIQUIDATION ANALYSIS**

13 The following is a Liquidation Analysis indicating what the Debtors believe creditors
14 would receive in the event of liquidation. The figures for "market value" and "liquidation value"
15 are the Debtors' best estimate on what these assets are worth on a market or liquidation basis.

16 The other assets of the Debtors are listed below:

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Asset	Scheduled Value	Liquidation Value	Secured Claims	Net Non-Exempt Value
Homestead located at 2302 North Central Avenue, Unit 610 Phoenix, AZ 85004	\$440,000.00	Same as scheduled	\$454,370.00 (first lien held by Nationstar Mortgage) \$119,911 (second lien held by PNC Bank - avoiding pursuant to Bankruptcy Rule 3012)	None
Rental Property located at 675 North Ash Drive, Chandler, Arizona 85004	\$310,007.00	Same as scheduled	\$356,816.00 (lien held by Seterus, Inc. - cramming down value to property value, \$310,007.00)	None

1	5 Acres of Vacant land located at corner or Shedd/Hahn Road, Casa Grande, AZ	\$43,000.00	Same as scheduled	\$105,000.00 (lien held by Emerald Isle Lending, Co. - land will be surrendered to lienholder in full satisfaction of claim)	None
2					
3					
4	Real Property located at 2302 North Central Avenue, Suite 12, Phoenix, Arizona 85004	\$247,500.00	Same as scheduled	\$340,000.00 (first lien held by US Bank – cramming down value to property value, \$247,500.00)	None.
5				\$123,000.00 (second lien held by US Bank – avoiding pursuant to Bankruptcy Rule 3012)	
6					
7					
8	Cash on Hand	\$200.00	Same as scheduled	IRS Tax Lien	None
9					
10	Ameriprise account	\$252.59	Same as scheduled	IRS Tax Lien	None
11					
12	Wells Fargo Savings Account	\$10.00	Same as scheduled	IRS Tax Lien	None
13					
14	Wells Fargo Checking Account	\$237.00	Same as scheduled	IRS Tax Lien	None
15					
16	Household Goods	\$1,925.00	Same as scheduled	IRS Tax Lien	None
17					
18	Pictures	\$50.00	Same as scheduled	IRS Tax Lien	None
19					
20	Records	\$50.00	Same as scheduled	IRS Tax Lien	None
21					
22	Books	\$50.00	Same as scheduled	IRS Tax Lien	None
23					
24	Clothing	\$400	Same as scheduled	IRS Tax Lien	None
25					
26	Wedding rings	\$300.00	Same as scheduled	IRS Tax Lien	None
27					
28	Dennis’s cuff links and watch	\$150.00	Same as scheduled	IRS Tax Lien	None
	Costume Jewelry	\$200.00	Same as scheduled	IRS Tax Lien	None
	Bowling Ball	\$20.00	Same as scheduled	IRS Tax Lien	None
	Chase IRA	\$125.00	Same as scheduled	IRS Tax Lien	None
	Valley of the Sun Properties, LLC	\$0	Same as scheduled	IRS Tax Lien	None
	Orpheum Investments, LLC	\$0	Same as scheduled	IRS Tax Lien	None

1	Tapestry Properties I, LLC	\$0	Same as scheduled	IRS Tax Lien	None
2	Tapestry Properties Holdings II, LLC	\$0	Same as scheduled	IRS Tax Lien	None
3	Tapestry Investors, LLC	\$0	Same as scheduled	IRS Tax Lien	None
4					
5	DKG-104 LLC 1 interest	\$100.00	Same as scheduled	IRS Tax Lien	None
6	Tapestry Properties Holdings III, LLC	\$0.00	Same as scheduled	IRS Tax Lien	None
7	Retland, LLC	\$0	Same as scheduled	IRS Tax Lien	None
8	Capstone Education, LLC	\$1.00	Same as scheduled	IRS Tax Lien	None
9					
10	Dennis Kolodin, PLLC	\$0	Same as scheduled	IRS Tax Lien	None
11	Landmark on Central, LLC	\$5,000.00	Same as scheduled	IRS Tax Lien	None
12	Metro Realty, LLC	\$0.00	Same as scheduled	IRS Tax Lien	None
13	Valley of the Sun Communications, LLC	\$0.00	Same as scheduled	IRS Tax Lien	None
14	Tapestry Management, LLC	\$0	Same as scheduled	IRS Tax Lien	None
15					
16	Kolodin Family Trust	\$0	Same as scheduled	IRS Tax Lien	None
17	2007 Mercedes	\$5,091.00	Current Kelly Blue Book	IRS Tax Lien	None
18	2004 Ford Expedition	\$1,232.00	Current Kelly Blue Book	IRS Tax Lien	None
19	HP Desktop Printer	\$25.00	Same as scheduled	IRS Tax Lien	None
20	Rescued shelter dog	\$0	Same as scheduled	IRS Tax Lien	None
21					
22	Daughter's old surface laptop	\$100.00	Same as scheduled	IRS Tax Lien	None
23	3 flower vases	\$75.00	Same as scheduled	IRS Tax Lien	None
24	Total Non-Exempt Equity				\$0.00
25	Less Chapter 7 Trustee's Fees				\$0.00
26	Total to Unsecured Creditor Under Chapter 7				\$0.00
27	Amount to be Paid to Unsecured Creditors Under Plan				\$1,000.00

1 Creditors should note that on a liquidation basis, full market value for assets cannot be
2 obtained. Further, there are costs associated with a liquidation of assets that must be paid out of
3 any sale proceeds. The liquidation analysis does not contain an estimation of any tax liability
4 which could be associated with the liquidation.

