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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re:)
10 JOSE DOMINGUEZ,) No. 4:15-bk-11701-BMW
11) (Chapter 11)
12 Debtor.)
13) NOTICE OF SUBMISSION OF
14) DEBTOR'S SECOND AMENDED
15) DISCLOSURE STATEMENT DATED
September 21, 2016
FOR ITS FIRST AMENDED PLAN OF
REORGANIZATION DATED May 10, 2016

16 Jose Dominguez, (hereinafter "Debtor"), submits this proposed Second Amended Disclosure
17 Statement dated September 21, 2016 attached hereto and by reference incorporated herein (hereinafter
18 "the Disclosure Statement") in connection with the "Debtor's First Amended Plan of Reorganization"
19 filed concurrently herewith dated May 10, 2016 (hereinafter "the Plan"). The Disclosure Statement is
20 submitted in compliance with 11 U.S.C. Section 1125 and Bankruptcy Rule 3017. It has not been
21 approved by the Bankruptcy Court and is filed solely to enable the Court and parties in interest to
22 evaluate the adequacy of the information contained herein as required of the Bankruptcy Code.
23 Moreover, the Disclosure Statement refers to information contained herein as required by the Bankruptcy
24 Code. The Disclosure Statement refers to information and facts that the Debtor anticipates will be
25 accurate or will occur on or prior to the date of the hearing to consider the Disclosure Statement.
26 Therefore, certain information and facts contained in the Disclosure Statement may not be completely
27 accurate as of the date hereof.

28 The Debtor believes that a form of Disclosure Statement in substantially the form as that which

1 is attached hereto contains information of a kind, and in sufficient detail, as far as is reasonably practical
2 in light of the nature and history of the Debtor, that would enable a reasonable investor, typical of the
3 holders of claims and interests in each class of claims and interest in the Plan, to make an informed
4 judgment about the Plan. Nevertheless, all readers are cautioned that the Debtor may file further
5 modifications of the Plan and of the Disclosure Statement prior to the hearing to consider the Disclosure
6 Statement.

7
8 *THE FILING AND ANY DISSEMINATION OF THE DISCLOSURE STATEMENT*
9 *IS NOT A SOLICITATION OF VOTES ACCEPTING OR REJECTING*
10 *THE PLAN DESCRIBED THEREIN.*

11 DATED: September 21, 2016.

12 LAW OFFICES OF
13 *ERIC SLOCUM SPARKS, P.C.*

14 /s/ Sparks AZBAR #11726
15 Eric Slocum Sparks
16 Attorney for Debtor
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TABLE OF CONTENTS
For Second Amended Disclosure Statement filed
September 21, 2016

I.	INTRODUCTION	1
II.	DEFINITIONS	2
III.	DISCLAIMER	4
IV.	DEBTOR'S BACKGROUND, EVENTS LEADING TO CHAPTER 11 FILING AND OPERATIONS UNDER CHAPTER 11	4
V.	VOTING	5
VI.	GENERAL INFORMATION AND DISCLOSURE	7
VII.	FINANCIAL INFORMATION	10
VIII.	SUMMARY OF THE PLAN OF REORGANIZATION	10
1.	Class 1 - Administrative Claims	11
2.	Class 2 - Priority Claims of Governmental Units	11
3.	Class 3 - Secured Tax Claims of Arizona Department of Revenue	12
4.	Class 4 - Secured Tax Claims of City of Tucson	13
5.	Class 5 - Secured Ad Valorem Claims	13
6.	Class 6 - Secured Claim of Deutsche Bank National Trust Company	14
7.	Class 7 - Secured Claim of Seterus, Inc.	14
8.	Class 8 - Secured Claim of Francisco G. Davila and Magdalena C. Davila, and Mart Elena Davila-Becklim	15
9.	Class 9 - Secured Claim of David J. McHenry, Trustee of the David J. McHenry Family Trust	16
10.	Class 10 - Unsecured Deficiency Claims and Unsecured Claims	18
11.	Class 11 - Contingent, Unliquidated and Disputed Claims	18
12.	Class 12 - Equity Interest	19
IX.	DISPUTED CLAIMS	19
X.	EXECUTORY CONTRACTS	19
XI.	MEANS OF EXECUTION	19
XII.	ABSOLUTE PRIORITY RULE	20
XIII.	CHAPTER 7 LIQUIDATION ANALYSIS	20
XIV.	CRAM-DOWN	21
XV.	TAX CONSEQUENCES	21

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XVI.	IMPLEMENTATION AND CONSUMMATION OF THE PLAN	21
XVII.	QUARTERLY FEES AND REPORTS	22
XVIII.	RETENTION OF JURISDICTION	22
XIX.	REPRESENTATION	23
XX.	CONCLUSION	23

EXHIBITS

A.	First Amended Plan of Reorganization dated May 10, 2016
B.	Ballot
C.	Liquidation Analysis
D.	Anticipated Revenue and Expense
E.	Schedules A & B

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8 IN THE UNITED STATES BANKRUPTCY COURT
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10 In re:)
11 JOSE DOMINGUEZ,) No. 4:15-bk-11701-BMW
12) (Chapter 11)
13 Debtor.) DEBTOR’S SECOND AMENDED
14) DISCLOSURE STATEMENT DATED
15) September 21, 2016
16) FOR ITS FIRST AMENDED PLAN OF
REORGANIZATION DATED May 10, 2016

17 **I. INTRODUCTION**

18 On September 14, 2015, Debtor, Jose Dominguez, (hereinafter referred to as “Debtor”), filed a
19 voluntary petition for Chapter 11 relief in the United States Bankruptcy Court for the District of Arizona.

20 This Disclosure Statement is filed pursuant to 11 U.S.C. §1125 and is intended to provide the
21 holders of claims and interest with adequate information about the debtor and Plan so as to enable the
22 creditors to make an informed judgment as to their acceptance or rejection of the Plan. In preparing this
23 Disclosure Statement the debtor has been mindful of the factors which courts tend to apply to determine
24 if a Disclosure Statement contains “adequate information”, mainly those factors articulated in *In re A.C.*
25 *Williams Company*, 25 B.R. 173 (Bankr. N.D. Ohio 1982).
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II. DEFINITIONS

As utilized in this Disclosure Statement and in the Plan of Reorganization which accompanies this Disclosure Statement, the following definitions apply to the following terms:

1. “Adequate Information” means information that would enable a hypothetical reasonable investor typical of holders of claims or interest of the Debtor’s estate, to make an informed judgment about the Debtor’s Plan of Reorganization.

