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11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **IN AND FOR THE DISTRICT OF ARIZONA**

13 In re:

14 KEVIN JAMES ROBERG,

15 Debtor.

In Chapter 11 Proceedings

Case No. 2:15-bk-10365-MCW

DISCLOSURE STATEMENT

16 **NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE
17 AUTHORIZED BY THE DEBTOR OTHER THAN THOSE STATED HEREIN. YOU
18 SHOULD NOT RELY ON ANY REPRESENTATIONS OR INDUCEMENTS
19 CONCERNING THE PLAN OTHER THAN THOSE CONTAINED IN THIS
20 DISCLOSURE STATEMENT.**

21 **AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED
22 IN THIS DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTOR CANNOT
23 WARRANT OR REPRESENT THAT THE INFORMATION IS WITHOUT ANY
24 ERROR. HOWEVER, THE INFORMATION IS ACCURATE TO THE BEST OF THE
25 DEBTOR'S KNOWLEDGE AND BELIEF.**

26 **I. INTRODUCTION TO DISCLOSURE STATEMENT**

1.1 Purpose of Disclosure Statement.

This Disclosure Statement is submitted by Kevin James Roberg, debtor and debtor-in-
possession (the "Debtor"), pursuant to 11 U.S.C. § 1125. The purpose of this Disclosure
Statement is to provide the holders of claims against the Debtor with adequate information about
the Debtor and the Plan of Reorganization (the "Plan") to make an informed judgment about the

1 merits of approving the Plan. A copy of the Plan is attached hereto as Exhibit “A” and is on file
2 with the Court. As a Creditor, your acceptance of the Plan is important. Acceptance of the Plan
3 by a Class of Creditors requires a vote by at least two-thirds in claim amount and more than fifty
4 percent in number of the allowed claims in the class that actually cast votes. Failure to vote on the
5 Plan does not count as either an acceptance or a rejection of the Plan.
6

7 1.2 The Debtor’s Plan.

8 **THE DEBTOR’S PLAN ACCOMPANIES THIS DISCLOSURE STATEMENT AS**
9 **EXHIBIT “A.” THE READER IS URGED TO REVIEW THE DEBTOR’S PLAN**
10 **CAREFULLY IN CONJUNCTION WITH THIS DISCLOSURE STATEMENT. IF**
11 **THERE IS ANY CONFLICT BETWEEN THE PROVISIONS OF THIS DISCLOSURE**
12 **STATEMENT AND THOSE OF THE DEBTOR’S PLAN, THE PROVISIONS OF THE**
13 **PLAN SHALL CONTROL.**

14 1.3 Voting Process and Deadline.

15 A ballot accompanies this Disclosure Statement for use in voting on the Debtor’s Plan. **To**
16 **vote to accept or to reject the Plan, creditors and interest holders of the Debtor in any of the**
17 **impaired classes should indicate their acceptance or rejection of the Plan and otherwise**
18 **complete the Ballot which pertains to the Plan.** See the “Summary of Plan” contained herein
19 and the Classification and Treatment of Claims and Interests contained in the copy of the Plan
20 attached hereto to determine whether you are a member of an impaired class. **Any creditor or**
21 **equity holder holding claims in more than one impaired class must file separate Ballots for**
22 **each such class.** Additional Ballots may be obtained by written request to the Debtor’s attorney at
23 the following address: Davis Miles McGuire Gardner, PLLC, 40 E. Rio Salado Parkway, Suite
24 425, Tempe, AZ 85281.
25
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1 You are urged to fill in, date, sign, and promptly process your Ballot or Ballots. **Please be**
2 **sure to properly complete the form and to legibly identify the name of the claimant or**
3 **interest holder.** The holders of claims and interests may vote on the Plan by filling out and filing
4 the accompanying Ballot for Accepting or Rejecting the Debtor's Plan with:

5 Clerk of the U.S. Bankruptcy Court
6 230 N. First Ave, Suite 101
7 Phoenix, AZ 85003

8 with a copy mailed to:

9 Davis Miles McGuire Gardner, PLLC
10 Attn: M. Preston Gardner
11 40 E. Rio Salado, Parkway, Suite 425
12 Tempe, AZ 85281

13 **SIGNED AND COMPLETED BALLOTS MUST BE RECEIVED AND FILED,**
14 **NOT MERELY MAILED, ON OR BEFORE 4:00 P.M. ON _____.**
15 SINCE MAIL DELAYS MAY OCCUR, IT IS IMPORTANT THAT THE BALLOT OR
16 BALLOTS BE MAILED OR DELIVERED WELL IN ADVANCE OF THE DATE SPECIFIED.
17 ANY BALLOTS RECEIVED OR FILED AFTER THAT DATE MAY BE EXCLUDED FROM
18 THE CALCULATION TO DETERMINE WHETHER THE CREDITORS AND INTEREST
19 HOLDERS OF A PARTICULAR CLASS HAVE VOTED TO ACCEPT OR REJECT THE
20 DEBTOR'S PLAN.