5 The Debtors are unaware of any avoidable pre-petition transfers. Therefore, the Debtors
6 estimate that there is no value to be obtained by avoiding pre-petition transfers. The Debtors do
7 not hold any claims that are to be brought in non-bankruptcy litigation. The Debtors estimate the
8 claims as zero.

9 This analysis is provided for informational purposes only, given that the Debtors' Plan
10 does not contemplate liquidation in this fashion.

11 **ARTICLE VII**

12 **IMPLEMENTATION AND FUNDING OF DEBTOR'S PLAN**

13 The Plan will be funded by the contribution of Debtors. If the Debtors deem advisable,
14 they may obtain a further Order from the Court that may be recorded in order to implement the
15 terms of the Plan. Plan will be funded by contributions from the Debtors.

16 **ARTICLE VIII**

17 **TAX CONSEQUENCES**

18 The Debtors have not obtained a tax opinion as to the tax consequences of the Plan as to
19 any claim, interest, or creditor. However, payment of indebtedness and discharge of debt may
20 have significant tax consequences for creditors. The creditors are advised to see its tax advisor
21 for information concerning the tax consequences of the Plan.

22 **BECAUSE THE DEBTORS EXPRESS NO TAX OPINION AND GIVE NO TAX**
23 **ADVICE, IN NO EVENT WILL THE DEBTOR OR THEIR PROFESSIONAL**
24

1 **ADVISORS BE LIABLE IF THE TAX CONSEQUENCES OF THE PLAN ARE NOT AS**
2 **ANTICIPATED. CREDITORS MUST LOOK SOLELY TO, AND RELY SOLELY ON,**
3 **THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES OF THE PLAN.**

4 **ARTICLE IX**

5 **NON-ALLOWANCE OF PENALTIES AND FINES**

6
7 No distribution shall be made under this Plan on account of, and no allowed claim,
8 whether secured, unsecured, priority, or administrative, shall include any fine, penalty, exempla-
9 ry or punitive damages, late charges or other monetary charge relating to or arising from any
10 default or breach by Debtors, and any claim on account thereof shall be deemed disallowed
11 whether or not an objection to it is filed.

12 **ARTICLE X**

13 **VOTING PROCEDURE**

14
15 The Plan divides the claims of creditors and of interest-holders into separate classes. All
16 classes of claimants are encouraged to vote; however, only the vote of holders of claims that are
17 impaired by the Plan will have a significant impact upon the confirmation process. Generally,
18 this includes creditors who, under the Plan, will receive less than payment in full of its claims on
19 the Effective Date of the Plan.

20
21 All creditors entitled to vote on the Plan must cast its vote by completing, dating and
22 signing the ballot which has been mailed to them together with the Disclosure Statement. The
23 ballot contains instructions concerning the deadline for submitting the ballot and to what address
24 the ballot should be mailed.

25
26 This Disclosure Statement has been approved by the Bankruptcy Court in accordance
27 with § 1125 of the Bankruptcy Code, and is provided to each person whose claim or interest has
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1 been scheduled by the Debtors, or who have filed a proof of claim or interest with respect to the
2 Debtors or its property, each known equity interest holder and other parties-in-interest known to
3 the Debtors. The Disclosure Statement is intended to assist creditors in evaluating the Plan and in
4 determining whether to accept the Plan. In determining acceptances of the Plan, votes of
5 creditors will only be counted if submitted by a creditor whose claim is duly scheduled by the
6 Debtors as undisputed, non-contingent and liquidated, or who has timely filed with the Court a
7 proof of claim or proof of interest.
8

9 The Bankruptcy Court will schedule a hearing to determine whether the requirements for
10 confirmation under the Bankruptcy Code have been met and whether the Plan has been accepted
11 by each impaired class and by the requisite number of creditors in such class. Under § 1126 of
12 the Code, an impaired class is deemed to have accepted the Plan upon a favorable vote of at least
13 two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims
14 of class members voting on the Plan. Further, unless there is unanimous acceptance of the Plan
15 by an impaired class, the Court must also determine that class members will receive at least as
16 much as they would if the Debtors were liquidated under Chapter 7 of the Code.
17

18 Even if each class of creditors does not accept the Plan, the Plan can be confirmed under
19 §1129(b) of the Code, so long as one impaired class of creditors accepts the Plan. The failure of
20 each class to accept the Plan could very well result in a conversion of this case to a Chapter 7 or
21 dismissal of the Chapter 11, and the secured creditors repossessing its collateral and disposing of
22 it in a commercially reasonable manner with no obligation to unsecured creditors.
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1 **ARTICLE XI**