2. “Allowed and Approved Claim” shall mean a timely filed Proof of Claim pursuant to an Order of the Court setting a bar date to which that claim should be filed and no objection to the claims having been filed. If an objection to a claim is filed, said claim will be allowed to the extent ordered by the Court.

3. “Bankruptcy Code” shall mean the Bankruptcy Code as set forth in Title 11 of the United States Code.

4. “Bankruptcy Court” shall mean in the United States Bankruptcy Court for the District of Arizona.

5. “Confirmation of the Plan” shall mean the entry of an order by the Bankruptcy Court confirming the Plan of Reorganization in accordance with §1129 of the Bankruptcy Code.

6. “Consummation of the Plan” means the accomplishment of all things required or provided for under the terms of the Plan.

7. “Court” shall mean the United States Bankruptcy Court for the District of Arizona.

8. “Creditors” shall mean all persons holding claims for secured and unsecured obligations, liabilities, demands or claims of any nature whatsoever against the Debtor arising at any time prior to confirmation of the Plan and administrative creditors.

9. “Debtor” shall mean the petitioners in the above-captioned Bankruptcy case.

10. “Disclosure Statement” shall mean this Disclosure Statement (hereinafter “Disclosure Statement”) filed in this case approved, after notice and a hearing by the Court as being in conformity with §1129 of the Code.

1 11. "Disposable Income" that amount of income to be contributed by debtors for a period of 60
2 months and paid to creditors on allowed claims of creditor on a pro rata basis any and all claims as a full
3 and final settlement. The amount of disposable income will be reduced by any allowed administrative
4 fees allowed by this Court.

5 12. "Effect of Discharge" 11 U.S.C. 1141(d)(5)(b) At any time after the confirmation of the plan,
6 and after notice and a hearing, the court may grant a discharge to the debtor who has not completed
7 payments under the plan if (I) the value, as of the effective date of the plan, of property actually
8 distributed under the plan on account of each allowed unsecured claim is not less than the amount that
9 would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on
10 such date; (ii) modification of the plan under section 1127 in not practicable; and (iii) subparagraph (c)
11 permits the court to grant a discharge.

12 13. "Effective Date" shall mean the later of (a) the first business day following the **60th** day after
13 entry of the Court of an order confirming this Plan, or (b) the first business day after such order has
14 become final and unappealable; provided however, no appeal of said order is pending; provided further,
15 the Debtor may waive the condition that no appeal of the order of confirmation be pending by a writing
16 duly executed by the Debtor and filed with the Court on or before the date which but for the pendency
17 of appeal would become the Effective Date of the Plan, and in the event that said condition is timely
18 waived by the Debtor, the Plan shall become effective as provided herein notwithstanding the pendency
19 on said date of an appeal or appeals; in the event that said condition is not timely waived, the Plan shall
20 become effective on the first business day after an appeal is no longer pending.

21 14. "Petition" means the original Chapter 11 Petition filed by the Debtor.

22 15. "Plan" shall mean the Plan of Reorganization accompanying this Disclosure Statement as it
23 may be amended, modified and/or supplemented pursuant to which the Debtor proposes payment in
24 whole or in part of creditors' claims.

25 16. "Plan Distribution Date" shall be a date that ends with the first full calendar quarter after the
26 date that the Chapter 11 Plan is confirmed by the Court, which the Debtor projects to be September 30,
27 2016.

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1 17. All other terms not specifically defined by this Disclosure Statement shall have the meaning
2 as designated in §101 of the Bankruptcy Code or, if not contained therein, their ordinary meaning.

3
4 **III. DISCLAIMER**

5 Any representations concerning the Debtor's Plan other than as set forth herein are unauthorized.
6 This Disclosure Statement is designed to provide information the Debtor deems material, important and
7 necessary for their creditors to arrive at an informed decision in exercising their right to accept or reject
8 the Plan. **YOU SHOULD THEREFORE NOT RELY ON ANY OTHER INFORMATION,**
9 **REPRESENTATIONS OR INDUCEMENTS IN ASSESSING THE MERITS OF THE**
10 **DEBTOR'S PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS**
11 **DISCLOSURE STATEMENT.**

12 The Debtor expressly does not warrant nor represent that there are no inaccuracies in the
13 following Disclosure Statement although the information provided is accurate to the best of Debtor's
14 knowledge, information and belief. Creditors should also be aware that the Court has not undertaken any
15 individual determination to verify the accuracy of the information contained in this Disclosure
16 Statement. Finally, the attorney for the debtor has not made any independent evaluation as to the
17 accuracy of the information contained herein other than to ascertain that the information contained herein
18 is generally consistent with information provided by the Debtor. Notwithstanding the foregoing, the
19 debtor believe that the information contained herein is correct and accurate and complies with the
20 requirements of the Bankruptcy Code.

21
22 **IV. DEBTOR'S BACKGROUND, EVENTS LEADING TO CHAPTER 11 BANKRUPTCY**
23 **FILING AND OPERATIONS UNDER CHAPTER 11**

24 Background and History of Debtor: Jose Dominguez was born in Chihuahua, Mexico. Jose
25 moved to the United States in May of 1995 when he was fifteen years old. Jose began working at a Tire
26 Shop for twelve years. Jose bought his first home at the age of 19. After living in the property for several
27 years Jose decided to refinance the property and borrow funds in order to purchase 2 more properties
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1 in the same community. Jose had hoped that the value of the properties that he purchased would increase
2 in time. Unfortunately the property values did not increase and the payments were beginning to be
3 burdensome which resulted in the loss of one of the properties. In 2007 Jesus and his friend Mario
4 Pineda opened a retail business together called Wheels and More. The business was a tire shop which
5 sold rims, tires, car accessories, lift kits and suspensions. The partners purchased a location at 4801 S
6 12th Ave., Tucson, AZ. In 2008 Jose's partner decided that due to the economic crash he no longer
7 wished to remain as a partner in the business and Jose had to purchase Mario's interest in the business.