21 1.4 Importance of Your Vote.

22 As a creditor or interest holder your vote is important. The Plan can be confirmed by the
23 Court if it is accepted by the holders of *two-thirds in amount* and more than *one-half in number*
24 of claims in each impaired class of claims voting on the Plan; and if it is accepted by the holders of
25 two-thirds in amount of interests in each impaired class of equity interests voting on the Plan. In
26

1 the event the requisite acceptances are not obtained, the Court may nevertheless confirm the Plan
2 if the Court finds that it accords fair and equitable treatment to the class or classes rejecting it.

3 1.5 Confirmation Process.

4 After the votes are tallied, the Court will hold a hearing on the confirmation of the Plan
5 and may enter a Confirmation Order if it finds that the requirements for confirmation have been
6 met. Confirmation of the Plan means that the Court has approved the Plan. For the Plan to be
7 confirmed, votes by each impaired Class representing at least two-thirds in amount of the allowed
8 Claims voting in each Class and greater than one-half in number of individual creditors for such
9 class (of those actually casting votes) must be submitted in favor of acceptance of the proponent's
10 Plan.
11

12 If the required acceptance of impaired classes of claims or interests is not obtained, §
13 1129(b)(1) of the Bankruptcy Code nevertheless permits the Bankruptcy Court to confirm the Plan
14 upon request of the Debtor, if the Court finds that the Plan does not discriminate unfairly against
15 and accords fair and equitable treatment to the impaired class or classes rejecting it and that the
16 Plan otherwise meets the requirements for confirmation including satisfying a Chapter 7
17 Liquidation analysis (discussed more fully below). At the hearing on confirmation of the Plan, the
18 Bankruptcy Court will hear any timely filed objections from a party in interest to confirmation of
19 the Plan.
20

21 1.6 Confirmation Hearing.

22 **The Bankruptcy Court has set _____, 2016, at ____ o'clock**
23 **____.m. for a hearing on confirmation of the Debtor's Plan.**
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1.7 Binding Effect of Plan.

When confirmed by the Bankruptcy Court, this Plan will bind all holders of Claims or equity interests in the Debtor, whether or not they are entitled to vote, or did vote, on the Plan, and whether or not they received or retained any distributions of property under the Plan.

II. DEFINITIONS

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

III. HISTORY AND EVENTS LEADING TO THE CHAPTER 11 FILING

3.1 Events Precipitating this Case.

Debtor commenced this case due to significant consumer and business debt. The downturn in the economy left the Debtor underwater on his rental property and unable to meet his monthly obligations to creditors. He was eventually forced to file for bankruptcy protection.

3.2 Administrative Proceedings.

Debtor filed his Chapter 11 petition on August 14, 2015. During the course of this bankruptcy case, the Debtor has filed his Monthly Operating Reports, as required by the Office of the U.S. Trustee and the Bankruptcy Code and Rules, and has paid the quarterly fees that have come due. Debtor does not intend to incur any non-ordinary course of business or financial affairs post-petition debt.

3.3 Retention of Professionals.

On August 20, 2015, the Debtor applied to the Court for approval of the employment of Davis Miles McGuire Gardner, PLLC (the "Firm") as counsel in this bankruptcy case. The Court signed an Order approving the retention of the Firm on August 24, 2015.

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1 IV. FINANCIAL INFORMATION

2 4.1 Income.

3 Debtor's income is primarily derived from wages through International Cruise and
4 Excursions, Inc., where he works as a personal vacation consultant. Debtor also owns a rental
5 property which generates some additional monthly income.
6

7 4.2 Assets.

8 Debtor has assets consisting of real and personal property. Debtor does not own any real
9 or personal property with significant value in excess of allowable state exemption limits. Debtor's
10 assets are set forth in his Schedules A and B attached hereto as Exhibit "B."

11 4.3 Liabilities.