2 **MODIFICATION OF PLAN**

3 In addition to its modification rights under §1127 of the Bankruptcy Code, the Debtors
4 may amend or modify its Plan at any time prior to Confirmation without leave of the Court. The
5 Debtors or the Reorganized Debtors may propose amendments and/or modifications of its Plan at
6 any time subsequent to Confirmation with leave of the Court and upon notice to Creditors. After
7 Confirmation of the Plan, the Debtors or the Reorganized Debtors may, with approve of the
8 Court, as long as it does not materially or adversely affect the interests of Creditors, remedy any
9 defect or omission or reconcile any inconsistencies of the Plan, or the Confirmation Order, if any
10 may be necessary to carry out the purposes and intent of its Plan.
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12 **ARTICLE XII**

13 **CLOSING THE CASE**

14
15 If the Court does not close this case on its own motion, the Debtors will move the Court
16 to close this case once the Plan is deemed substantially consummated. Until substantial
17 consummation, the Debtors will be responsible for filing pre- and post-confirmation reports
18 required by the United States Trustee and paying the quarterly post-confirmation fees of the
19 United States Trustee, in cash, pursuant to 28 U.S .C. §1930, as amended. Pursuant to 11 U.S.C.
20 §1129(a)(12), all fees payable under Section 1930 of Title 28, as determined by the Court at the
21 hearing on confirmation of the Plan, will be paid, in cash, on the Effective Date.
22

23 **ARTICLE XIII**

24 **DISCLAIMER**

25 Court approval of this Disclosure Statement and the accompanying Plan of
26 Reorganization, including exhibits, is not a certification of the accuracy of the contents thereof.
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1 Furthermore, Court approval of these documents does not constitute the Court's opinion as to
2 whether the Plan should be approved and disapproved.

3 **ARTICLE XIV**

4 **RISKS**

5 The risk of the Plan lies essentially with the Debtors' ability to make the Plan payments.
6

7 **ARTICLE XV**

8 **RECOMMENDATION OF THE DEBTORS-IN-POSSESSION**

9 The Debtors recommend that all creditors entitled to vote for the Plan do so. The
10 alternatives to confirmation of the Plan would be either conversion of this case to a case under
11 Chapter 7 of the Bankruptcy Code or its dismissal.

12 Conversion will result in the appointment of a Chapter 7 trustee and, most likely, the
13 hiring of an attorney by the trustee. Expenses incurred in administering the Chapter 7 case will
14 take priority in the right to payment over allowed, administrative expenses incurred in the
15 Chapter 11 case. Both Chapter 7 and Chapter 11 administrative expenses take priority over the
16 payment of unsecured claims without priority. In other words, conversion would likely decrease
17 the net amount available to pay currently existing creditors. Further, a Chapter 7 proceeding
18 would not provide the Debtors with the means to pay its Priority claims over time.
19

20 In addition, conversion could substantially delay any distribution to creditors beyond the
21 time period for distribution defined in the Plan. A Chapter 7 trustee is not limited to specific
22 deadlines for closing a case and distributing assets to creditors. It is not unusual for distributions
23 in Chapter 7 cases to be delayed for years. Moreover, the return on the assets of the Estate a
24 trustee is likely to obtain through a standard Chapter 7 liquidation could be less than the return
25 the Plan will generate.
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1 Dismissal of this case would leave all creditors holding unsecured claims in the position
2 of having to institute legal proceedings to collect the debts. Outside the context of a bankruptcy
3 case, the first creditor to collect may collect all non-exempt property, leaving nothing to be paid
4 to remaining creditors. In addition, dismissal of this case would open the door for the Debtors to
5 file a new bankruptcy case, which could further delay or reduce funds available to pay creditors.
6

7 For all these reasons, the Debtors urge you to vote to accept the Plan and to return your
8 ballot in time to be counted.

9 **NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE**
10 **AUTHORIZED OTHER THAN THOSE STATED HEREIN. YOU SHOULD NOT RELY**
11 **ON ANY REPRESENTATIONS OR INDUCEMENTS CONCERNING THE PLAN**
12 **OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT.**

13 **THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE**
14 **STATEMENT DOES NOT CONSTITUTE A CERTIFICATION OR RULING BY THE**
15 **COURT REGARDING THE COMPLETENESS OR ACCURACY OF ANY**
16 **STATEMENTS CONTAINED HEREIN.**

17 **AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED**
18 **IN THIS DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTORS CANNOT**
19 **WARRANT OR REPRESENT THAT THE INFORMATION IS WITHOUT ANY**
20 **ERROR. HOWEVER, THE INFORMATION IS ACCURATE TO THE BEST OF THEIR**
21 **KNOWLEDGE AND BELIEF.**
22

23
24 This Disclosure Statement is not the Plan. This Disclosure Statement, together with the
25 Plan (Exhibit 1), should be read in its entirety before you vote on the Plan. The Plan is
26 summarized in this Disclosure Statement, but the Plan is controlling.
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RESPECTFULLY SUBMITTED this 18th day of November, 2016.

ELLETT LAW OFFICES, P.C.

/s/ Ronald J. Ellett

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