8 Events Leading to the Chapter 11: After six years of operating the business the Debtor started
9 to see a decrease in income due to the economy Jose also was in the process of dealing with a divorce
10 which caused a hardship due to all of the expenses of the divorce. With these conflicts the business
11 started going through a decline in income with no corresponding decline in expenses. The debtor had
12 no choice but to file for a reorganization in order to restructure and preserve his assets.

13 14 V. VOTING

15 A. Ballots and Voting Deadline.

16 A ballot to be used for voting to accept or reject the Plan is enclosed with this Disclosure
17 Statement as Exhibit "B" and mailed to creditors entitled to vote. A creditor must (1) carefully review
18 the ballot and instructions thereon; (2) execute the ballot; and, return it to the address indicated thereon
19 by the deadline in order to be considered for voting purposes. The Bankruptcy Court has directed that,
20 in order to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be
21 received no later than the date established by the Bankruptcy Court, with a copy being provided to the
22 following address: LAW OFFICES OF ERIC SLOCUM SPARKS, P.C., 110 South Church Avenue,
23 #2270, Tucson, Arizona 85701. ***The enclosed Ballot states the Court established deadline in which all***
24 ***ballots must be filed with the Court and copies provided to Debtor's counsel.***

25 B. Creditors Entitled to Vote.

26 Any creditor of the Debtor, whose claim is impaired under the Plan is entitled to vote if it has
27 filed a Proof of Claim on or before the last date set by the Bankruptcy Court for such filings. Any claim
28

1 to which an objection has been filed (and such objection is still pending) is not entitled to vote, unless
2 the Bankruptcy Court temporarily allows the claim in an amount which it deems proper for the purpose
3 of accepting or rejecting the Plan upon Motion by the creditor whose claim is subject to any objection.
4 Such motion must be heard and determined by the Bankruptcy Court prior to the date established by the
5 Court to confirm the Plan. In addition, a creditor's vote may be disregarded if the Bankruptcy Court
6 determines that the creditor's acceptance or rejection was not solicited or procured in good faith or in
7 accordance with the provisions of the Bankruptcy Code.

8 C. Definition of Impairment.

9 Under §1124 of the Bankruptcy Code, a class of claims or equity interests is impaired under a
10 Plan of Reorganization unless, with respect to each claim or equity interest of such class, the Plan:

11 Except as provided in Section 1123(a)(4) of this title, a class of claims or interests is impaired
12 under a plan unless, with respect to each claim or interest of such class, the
plan -

13 (1) leaves unaltered the legal, equitable, and contractual rights to which such claim or
14 interest entitles the holder of such claim or interest;

15 (2) notwithstanding any contractual provision or applicable law that entitles the holder
16 of such claim or interest to demand or receive accelerated payment of such claim or
17 interest after the occurrence of a default –

18 (A) cures any such default that occurred before or after the commencement of the
19 case under this title, other than a default of a kind specified in Section 365(b)(2) of this
20 title;

21 (B) reinstates the maturity of such claim or interest for any damages incurred as
22 a result of any reasonable reliance by such holder on such contractual provision of such
23 applicable law; and

24 (C) compensates the holder of such claim or interest for any damages incurred as
25 a result of any reasonable reliance by such holder or such contractual provision or such
26 applicable law; and

27 (D) does not otherwise alter the legal, equitable, or contractual rights to which
28 such claim or interest entitles the holder of such claim or interest.

11 U.S.C. §1124.

D. Classes Impaired Under the Plan.

Creditors holding claims or interests in Classes 2 through 11 are impaired under the Plan and are
eligible, subject to the limitations set forth above, to vote to accept or reject the Plan. Creditors holding

1 claims in Classes 1 and 12 are not impaired under the Plan and are not entitled to vote with respect to
2 acceptance or rejection of the Plan. All creditors will be paid in accordance with the provisions of the
3 Plan. *See 11 U.S.C. §1126(f).*

4 E. Votes Required for Class Acceptance.

5 The Bankruptcy Code defines acceptance of a Plan by a class of creditors as acceptance by
6 holders of two-thirds in dollar amount and by a majority in number of the claims of that class which
7 actually cast ballots for acceptance or rejection of the Plan, i.e., acceptance takes place only if two-thirds
8 in amount and majority in numbers of the creditors actually voting cast their ballots in favor of
9 acceptance.

10 SINCE MAIL DELAYS MAY OCCUR, IT IS IMPORTANT THAT THE BALLOT OR
11 BALLOTS BE MAILED OR DELIVERED WELL IN ADVANCE OF THE DATE SPECIFIED. ANY
12 BALLOTS RECEIVED AFTER THIS DATE MAY NOT BE INCLUDED IN ANY CALCULATION
13 TO DETERMINE WHETHER THE DEBTOR'S CREDITORS HAVE VOTED TO ACCEPT OR
14 REJECT THE PLAN.

15 THIS IS A SOLICITATION BY THE PROPONENT ONLY AND IS NOT A SOLICITATION
16 BY THE PROPONENT'S ATTORNEY OR ACCOUNTANT, AND THE PRESENTATIONS MADE
17 HEREIN ARE THOSE OF THE PROPONENT AND NOT OF THE PROPONENT'S ATTORNEY
18 OR ACCOUNTANT, EXCEPT AS OTHERWISE INDICATED. THE RECORDS SUBSEQUENT
19 TO THE FILING OF THE PETITION FOR REORGANIZATION HAVE BEEN KEPT BY THE
20 DEBTOR-IN-POSSESSION AND MONTHLY FINANCIAL REPORTS HAVE BEEN SUBMITTED
21 BY THE DEBTOR-IN-POSSESSION FROM TIME TO TIME SINCE THE FILING OF THE
22 PETITION. WHILE EVERY REASONABLE EFFORT HAS BEEN MADE TO ENSURE THE
23 ACCURACY OF THE MONTHLY REPORTS, THEIR ACCURACY CANNOT BE GUARANTEED.