12 Claims against the Debtor are set forth in Debtor's Schedules D, E, and F, attached hereto
13 as Exhibit "C."
14

15 **FOR PURPOSES OF PLAN COMPUTATION, ALL OBLIGATIONS OF THE**
16 **VARIOUS CREDITORS LISTED IN THE SCHEDULES IN THIS DISCLOSURE**
17 **STATEMENT AND PLAN SHOULD BE CONSIDERED AS ESTIMATES ONLY AND**
18 **ALL CLAIMS ARE CONSIDERED DISPUTED AS TO THE AMOUNT UNLESS**
19 **SUPPORTED BY A TIMELY FILED PROOF OF CLAIM (AND IF OBJECTION**
20 **THERE TO IS FILED BY DEBTOR FOLLOWING RESOLUTION BY THE**
21 **BANKRUPTCY COURT AS TO AMOUNT OF THE CLAIM), OR IF THE CLAIM HAS**
22 **BEEN SCHEDULED AS UNDISPUTED, FIXED AND LIQUIDATED. ALL**
23 **CREDITORS' CLAIMS NOT SUPPORTED BY TIMELY FILED PROOF OF CLAIM**
24 **OR SCHEDULED AS UNDISPUTED, FIXED AND LIQUIDATED, MAY BE**
25 **EXCLUDED FROM PLAN COMPUTATIONS AND DISTRIBUTIONS UNDER THE**
26

1 **PLAN OR AT DEBTOR'S OPTION, INCLUDED AT THE AMOUNTS OR VALUES**
2 **LISTED HEREIN.**

3 V. SUMMARY OF PLAN

4 The following description of the Plan is for informational purposes only and does not
5 purport to change or supersede any of the specific contractual language of the Plan. THE PLAN
6 IS CONTROLLING IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE
7 CONTENTS OF THE PLAN AND THE CONTENTS OF THIS DISCLOSURE STATEMENT.
8

9 The Debtor will retain control of his assets and use his income to make the payments set
10 forth in Article IV of the Plan. Any funds remaining in the Plan Fund shall be turned over to the
11 Debtor upon payment of all Allowed Claims in full or to the duly appointed and acting Chapter 7
12 Trustee if this case is converted to a case under Chapter 7.
13

14 5.1 Classification and Treatment of Claims.

15 As required by § 1122 of the Bankruptcy Code, the Plan divides Claims against the Debtor
16 into classes which the Debtor believes are in compliance with the Bankruptcy Code. The
17 classification and treatment are as follows:

18 5.1.1 Class 1: Administrative. Class 1 claims will consist of all allowed
19 Administrative Claims for actual and necessary costs and expenses of administration entitled to
20 priority under §§ 503(b) and 507(a)(2) of the Bankruptcy Code. This Class includes, without
21 limitation, post-petition tax claims, Debtor's attorneys' fees, approved accounting fees, and fees
22 due the United States Trustee, if any. Debtor has incurred approximately \$18,000 in post-petition
23 attorneys' fees thus far, and will incur an additional approximately \$4,000-8,000 in administrative
24 expenses related to attorney's fees and bankruptcy costs, including quarterly trustee's fees through
25
26

1 confirmation. Debtor will pay the Class 1 Claims in full by making payments from excess
2 monthly income or from non-exempt assets. **Class 1 is unimpaired.**

3 5.1.2 Class 2: Priority Tax Claims. Class 2 consists of the Priority Tax Claim of
4 the Internal Revenue Service (“IRS”) in the amount of \$3,279.80 for pre-petition taxes allowable
5 pursuant to §507(a)(8) of the Bankruptcy Code. The Debtor will pay the Class 2 Priority Claim by
6 making regular monthly installment payments with 3% interest until paid in full, over a period
7 ending no later than five years following the Petition Date. Debtor will make payments on the
8 Class 2 Priority Claim from his excess monthly income, beginning in the month following
9 payment in full of any Class 1 Administrative Claims. **Class 2 is impaired.**

11 5.1.3 Class 3: Secured Claim of Internal Revenue Service. Class 3 consists of
12 the Allowed Secured Claim of the IRS in the amount of \$10,763, which is secured by a lien in
13 certain of the Debtor’s unencumbered personal property. The IRS shall have an Allowed
14 Secured Claim in the amount of \$10,763, payable over five (5) years with interest at the rate of
15 3%. The IRS shall release its tax lien upon payment in full of its Allowed Secured Claim. **Class**
16 **3 is impaired.**

18 5.1.4 Class 4: Secured Claim of Ditech Financial, LLC. Class 4 consists of the
19 Secured Claim of Ditech Financial, LLC fka Green Tree Servicing, LLC (“Ditech”), which is
20 secured by a first deed of trust in the rental property located at 2525 North Raven, Mesa, Arizona
21 85207. On November 10, 2015, the Court entered an Order Granting Motion to Value Real
22 Property and Modify Secured Claims (Dkt. #32), which controls the treatment of the Class 4
23 Claim and the terms of which are incorporated by this reference. Pursuant to the Order, the
24 amount of the Allowed Secured Claim of Ditech is limited to \$332,034. The Allowed Secured
25 Claim of \$332,034 shall be payable in equal monthly payments over a period of thirty (30) years
26