24
25 **VI. GENERAL INFORMATION AND DISCLOSURE**

26 Sources of Information.

27 Information relating to financial matters has been taken from the records of the Debtor and
28

1 interviews with the Debtor. Information of a legal nature has been provided by the counsel of record.
2 Debtor has maintained and provided accounting and financial information.

3 Current Condition of Debtor.

4 Debtor is currently earning income from his business and income from real property.

5 The Accounting Process.

6 The accounting process is conducted using generally accepted accounting principals.
7 Accounting information is furnished by the Debtor and is presented on a cash basis.

8 Inventory and Asset Description.

9 The Debtor's post-petition income is an asset of the estate. The Debtor's assets are listed in
10 Schedules A and B of the petition attached hereto as Exhibit E, Debtor's exempt property is listed in
11 Schedule C of the petition.

12 Future Management.

13 Management of Debtor's affairs will remain with Debtor.

14 The Anticipated Future of Debtors' Affairs.

15 It is the Debtor's intention, with lowered monthly expenses to utilize the improved cash flow
16 in a prudent way.

17 Incidents which led to the filing of the Chapter 11.

18 *See* ARTICLE IV of this Disclosure Statement.

19 Disclaimer regarding the information given.

20 *See* ARTICLE III of this Disclosure Statement.

21 Amount of claims scheduled.

22 *See* ARTICLES VII AND VIII.

23 The estimated return to the creditors if liquidated.

24 *See* ARTICLE XIII.

25 A copy of the proposed plan.

26 *See Exhibit "A"* included herewith and filed as a separate document.

27 Existence, likelihood, and possible success of bankruptcy litigation, if any.

28

1 No other bankruptcy litigation is anticipated.

2 The collectability of any accounts receivable.

3 The debtor currently has no accounts receivable.

4 Pre-petition transfers.

5 There were no pre-petition transfers.

6 Relationship of the Debtor with affiliates.

7 None.

8 Administrative Claims.

9 These claims consist of the expenses of administration of the estate including attorney fees
10 for Debtor's counsel and any unpaid fees to the U.S. Trustee. The Debtors estimate these costs and
11 expenses may be in excess of \$15,000.00.

12 Tax Claims.

13 As reflected in the original schedules filed by the Debtor, Debtor estimated tax claims in the
14 amount of \$0.00. This does not include any amounts that may be due for ad valorem claims which are
15 secured against real property, if any. Required treatment of tax claims is addressed in §§507(a)(8) &
16 1129(a)(9). The Debtor intends to treat all relevant tax claims as required by applicable bankruptcy and
17 state law.

18 Secured Claims.

19 As reflected in the original schedules filed by the Debtor, Debtor estimated secured claims in
20 the amount of \$946,637.56.

21 Unsecured Claims.

22 As reflected in the original schedules filed by the Debtor, Debtor estimated unsecured claims
23 in the amount of \$16,742.91, which does not include any deficiency amounts for secured creditors.

24 Domestic Support Claims.

25 Debtor is current with his domestic support obligation.

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VII. FINANCIAL INFORMATION

Debtor receives income from his business and income from real property. For additional information see Liquidation Analysis attached as **Exhibit “C”**. See Anticipated Income and Expense as **Exhibit “D”**.

VIII. SUMMARY OF THE PLAN OF REORGANIZATION

Classification and Treatment of Claims and Interests

1. *Claim Amounts:* Because certain claims against the Debtor may be unknown or of undetermined amounts, the amounts of claims specified in this Disclosure Statement reflect only the Debtor’s best estimate at this time of the amount due. In addition, the amounts of the claims specified in this Disclosure Statement do not include, for example, claims arising from the rejection of certain executory contracts and other contingent or unliquidated claims arising against the debtor.

2. *Effective Date of the Plan:* The “Effective Date” of the Plan is important in determining when performance of many of the Debtor’s obligations under the Plan is due. The Effective Date is defined in the Plan as the first business day following the later of the following day;

(I) the date on which the Order confirming the Plan (the “Confirmation Order”) becomes final and non-appealable with no appeal then pending; or

(ii) 60 days after the date of the Confirmation Order for unsecured claims; and

(iii) 30 days after the date of the Confirmation Order for secured claims.

3. *Classification:* The Plan divides claims against the Debtor, into multiple separate classes that the Debtor asserts are in accordance with the Bankruptcy Code. Unless otherwise expressly stated in the Plan, distributions to holders of allowed claims are in full satisfaction of their allowed claims. All claims against the Debtor arising prior to confirmation will be discharged by performance of the Plan on the Effective Date to the extent that such claims are dischargeable under the Bankruptcy Code Section 1141(d).

1 11 U.S.C. § 1111(b) Election

2 The Bankruptcy Code provides that a secured creditor may elect to have its entire claim treated
3 as a recourse claim subject to certain exceptions which may not be applicable. If Lender elects to
4 exercise its right to make an election to have its entire claim treated as recourse pursuant to 11 U.S.C.
5 § 1111(b)(2) it will not be entitled to a vote or distribution on its unsecured claim and will not be entitled
6 to interest payments on the unsecured portion of its entire claim. The 1111(b) election is required to be
7 made prior to the conclusion of the disclosure statement hearing or such other time as allowed by the
8 Court.

9 Other unsecured creditors will not have their unsecured claim affected by Lender's election and
10 will have the allowed amount of their unsecured claim paid according to the Plan.

11 The Plan provides for 12 classes of claims to be paid or administered in the following manner:

12 8.1 Class 1 - Administrative Claims

13 These claims are for the expenses of administration of the estate, including attorney fees for
14 Debtors' counsel in the approximate sum of \$15,000.00 and unpaid fees to the U.S. Trustee, if any.
15 Debtors believe, at the time that the Debtors' Chapter 11 Plan is confirmed, that there will be an
16 administrative expense claim in the approximate amount of \$15,000.00. The Plan provides for the
17 payment in cash, in full, of all allowed Administrative Claims on the later of the Effective Date or the
18 date upon which such Claims become Allowed Claims, or as otherwise ordered by the Bankruptcy Court
19 or agreed to by Claimant and Debtor. **(This class is not impaired.)**

20 8.2 Class 2 - Priority Claims of Governmental Units

21 A. Classification: Class 2 claims consists of all allowed claims of the United States
22 Internal Revenue Service ("IRS") and/or State of Arizona, Department of Revenue ("ADOR") and/or
23 the Arizona Department of Economic Security ("ADES"), City of Tucson or other government agency
24 which are entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code except ad valorem
25 taxes. Debtor is aware of Proofs of Claim filed by the Internal Revenue Services in the amount of
26 \$3,066.57, the Arizona Department of Revenue in the amount of \$6,402.82 and \$2,400.00, and the City
27 of Tucson in the amount of \$3,086.24.

28 B. Impairment: Class 2 is impaired.

1 C. Treatment: In the event there are determined to be allowed Class 2 claims, each
2 holder of a Class 2 allowed claim shall retain its claim, in accordance with Section 1129 of the
3 Bankruptcy Code. The claim shall bear simple interest at a fixed rate equal to that rate which would be
4 required to be paid as of the Effective Date under Section 6621 and/or 6622 of the Internal Revenue
5 Code, or such other interest rate as the Bankruptcy Court determines is sufficient to confer upon the tax
6 note a value as of the Effective Date equal to the principal amount of such claim. The allowed claim
7 shall be payable in equal monthly installments of principal, along with accrued interest, in deferred cash
8 payments over a period not to exceed five years from the date of petition. The first payment shall
9 commence on the first day of the month immediately following the month of the Effective Date. The
10 claim is subject to prepayment at any time without penalty or premium and shall have such other terms
11 as are required by law. In the event the Debtor defaults on any payment due as required under the
12 confirmed plan, and in the event the Debtor fails to cure said default within thirty days after written
13 notice of the default is mailed to the Debtor and the Debtor's attorney, the entire imposed liability
14 together with any unpaid current liabilities, shall become due and payable immediately unless amended
15 by the Court. The governmental unit may collect unpaid liabilities that become due as a result of the
16 default through the administrative collection provisions or the judicial remedies. The governmental unit
17 shall not be required to seek a modification from the automatic stay to collect any tax liabilities that were
18 not discharged by the confirmation of the plan and from property that has reverted with the Debtor.

19 8.3 Class 3 - Secured Tax Claims of Arizona Department of Revenue ("ADOR")

20 A. Classification: Class 3 shall consist of the allowed ADOR secured tax claim
21 which are secured by ADOR tax liens. ADOR has filed a claim in the amount of \$14,907.58.

22 B. Impairment: Class 3 is impaired.

23 C. Treatment: ADOR's pre-petition secured claim shall be paid, in regular
24 installments, with interest, over 96 months. The claim shall bear simple interest at a fixed rate equal to
25 that rate which would be required to be paid as of the Effective Date under Section 6621 and/or 6622
26 of the Internal Revenue Code, or such other interest rate as the Bankruptcy Court determines is sufficient
27 to confer upon the tax note a value as of the Effective Date equal to the principal amount of such claim.
28 Payments will commence thirty days after the Effective Date. Interest on the claim shall be at the rate

1 in effect on the Effective Date of the Plan. The Debtors' first payment under the Plan for the secured
2 claim shall be made thirty days from the effective date of the Plan and shall continue on the first day of
3 each month thereafter until paid off. In the event the Debtor defaults on any payment due as required
4 under the confirmed plan, and in the event the Debtor fails to cure said default within thirty days after
5 written notice of the default is mailed to the Debtor and the Debtor's attorney, the entire imposed
6 liability together with any unpaid current liabilities, shall become due and payable immediately. The
7 governmental unit may collect unpaid liabilities that become due as a result of the default through the
8 administrative collection provisions or the judicial remedies. The governmental unit shall not be required
9 to seek a modification from the automatic stay to collect any tax liabilities that were not discharged by
10 the confirmation of the plan and from property that has reverted with the Debtor.

11 8.4 Class 4 - Secured Tax Claims of City of Tucson ("City")

12 A. Classification: Class 4 shall consist of the allowed City secured tax claim which
13 are secured by City tax liens. City has filed a claim in the amount of \$16,667.74.

14 B. Impairment: Class 4 is impaired.

15 C. Treatment: City's pre-petition secured claim shall be paid, in regular installments,
16 with interest, over 96 months. Payments will commence thirty days after the Effective Date. Interest on
17 the claim shall be at the rate in effect on the Effective Date of the Plan. The Debtors' first payment under
18 the Plan for the secured claim shall be made thirty days from the effective date of the Plan and shall
19 continue on the first day of each month thereafter until paid off.

20 8.5 Class 5 - Secured Ad Valorem Real Property Tax Claims

21 A. Classification: Class 5 shall consist of pre-petition allowed Ad Valorem Real
22 Property Tax Claims which are secured by liens on real property. Pima County has filed a claim in the
23 amount of \$3,616.34, \$1,451.10 and \$7,799.79.

24 B. Impairment: Class 5 is impaired

25 C. Treatment: In the event there are determined to be allowed Class 5 claims, each
26 holder of a Class 5 allowed claim shall retain its lien having an aggregate principal amount sufficient
27 to satisfy, in accordance with Section 1129 of the Bankruptcy Code, the allowed claim. Such claim shall
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1 bear simple interest at a statutory rate of 16% per annum required to be paid as of the Effective Date,
2 or such other interest rate as the Bankruptcy Court determines is sufficient to confer upon the tax claim
3 a value as of the Effective Date equal to the principal amount of such claim charged by the taxing
4 authority, or the statutory rate of interest. Payments shall be made in equal monthly installments of
5 principal, along with accrued interest, in deferred cash payments over a period not to exceed five years
6 from date of petition. The claim is subject to prepayment at any time without penalty or premium and
7 shall have such other terms as are required by law.