1 with 4% interest. The remaining balance of the Allowed Class 4 Claim shall be treated as a
2 General Unsecured Claim in accordance with Class 7. **Class 4 is impaired.**

3 Class 4-A: Secured Claim of Webster Bank, N.A. Class 4-A consists of
4 the Allowed Secured Claim of Webster Bank, N.A. (“Webster Bank”), which is secured by a
5 second deed of trust in the rental property located at 2525 North Raven, Mesa, Arizona 85207. On
6 March 31, 2016, the Court entered a Order Granting Amended Motion to Value Real Property and
7 to Avoid Junior Lien of Webster Bank, N.A. (Dkt. #60), which controls the treatment of the Class
8 4-A Claim and the terms of which are incorporated by this reference. Pursuant to the Order, the
9 claim of Webster Bank is wholly unsecured and its Allowed Secured Claim is \$0.00. The entire
10 Class 4-A Claim shall be treated as a General Unsecured Claim in accordance with Class 7.
11 **Class 4-A is impaired.**

12
13 5.1.5 Class 5: Secured Claim of Santander Consumer USA. Class 5 consists of
14 the Allowed Secured Claim of Santander Consumer USA (“Santander”), which is secured by a
15 lien in a 2010 Volkswagen EOS (the “Vehicle”). Debtor asserts that the fair market value of the
16 Vehicle is no more than \$11,750. Debtor hopes to reach a stipulated agreement with the Class 5
17 Claimant regarding treatment of its Claim under the Plan. The terms of any stipulation between
18 the parties will be binding for purposes of the Plan and fully incorporated into the Order
19 confirming the Plan. In the event the parties are unable to reach a stipulated agreement,
20 Santander shall have an Allowed Secured Claim in the amount of \$11,750, payable over five
21 (5) years with interest at the rate of 4.25%. The remaining balance of Santander’s Allowed
22 Claim shall be treated as a General Unsecured Claim in accordance with Class 7. Santander
23 shall release its lien against the Vehicle upon payment in full of its Allowed Secured Claim. **Class**
24 **5 is impaired.**

1 5.1.6 Class 6: Secured Claim of Westin Kierland Villas. Class 6 consists of the
2 Allowed Secured Claim of Westin Kierland Villas (SVO Management, Inc.) (“Westin”) for
3 unpaid loan/maintenance dues, which is secured by a lien in the Debtor’s timeshare at the Westin
4 Kierland Villas (the “Timeshare”). Debtor asserts that the Timeshare has a fair market value of no
5 more than \$1,000 and that the amount owing to Westin for maintenance dues is approximately
6 \$3,300. Debtor shall surrender his interest in the Timeshare to the Class 6 Claimant in full
7 satisfaction of its Allowed Secured Claim. Unless the Class 6 Claimant has commenced
8 foreclosure proceedings within 30 days of the Effective Date, the Debtor at his option may
9 transfer ownership of the Timeshare to Westin through a deed in lieu of foreclosure. The
10 balance of the Class 6 Claim shall be treated as a General Unsecured Claim in accordance with
11 Class 7. **Class 6 is impaired.**

12
13
14 5.1.7 Class 7: General Unsecured Claims. Class 7 consists of the Allowed
15 Unsecured Claims of Creditors. The following is a list of General Unsecured Claims against the
16 Debtor:

Claim No.	Creditor	Amount of Claim
	Allergy, EN&T, Ltd.	\$1,608.00
5	American Express	\$1,024.85
4	American Express	\$526.25
	Bank of America	\$15,533.00
	Bank of America	\$10,321.00
	Citibank/Home Depot	\$219.00
2	Discover Bank	\$1,565.50
6	Ditech Financial, LLC	\$42,219.56
	GECRB/Banana Republic	\$2,017.00
3	Internal Revenue Service	\$1,645.19
1	Navient Solutions, Inc. (Dept. of Educ.)	\$21,312.09
9	Santander Consumer USA	\$8,069.65
	Transworld System, Inc.	\$2,280.00
	Valentine & Kebartas	\$258.00
8	Webster Bank, N.A.	\$41,295.01
7	Wells Fargo Bank, N.A.	\$3,079.58

	Westin Kierland Villas	\$2,300.00
	Wex Bank	\$0.00
	Total =	\$155,273.68

Debtor shall fund the Plan by making monthly payments from his Excess Cash Flow. Class 7 Claimants will receive quarterly distributions under the Plan on a pro-rata basis, commencing in the month following payment in full of Administrative and Priority Claims.