8 8.6 Class 6 - Secured Claim of Deutsche Bank National Trust Company c/o Select Portfolio
9 Servicing, Inc. ("Deutsche")

10 A. Classification: Class 6 consists of the allowed secured claim of Deutsche to the
11 extent of the value of the secured creditor's interest in the Debtor's interest in the real property known
12 as 2327 E. Bantam Rd., Tucson, AZ 85706. This claim is evidenced by a deed of trust. Deutsche has
13 filed a claim in the amount of \$196,189.78.

14 B. Impairment: Class 6 is impaired.

15 C. Treatment: Debtor will continue to make payments pursuant to the existing
16 mortgage contract or such other terms and conditions ordered by the Court or stipulated to by Debtor and
17 Deutsche. Tax and insurance escrows, if any, will continue to be paid pursuant to the terms of the Note
18 and Deed of Trust as amended or modified. Pre-petition arrears, if any, will be paid in sixty (60) equal
19 monthly installments beginning 30 days after the Effective Date of the Plan.

20 8.7 Class 7 - Secured Claim of Seterus, Inc. ("Seterus")

21 A. Classification: Class 7 consists of the allowed secured claim of Seterus
22 to the extent of the value of the secured creditor's interest in the Debtors' interest in the real property
23 located at 5425 S. Cassia Way, Tucson, AZ 85706. This claim is evidenced by a promissory note and
24 deed of trust. Seterus has filed a proof of claim in the amount of \$130,833.31.

25 B. Impairment: Class 7 is impaired.

26 C. Treatment: Debtor will continue to make payments pursuant to the existing
27 mortgage contract or such other terms and conditions ordered by the Court or stipulated to by Debtor and
28

1 Seterus. Tax and insurance escrows, if any, will continue to be paid pursuant to the terms of the Note
2 and Deed of Trust as amended or modified. Pre-petition arrears, if any, will be paid in sixty (60) equal
3 monthly installments beginning 30 days after the Effective Date of the Plan.

4 8.8 Class 8 - Secured Claim of Francisco G. Davila and Magdalena C. Davila, and Marta
5 Elena Davila-Becklim (“Davila’s”)

6 A. Classification: Class 8 consists of the allowed secured claim of the Davila’s to
7 the extent of the value of the secured creditor’s interest in the Debtors’ interest in the real property
8 located at “Commercial land” 4817 S. 12th Avenue, Tucson, AZ 857146. This claim is evidenced by a
9 promissory note and deed of trust. The Davila’s filed a proof of claim in the amount of \$78,162.40.

10 B. Impairment: Class 8 is impaired.

11 C. Treatment: Debtor has not recently had the property appraised, but believes the
12 current value of the property is \$46,000.00.

13 IN THE EVENT THE DEBTOR IS ABLE TO REACH A STIPULATION WITH DAVILA’S
14 AS TO ITS TREATMENT, THE TERMS AND CONDITIONS THEREIN WILL SUPERCEDE THE
15 TREATMENT SET FORTH HEREIN. Under § 506 of the Bankruptcy Code, a secured creditor has a
16 secured claim to the extent of the creditor’s interest in the Debtor’s interest in the collateral and an
17 unsecured claim for the balance, if any, unless the creditor makes a 1111(b) election, and, if eligible,
18 elects to have its claim treated as fully secured. The allowed amount of the creditor’s secured claim will
19 be the lesser of value of the creditor’s interest in the Debtor’s interest in the property as determined
20 under § 506, or the allowed amount of the creditor’s claim. Debtor has not recently had the property
21 appraised, but believes the current value of the property is \$46,000.00. The Debtor proposes to limit
22 the Class 8 creditor’s secured claim to \$46,000.00 and to treat the balance of its claim, if any, as an
23 unsecured deficiency claim and treat and pay it as a Class 10 unsecured creditor.

24 The allowed claim of the Class 8 creditor shall be paid, assuming no 1111(b) election is made
25 by creditor, and secured by the second lien evidenced by a mechanics lien as follows:

26 1. The allowed secured claim shall accrue interest from the Effective Date of the Plan
27 at the rate of 5.00 % per annum fixed. The Class 8 creditor is not entitled to interest on its allowed
28

1 secured claim from the Petition date to the Confirmation Date as the current market value of the real
2 property is less than the amount of Davila's claim.

3 2. The note shall be payable in equal monthly installments of principal and interest
4 amortized over twenty (20) years. The first monthly installment shall be due thirty (30) days after the
5 Effective Date of the Plan and subsequent monthly installments shall be due on the same day of each
6 subsequent month. On the twentieth anniversary of the Effective Date of the Plan the outstanding
7 principal balance of the note and all accrued and unpaid interest thereon shall be due and payable in full.
8 The final payment shall be made either from proceeds of the sale or refinancing of the property or
9 contributions of the owners of the property at the time the final payment is due. Unless modified herein
10 tax and insurance escrows, if any, will continue to be paid pursuant to the terms of the Note and Deed
11 of Trust.

12 3. The note of the Class 8 creditor shall continue to be secured by its first position deed
13 of trust on the property but the note and any obligation due the Class 8 creditor, which is secured by the
14 above deed of trust, shall be non-recourse to the Debtor. Any security for payment of the allowed claim
15 which Davila's had at the petition date other than the deed of trust above described which encumbers
16 the property Davila's shall retain post-confirmation.

17 4. The Debtor and the Class 8 creditor shall agree to execute such modifications to
18 the existing note and deed of trust as are reasonably necessary to reflect the provisions of the Plan
19 treatment for this creditor.

20 5. Any difference between current market value and obligation due lender shall be treated
21 as a Class 10 unsecured claim and will be paid on a *pro-rata* basis from Debtors' disposable income.

22 8.9 Class 9 - Secured Claim of David J. McHenry, Trustee of the David J. McHenry Family
23 Trust dtd 8/30/1996 ("McHenry")

24 A. Classification: Class 9 consists of the allowed secured claim of McHenry to the
25 extent of the value of the secured creditor's interest in the Debtor's interest in the real property known
26 as 4801 S. 12th Avenue, Tucson, AZ 85714. This claim is evidenced by a deed of trust. McHenry has
27 filed a claim in the amount of \$468,628.42.