Class 7 is impaired.

5.1.8 Class 8: Debtor's Interest. Pursuant to § 1129(a)(15) and (b)(2)(B)(ii) of the Bankruptcy Code, the Debtor shall retain his interest in all estate property in consideration of his funding of Allowed Claims and shall receive all exempt property.

5.2 Liquidation Analysis.

The following is a Liquidation Analysis indicating what the Debtor believes creditors would receive in the event of a liquidation of the Debtor's property. The figures for "market value" and "liquidation value" are the Debtor's best estimates on what the assets are worth on a market or liquidation basis.

Asset	Market Value	Liquidation Value ¹	Exemption	Secured Claim	Equity
Rental Property	332,034	298,830	0	415,548	0
Westin Timeshare	1,000	900	0	1,098	0
Sonoran Villas Timeshare	1,000	900	0	900	0
Schwab Bank checking	300	300	300	0	0
Wex Bank student loan debit card account	8,026	8,026	0	8,026	0
HSA account	466	466	466	0	0
Household furnishings	1,120	1,008	1,120	0	0
Laptop & Accessories	200	180	100	80	0
Clothing	500	450	500	0	0
Bicycle	50	45	50	0	0

¹ Debtor assumes a 10% cost of sale on liquidation of his non-liquid assets.

1	Recreational equipment	100	90	0	90	0
2	Term life insurance	0	0	100%	0	0
3	Schwab Roth IRA	1	1	100%	0	0
4	Fidelity 401(k)	4,093	4,093	100%	0	0
5	RFG, LLC	0	0	0	0	0
6	2010 VW EOS	11,868	10,681	6,000	19,938	0
7	Misc. tools	100	90	0	90	0
8						
9	Liquidation Equity					\$0.00

10 Creditors should note that on a liquidation basis, full market value for assets cannot be
11 obtained. Further, there are costs associated with a liquidation of assets that must be paid out of
12 any sale proceeds. The liquidation analysis does not contain an estimation of any tax liability
13 which could be associated with liquidation. **Creditors should note that after payment of**
14 **Administrative Claims and Priority Claims, no Liquidation Equity exists for the benefit of**
15 **General Unsecured Claims.** This analysis is provided only for informational purposes since the
16 Debtor's Plan does not contemplate liquidation in this fashion.

17 VI. MEANS TEST AND DISPOSABLE INCOME ANALYSIS AS OF THE PETITION
18 DATE AND CURRENT INCOME AND EXPENSE ANALYSIS.

19 Pursuant to § 1129(a)(15) of the Bankruptcy Code, the Court shall confirm a plan only if:
20 in a case in which the debtor is an individual and in which the holder of an Allowed Unsecured
21 Claim objects to the confirmation of the Plan, what the holder of such Allowed Unsecured Claim
22 shall receive under the Plan is either (A) the value, as of the Effective Date of the Plan, of the
23 property to be distributed under the Plan on account of such Allowed Unsecured Claim is not less
24 than the amount of such Allowed Unsecured Claim, or (B) the value of the property to be
25 distributed under the Plan is not less than the projected disposable income of the debtor (as defined
26 in § 1325 (b)(2)) to be received during the 5-year period beginning on the date that the first

1 payment is due under the Plan, or during the period for which the Plan provides payments,
2 whichever is longer.

3 Section 1325(b)(2) defines disposable income as current monthly income received by the
4 debtor (other than child support payments, foster care payments, or disability payments for a
5 dependent child made in accordance with applicable non-bankruptcy law to the extent reasonable
6 necessary to be expended (A)(i) for the maintenance or support of the debtor or a dependent of the
7 debtor, or for a domestic support obligation, that first becomes payable after the date the petition is
8 filed; and (ii) for charitable contributions (that meet the definition of “charitable contribution”
9 under § 548(d)(3) to a qualified religious or charitable entity or organization (as defined in §
10 548(d)(4) in an amount not to exceed 15 percent of gross income of the debtor for the year in
11 which the contributions are made)); and (B) if the debtor is engaged in business, for the payment
12 of expenditures necessary for the continuation, preservation, and operation of such business.
13

14 The Debtor provides a calculation of his monthly income and expenses on Schedules I and
15 J, respectively, a copy of which is attached hereto and incorporated herein as Exhibit “D.”
16 Pursuant to Schedule I, the Debtor’s average monthly income is presently \$3,051.00. According
17 to the Debtor’s Schedule J, the average monthly expenses are \$2,429.33. Therefore, the Debtor’s
18 monthly net income is \$621.67. Pursuant to § 1129(a)(15) of the Bankruptcy Code, because the
19 Debtor is an individual, in the event a holder of an allowed unsecured claim objects to the
20 confirmation of the Plan, the value of property to be distributed under the Plan cannot be less than
21 the projected disposable income of the Debtor (as defined in § 1325(b)(2)) to be received during
22 the 5-year period beginning on the date that the first payment is due under the Plan, or during the
23 period for which the Plan provides payments, whichever is longer. Here, \$621.67 multiplied by
24 60 months is \$37,300.20.
25
26