28

1 B. Impairment: Class 9 is impaired.

2 C. Treatment: Debtor is obtaining an appraisal of the property, but believes the
3 current market value of the property is \$230,000.00.

4 IN THE EVENT THE DEBTOR IS ABLE TO REACH A STIPULATION WITH MCHENRY
5 AS TO ITS TREATMENT, THE TERMS AND CONDITIONS THEREIN WILL SUPERCEDE THE
6 TREATMENT SET FORTH HEREIN. Under § 506 of the Bankruptcy Code, a secured creditor has a
7 secured claim to the extent of the creditor's interest in the Debtor's interest in the collateral and an
8 unsecured claim for the balance, if any, unless the creditor makes a 1111(b) election, and, if eligible,
9 elects to have its claim treated as fully secured. The allowed amount of the creditor's secured claim will
10 be the lesser of value of the creditor's interest in the Debtor's interest in the property as determined
11 under § 506, or the allowed amount of the creditor's claim. Debtor has not recently had the property
12 appraised, but believes the current value of the property is \$230,000.00. The Debtor proposes to limit
13 the Class 9 creditor's secured claim to \$230,000.00 and to treat the balance of its claim, if any, as an
14 unsecured deficiency claim and treat and pay it as a Class 10 unsecured creditor.

15 The allowed claim of the Class 9 creditor shall be paid, assuming no 1111(b) election is made
16 by creditor, and secured by the first lien mortgage evidenced by a promissory note and deed of trust,
17 modified as follows:

18 1. The allowed secured claim shall accrue interest from the Effective Date of the Plan
19 at the rate of 4.00 % per annum fixed. The Class 9 creditor is not entitled to interest on its allowed
20 secured claim from the Petition date to the Confirmation Date as the current market value of the real
21 property is less than the amount of McHenry's claim.

22 2. The note shall be payable in equal monthly installments of principal and interest amortized
23 over thirty (30) years. The first monthly installment shall be due thirty (30) days after the Effective Date
24 of the Plan and subsequent monthly installments shall be due on the same day of each subsequent month.
25 On the thirtieth anniversary of the Effective Date of the Plan the outstanding principal balance of the
26 note and all accrued and unpaid interest thereon shall be due and payable in full. The final payment shall
27 be made either from proceeds of the sale or refinancing of the property or contributions of the owners
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1 of the property at the time the final payment is due. Unless modified herein tax and insurance escrows,
2 if any, will continue to be paid pursuant to the terms of the Note and Deed of Trust.

3 3. The note of the Class 9 creditor shall continue to be secured by its first position deed
4 of trust on the property but the note and any obligation due the Class 9 creditor, which is secured by the
5 above deed of trust, shall be non-recourse to the Debtor. Any security for payment of the allowed claim
6 which McHenry had at the petition date other than the deed of trust above described which encumbers
7 the property McHenry shall retain post-confirmation.

8 4. The Debtor and the Class 9 creditor shall agree to execute such modifications to
9 the existing note and deed of trust as are reasonably necessary to reflect the provisions of the Plan
10 treatment for this creditor.

11 5. Any difference between current market value and obligation due lender shall be treated
12 as a Class 10 unsecured claim and will be paid on a *pro-rata* basis from Debtors' disposable income.

13 8.10 Class 10 - Unsecured Deficiency Claims and Unsecured Claims.

14 A. Classification: Class 10 consists of all unsecured deficiency claims and unsecured
15 claims against the debtor. Debtors estimated unsecured claims in the amount of \$16,742.91, which does
16 not include any deficiency amounts for secured creditors.

17 B. Impairment: Class 10 is impaired.

18 C. Treatment: All allowed and approved claims under this Class shall be paid the
19 sum of \$690.00 on a quarterly basis, *pro rata*, from Debtors' disposable income, to be paid on the last
20 day of each quarter, beginning with the quarter ending after the Effective Date and anticipated to be
21 September 30, 2016, and continuing each quarter thereafter for five years. Any liens held by the Class
22 10 creditors shall be null and void and removed as of the Effective Date.

23 8.11 Class 11 - Contingent, Unliquidated and Disputed Claims.

24 A. Classification: Class 11 consists of all contingent, unliquidated and disputed
25 claims.

26 B. Impairment: Class 11 is impaired.

27 C. Treatment: Class 11 creditors shall receive no distribution under the Plan.
28

1 third party financing, although currently Debtor has no plans or ability to do so. Debtor believes that
2 by virtue of Confirmation of the Plan, they will have the ability to pay all allowed and approved claims
3 pursuant to the Plan of Reorganization. The unsecured creditors will be paid a total of \$13,800.00 under
4 the Plan of Reorganization.

5 **XII. ABSOLUTE PRIORITY RULE**

6 Debtors will make every effort to confirm a consensual Plan by meeting all the requirements of
7 11 U.S.C. § 1129(a). However, if a secured or unsecured creditor votes against the Plan, Debtors request
8 that the Court confirm the Plan over the objection of the creditor pursuant to 11 U.S.C. § 1129(b). In the
9 event a secured creditor objects or does not vote for the Plan, the Plan is fair and equitable as it proposes
10 that each secured creditor will retain its lien on its collateral and will be paid the value of its Allowed
11 Secured Claim in payments with interest.

12 Property of the estate includes all interest of the debtor in property as of the commencement of
13 the case. 11 U.S.C. § 541 (a). Individual debtors then claim exemptions and the property claimed exempt
14 is withdrawn from the estate. *Owen v. Owen*, 500 U.S. 305,308, 111 S. Ct. 1833, 114 L. Ed. 2d 350
15 (1991); accord *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 478 (9th Cir. 2000). As exempt property
16 is withdrawn from the estate under Section 541(a), an individual debtor is permitted to retain exempt
17 property under the absolute priority rule.

18 19 **XIII. CHAPTER 7 LIQUIDATION ANALYSIS**

20 Pursuant to the provisions of the Bankruptcy Code providing for Court approval of a Plan or
21 Reorganization, Debtor is required to pay creditors at least as much as creditors would receive in a
22 Chapter 7 liquidation case, after costs of administration and the liquidation of the Debtor's assets. 11
23 U.S.C §1129(a)(7)(ii). A Liquidation Analysis is attached hereto as **Exhibit "C"**. The Liquidation
24 Analysis represents an estimate of recovery based upon hypothetical liquidation assumptions whereby
25 a Trustee would liquidate the Debtors' assets to convert assets to cash and settle claims. The
26 determination of the hypothetical proceeds from the liquidation of assets is an uncertain process
27 involving the use of estimates and assumptions that, although considered reasonable, are inherently
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1 subject to business, economic and competitive contingencies beyond the control of the Debtor.

2
3 **XIV. CRAM-DOWN**

4 If all impaired classes do not accept the Plan, the Debtor, Debtor-in-Possession will use the
5 “cram-down” provisions of section 1129(b) of the Bankruptcy Code. Cram-down is a colloquial term
6 for confirmation of a Plan over the dissent of a class of holders of claims.

7
8 **XV. TAX CONSEQUENCES**

9 Neither the Debtor nor Debtor’s lawyer can make any statements with regard to the tax
10 consequences of the Plan on any of the creditors. Each creditor in this case, when analyzing the Plan,
11 should consult with its own professional advisors to determine whether or not acceptance of the Plan by
12 the creditor will result in any adverse tax consequences to the creditor.

13
14 **XVI. IMPLEMENTATION AND CONSUMMATION OF PLAN**

15 The terms of the Plan subsequent to confirmation shall bind the Debtor, any entity acquiring
16 property under the Plan, and any creditor or claimant, whether or not such creditor or claimant has
17 accepted the Plan. All property of the estate shall vest in the Debtor and shall be free from attachment,
18 levy, or garnishment of execution by creditors bound by the Plan.

19 ALL SECURED CREDITORS SHALL PROVIDE THE DEBTOR WITHIN 60 DAYS OF THE
20 EFFECTIVE DATE, A NEW PAYMENT BOOK REFLECTING AMOUNT OF MODIFIED
21 PAYMENTS, IF ANY AND/OR MONTHLY STATEMENTS REFLECTING THE NEW MONTHLY
22 PAYMENTS AMOUNTS DUE AS SET FORTH UNDER THE TERMS OF THE CONFIRMED
23 PLAN OF REORGANIZATION.

24 It shall be the obligation of each creditor participating under the Plan to keep the Debtor advised
25 of its current mailing address. In the event any payment tendered to creditors is mailed, postage prepaid,
26 (1) to the address specified in the Debtor’s schedules and statement, (2) to the address specified in any
27 proof of claim filed by creditor or claimant here or (3) to the address provided by any such creditor or
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1 claimant for purposes of distribution, and if subsequently the Post Office returns such distribution due
2 to a lack or insufficiency of address or forwarding address, the Debtor shall retain such distribution for
3 a period of six months. Thereafter, the distribution shall revert to the Debtor without further Order from
4 the Court and free and clear of any distributions to any creditor for whom a distribution has been
5 returned by the Post Office. The Debtor reserves the right to modify the Plan in accordance with §1127
6 of the Bankruptcy Code. The Plan may be modified prior to confirmation provided that the plan still
7 complies with §1122 and §1123 of the Bankruptcy Code. The Plan may be modified subsequent to
8 confirmation and before substantial consummation of the Plan under such circumstances as may warrant
9 such under §1127 of the Bankruptcy Code. Any holder of a claim or interest that has previously accepted
10 or rejected a confirmed Plan, shall be deemed to have accepted or rejected any subsequently modified
11 Plan unless the holder of such claim or interest changes its acceptance or rejection of the Plan within the
12 time fixed by the Court.

13 14 15 **XVII. QUARTERLY FEES AND REPORTS**

16 Debtor shall continue to pay quarterly fees to the U.S. Trustee System until such time as a
17 Final Decree has been entered in this matter by the Court, closing this Chapter 11 proceeding. Debtor
18 shall continue to file monthly operating reports until such time as the Court enters an Order
19 confirming this Chapter 11 Plan of Reorganization. At such time, Debtor shall cease filing monthly
20 operating reports and shall begin filing quarterly post confirmation reports. These quarterly reports
21 shall be filed until such time as a Final Decree has been entered in this matter by the Court, closing
22 this Chapter 11 proceeding.

23 24 **XVIII. RETENTION OF JURISDICTION**

25 The Bankruptcy Court will retain jurisdiction over this case for purposes of determining the
26 allowance of claims or objections to claims. The Court will also retain jurisdiction for purposes of
27 fixing allowances for compensation and/or for purposes of establishing bar dates and making a
28

1 determination with respect to all disputed claims. Finally, the Court shall retain jurisdiction for
2 purposes of determining any dispute arising from the interpretation, implementation or
3 consummation of the Plan and to implement and enforce the provisions of estoppel, the principles of
4 *res judicata* or collateral estoppel with respect to any term or provision contained herein in the event
5 the Plan is not confirmed.

6 The Court may enter a Final Decree and retain jurisdiction over this case to reopen the case to
7 provide relief including the entering of a Discharge Order.

8 9 **XIX. REPRESENTATION**

10 No representations concerning the Debtor are authorized by the Debtor other than as set forth
11 in this statement. Any representation or inducement made to secure your acceptance other than as
12 contained in this statement should not be relied upon by you in arriving at your decision, and such
13 additional representations and inducements should be reported to counsel for the Debtor, who, in
14 turn, shall deliver such information to the Bankruptcy Court for such action as may be deemed
15 appropriate.

16 17 **XX. CONCLUSION**

18 It is respectfully submitted that Debtor has given every thought to the complex problems
19 confronting Debtor, and, with the assistance of counsel, have devised and formulated this Plan with
20 the hope that the equitableness of the Plan will be considered favorable by creditors.

21
22 RESPECTFULLY SUBMITTED: September 21, 2016.

23
24 LAW OFFICES OF
ERIC SLOCUM SPARKS, P.C.

25 /s/ Sparks AZBAR #11726
26 Eric Slocum Sparks
27 Attorney for Debtor
28

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