1 Section 1129(a)(15) of the Code requires only that this amount be distributed “under the
2 plan” and not to any particular class of creditor. Debtor will pay this Excess Cash Flow first to
3 Allowed Administrative Claims, then to Allowed Priority Claims, and finally to General
4 Unsecured Claims. Debtor has incurred approximately \$18,000 in post-petition attorneys’ fees
5 thus far, and will incur an additional approximately \$4,000-8,000 in administrative expenses
6 related to attorney’s fees and bankruptcy costs, including quarterly trustee’s fees through
7 confirmation. Debtor will fund his Administrative and Priority Claims in full, and will then make
8 payments to his General Unsecured Creditors. Debtor hopes to fund the payments required under
9 the Plan, in whole or in part, from exempt assets or financing, and to pay all Allowed Claims in
10 fewer than the five years contemplated by the Bankruptcy Code. Attached hereto as Exhibit “E” is
11 the Debtor’s estimated plan payment schedule and 60-month income and expense projections.

14 VII. IMPLEMENTATION OF THE PLAN

15 The Plan will be funded by the Debtor’s post-petition earnings and/or liquidation of
16 exempt assets. The Reorganized Debtor shall act as the Disbursing Agent under the Plan. In the
17 event any entity which possesses an Allowed Secured Claim, or any other lien on any of the
18 Debtor’s property for which the Plan requires the execution of any documents to incorporate the
19 terms of the Plan, fails to provide a release of its lien or execute the necessary documents to satisfy
20 the requirements of the Plan, the Debtor may record a copy of their Plan and the Confirmation
21 Order with the appropriate governmental agency and such recordation shall constitute the lien
22 release and creation of the necessary new liens to satisfy the terms of the Plan. If the Debtor
23 deems advisable, he may obtain a further Order from the Court that may be recorded in order to
24 implement the terms of the Plan.

26 ////

1 VIII. COMPLIANCE WITH BANKRUPTCY CODE

2 In order to confirm the Plan, the Bankruptcy Court must make a series of determinations
3 concerning the Plan, including those set forth below. The Debtor believes that each of these
4 conditions has been met and will seek rulings of the Bankruptcy Court to this effect at the
5 confirmation hearing.
6

7 In addition, the Bankruptcy Code requires that the Plan be accepted by requisite votes of
8 holders of claims and interests. If any member of an impaired class does not accept the Plan, the
9 Bankruptcy Court must find that confirmation of the Plan is in the “best interests” of such entities.

10 8.1 Classification of Claims and Interests. The Bankruptcy Code requires that a plan
11 of reorganization place each creditor’s claim and each interest holder’s interest in a class with
12 other claims or interests that are “substantially similar” to one another. The Debtor believes that
13 the Plan’s classification meets the Bankruptcy Code standard.
14

15 8.2 Section 1111(b) Election. Section 1111(b) of the Bankruptcy Code provides that
16 as a general rule, a secured claim is to be accorded a treatment in the Chapter 11 Plan that is the
17 same as would be received if it were a recourse claim, regardless of whether or not the claim is
18 non-recourse by agreement or applicable law. Section 1111 also provides an opportunity for a
19 partially secured creditor whose claim is treated by the proposed Plan as partially secured and
20 partially unsecured to acquiesce in such bifurcation of their claim or, alternatively, to elect to treat
21 the claim as fully secured.
22

23 8.3 Technical Requirements. To be confirmed, the contents of a plan must comply
24 with the technical requirements of Chapter 11 of the Bankruptcy Code, which the Debtor believes
25 has been done.
26

1 8.4 Good Faith. To be confirmed the Bankruptcy Court must find that the debtor has
2 proposed the plan in good faith. In the instant case, this requirement is met because the Plan
3 contemplates a bona fide reorganization in which creditors will be paid an amount on behalf of
4 their claims that is greater than would be received through liquidation or conversion to a Chapter 7
5 proceeding.
6

7 8.5 Disclosure. The Bankruptcy Court must find that the Debtor's disclosures
8 concerning the Plan have been adequate and have included information concerning all payments
9 made or promised in connection with the Plan and the bankruptcy case, as well as the identity,
10 affiliations, and compensation to be paid to all officers, directors, and other insiders. The Debtor
11 believes this requirement has been met by this Disclosure Statement.
12

13 8.6 Feasibility. The Plan may not be confirmed if the Bankruptcy Court finds that
14 confirmation is likely to be followed by the liquidation of the reorganized debtor or the need for
15 further financial reorganization. The Debtor believes that he will be able to meet his obligations
16 under the Plan and continue to operate his business without further reorganization, as set forth
17 herein.
18

19 8.7 Best Interests. Notwithstanding acceptance of the Plan by creditors and interest
20 holders impaired under the Plan, if a claimant or interest holder does not accept the Plan, then the
21 Bankruptcy Court must independently determine that the Plan is in the best interests of that
22 claimant's or interest holder's class. To meet this test, the Court must determine that each claim or
23 interest in the impaired class will receive under the Plan, as of the Effective Date, property of a
24 value at least equal to the value that each such holder would receive in the Debtor's liquidation
25 under Chapter 7 of the Bankruptcy Code. In this case, the Liquidation Analysis—contained in
26 Section 5.2 of Part V, *supra*—demonstrates that this requirement has been met.

1 IX. TAX CONSEQUENCES OF PLAN

2 In 1978, a massive revision of the bankruptcy laws was enacted as the Bankruptcy Code
3 now in effect. In turn, the impact of the Bankruptcy Code on the existing tax laws led to the
4 enactment of the Bankruptcy Tax Act of 1980, P.L. 96-589, 94 Stat. 3389 (1980). This Act made
5 a number of significant changes in the law regarding, inter alia, the way in which a bankruptcy
6 estate is taxed, whether the occurrence of a bankruptcy filing interrupts a debtor's taxable year,
7 whether income and deductions belong to the debtor or the estate, and whether individual losses
8 are available to the estate.

10 **CLAIMANTS ARE ADVISED TO CONSULT WITH THEIR TAX ADVISORS**
11 **CONCERNING THE INDIVIDUAL TAX CONSEQUENCES OF THE TRANSACTIONS**
12 **CONTEMPLATED IN THIS PLAN, INCLUDING STATE AND LOCAL TAX**
13 **CONSEQUENCES.**

14 X. VOTING/CONFIRMATION/ALTERNATIVES

15 10.1 Voting. A creditor may vote either to accept or reject the Plan. Only the votes of
16 impaired classes will be counted in connection with confirmation of the Plan, since classes of
17 claims and interests which are not impaired are deemed to have accepted the Plan. In determining
18 acceptance of the Plan, votes will be counted only if submitted by a party with an Allowed Claim
19 or an Allowed Interest, and the ballot for voting on the Plan does not constitute a proof of claim
20 for this purpose. A claim to which an objection has been filed is not an Allowed Claim unless and
21 until the Bankruptcy Court has ruled on the objection; and although holders of disputed claims will
22 receive ballots, their votes will not be counted unless the Bankruptcy Court temporarily allows
23 such claims for the purpose of voting on the Plan.
24
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26

1 10.2 Confirmation. For the Plan to be approved, it must either (i) be accepted by at least
2 two-third in amount and more than one-half in number of the creditors of each impaired class, or
3 (ii) be approved by the Court as being in the best interest of all parties within a particular class
4 despite the failure to receive the required votes (i.e. “cramdown”).
5

6 The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by
7 holders of two-thirds in dollar amount and a majority in number of claims of that class, counting
8 only those members of the class who actually vote. The Bankruptcy Code defines acceptance of a
9 plan by a class of interests (equity securities) as acceptance by two-thirds of the number of shares,
10 counting only those shares actually voted.

11 Classes of claims and interests that are unimpaired under the Plan are conclusively deemed
12 to have accepted the Plan. A class of creditors or interest holders is unimpaired if the Plan (i) does
13 not alter the legal, equitable or contractual rights between the Debtor and the creditor or interest
14 holder (with the exception of reinstating the claim by curing any defaults), or (ii) pays the claimant
15 the full amount of the claim or interest by cash payment on the Effective Date. Classes of claim
16 and interests that receive no distribution under the Plan are deemed to have rejected the Plan.
17 Consequently, ballots are being sent only to those classes which are impaired but are to receive a
18 distribution under the Plan.
19

20 The Plan may be confirmed by the Bankruptcy court even if it is not accepted by all
21 classes of impaired claim, as long as at least one impaired class of claims has accepted.
22

23 10.3 Alternative to Confirmation. In the event this Plan is not confirmed, the Chapter
24 11 proceeding can be (i) continued for the submission of other plans, (ii) converted to Chapter 7,
25 or (iii) dismissed. In the event the Plan is not confirmed through acceptance of the claimholders, it
26 is the Debtor’s intention to seek confirmation through cramdown.

1 XI. INFORMATION/REPRESENTATIONS

2 11.1 Source of Information. Unless otherwise stated, all of the information contained
3 herein is based on information supplied by the Debtor or its agents, and no representations
4 concerning the Debtor are authorized by the Debtor other than as set forth in this Disclosure
5 Statement.
6

7 11.2 Conflicts. To the extent any information set forth in this Disclosure Statement
8 conflicts with any information set forth in the Debtor's schedules or statement of financial affairs,
9 this Disclosure Statement will govern and will, to the extent necessary, constitute an amendment
10 to the affected schedules or statement of financial affairs.

11 11.3 Unauthorized Representations. Any representations or inducements made to
12 secure acceptance other than as contained in this Disclosure Statement should not be relied upon in
13 arriving at a decision, and such representations and inducements should be reported to counsel for
14 the Debtor, who in turn shall deliver such information to the Court for appropriate action.
15

16 11.4 Disclaimer.

17 **NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE**
18 **AUTHORIZED OTHER THAN AS SET FORTH HEREIN. YOU SHOULD NOT RELY**
19 **ON ANY REPRESENTATIONS OR INDUCEMENTS TO ACCEPT THE PLAN OTHER**
20 **THAN THOSE CONTAINED HEREIN.**

21 **AN ACCOUNTANT HAS NOT REVIEWED OR APPROVED THE**
22 **INFORMATION CONTAINED HEREIN. MUCH OF THE INFORMATION**
23 **CONTAINED HEREIN WAS DERIVED FROM THE DEBTOR OR DEBTOR'S**
24 **RECORDS AND HAS NOT BEEN VERIFIED FROM INDEPENDENT SOURCES.**
25 **DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION**
26

1 CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH ALL SUCH
2 INFORMATION IS ACCURATE TO THE DEBTOR'S BEST KNOWLEDGE,
3 INFORMATION, AND BELIEF.

4 THE COURT HAS NOT VERIFIED THE ACCURACY OF THE INFORMATION
5 CONTAINED HEREIN. THE COURT'S APPROVAL OF THE DISCLOSURE
6 STATEMENT DOES NOT IMPLY THAT THE COURT ENDORSES OR APPROVES
7 THE PLAN, BUT ONLY THAT IF THE INFORMATION IS ACCURATE, IT IS
8 SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS AND
9 INTEREST HOLDERS TO MAKE INFORMED DECISIONS WHETHER TO APPROVE
10 OR REJECT THE PLAN.

11
12 XII. NON-ALLOWANCE OF PENALTIES AND FINES

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

18
19 XIII. EXECUTORY CONTACTS

20 The Debtor rejects all executory contracts and unexpired leases, with the exception of the
21 following:

22 Frank Spaccarelli Residential Lease

23 Kim Hemmersbach Residential Lease

24 Claims for any executory contracts or unexpired leases rejected by the Debtor shall be filed
25 no later than ten (10) days after the earlier of Confirmation or the date the executory contract or
26

1 unexpired lease is specifically rejected. Any such Claims not timely filed and served shall be
2 disallowed.

3 **XIV. MODIFICATION OF PLAN**

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

12
13 **XV. CLOSING OF THE CASE**

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

21
22 **XVI. RETENTION OF JURISDICTION**

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

1 1. The Classification of Claims of any Creditors and the re-examination of any
2 Claims which have been allowed for the purposes of voting, and for the determination of such
3 objections as may be filed to the Creditor's Claims. The failure of Debtor to object to or examine
4 any Claim for the purpose of voting shall not be deemed to be a waiver of the Debtor's rights to
5 object to or to re-examine the Claim in whole or in part.
6

7 2. To determine any Claims which are disputed by the Debtor.

8 3. To determine all questions and disputes regarding title to the assets of the estate,
9 and determination of all causes of action, disputes, or conflicts, whether or not subject to action
10 pending as of the date of Confirmation, between the Debtor and any other party, including but not
11 limited to, any rights of the Debtor to recover assets pursuant to the provisions of the Bankruptcy
12 Code.
13

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

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

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

20 7. The entry of an order, including injunctions, necessary to enforce the title, rights,
21 and powers of the Debtor, and to impose such limitations, restrictions, terms, and conditions of
22 such title, right, and power that the Court may deem necessary.
23

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

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DATED this 1st day of August, 2016.

DAVIS MILES MCGUIRE GARDNER, PLLC

/s/ M. Preston Gardner

Pernell W. McGuire
M. Preston Gardner
Attorneys for Debtor

/s/ Kevin J. Roberg

Kevin J. Roberg