

1 Philip R. Rudd (SBN 014026)
Philip.Rudd@SacksTierney.com
2 Wesley D. Ray (SBN 026351)
Wesley.Ray@SacksTierney.com
3 James S. Samuelson (SBN 017471)
Samuelson@SacksTierney.com
4 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
5 Scottsdale, AZ 85251-3693
Telephone: 480.425.2600
6 Facsimile: 480.970.4610
Attorneys for Debtor
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

10 In Re:

Chapter 11 Proceedings

11 ALAN R. MISHKIN,

No. 2-15-bk-15440-PS

12 Debtor.

**AMENDED DISCLOSURE STATEMENT IN
SUPPORT OF DEBTOR'S FIRST JOINT
AMENDED PLAN OF REORGANIZATION
DATED JUNE 24, 2016**

13
14
15 Alan R. Mishkin, debtor and debtor-in-possession in the above-captioned bankruptcy case
16 (“**Debtor**”), hereby submits to the Court and creditors of his estate the following *Amended*
17 *Disclosure Statement in Support of First Joint Amended Plan of Reorganization Dated June 24,*
18 *2016.* (“**Disclosure Statement**”) pursuant to 11 U.S.C. § 1125.

19 **I. INTRODUCTION**

20 Section 1125(b) of the Bankruptcy Code prohibits the solicitation of acceptances or
21 rejections of a plan of reorganization unless such plan is accompanied by a copy of the Disclosure
22 Statement which has been approved by the Bankruptcy Court.

23 The purpose of this Disclosure Statement is to provide creditors and interested parties in
24 this bankruptcy proceeding with such information as is sufficient to allow them to make an
25 informed decision regarding the *Debtor's First Joint Amended Plan of Reorganization Dated June*
26 *24, 2016* filed on June 24, 2016 at Docket No. 245 (the “**Plan**”).

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

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

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

12 This Disclosure Statement and the Plan will classify all creditors into classes. The
13 treatment of each class of creditors will be set forth in this Disclosure Statement and in the Plan.
14 You should carefully examine the treatment of the class to which your claim will be assigned.

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

20 The Bankruptcy Court will confirm the Plan if the requirements of Section 1129 of the
21 Bankruptcy Code are satisfied. The Bankruptcy Court must determine whether the Plan has been
22 accepted by each impaired class entitled to vote on the Plan. Impaired classes entitled to vote on
23 the Plan are those classes of claims whose legal, equitable, or contractual rights are altered, as
24 defined under Section 1124 of the Bankruptcy Code. An impaired class of claims is deemed to
25 have accepted the Plan if at least two-thirds (2/3) in amount of those claims who vote and more
26 than one-half (1/2) in number of those claims who vote have accepted the Plan. An impaired class
27 of interests is deemed to have accepted the Plan if the Plan has been accepted by at least two-thirds
28 (2/3) in amount of the allowed interests who vote on the Plan.

1 Only the votes of those Creditors or interested parties whose ballots are timely received will
2 be counted in determining whether a class has accepted the Plan. Even if each class of Creditors
3 does not accept the Plan, the Plan can be confirmed under Section 1129(b) of the Bankruptcy
4 Code, so long as one impaired class of Creditors accepts the Plan.

5 **II. DEFINITIONS**

6 Unless otherwise defined herein, capitalized terms shall have meanings ascribed to them in
7 the Plan.

8 **III. A BRIEF HISTORY OF THE DEBTOR**

9 The Debtor, who is 74 years old, is a longtime, highly respected real estate developer and
10 entrepreneur in Arizona, Colorado, Nevada and Mexico. Throughout his career, the Debtor (both
11 individually and through a variety of corporate entities) and his partners owned, developed, and
12 operated several commercial projects, residential multi-family and condominium projects, radio
13 stations, and nearly 25 private and semi-private golf facilities (including the famed Arizona
14 Biltmore Golf Courses and the Scottsdale Country Club). These development and business
15 ventures have included an interest in the Telluride Companies, which own and operate the
16 Telluride ski mountain, golf club and related facilities in Colorado; development of a home
17 furnishings retail business offering the exclusive MacKenzie-Childs lines and operating in the
18 Arizona Biltmore Fashion Center; development of new restaurant concepts throughout Arizona;
19 part owner of the Los Abrigados Resort in Sedona, Arizona; and as a founding partner of MCW
20 Holdings LLC, a mixed-use real estate development company in Tempe, Arizona. MCW
21 developed, among other projects, Brickyard on Mill, which features 125,000 sq.ft. of "Class A"
22 office space, 105,000 sq.ft. of retail and restaurant space and 115,000 sq.ft. of for sale loft
23 condominiums.

24 In 2004, the Debtor co-developed the 350-acre Las Palomas Golf Resort in Puerto Peñasco
25 (Rocky Point), Mexico ("**Las Palomas**"). That project entailed ground entitlements,
26 environmental approval from the Mexican Coastal Authority, and the planning and design of more
27 than 2,500 high rise and home residential units, meeting facilities and an 18-hole links style golf
28 course. The project was awarded the International Golf Development of the Year by Golf Inc.

1 Magazine International and is considered the forerunner of beach front development for the State
2 of Sonora, Mexico.

3 Unfortunately, the Great Recession of the past several years had a severe detrimental
4 impact on the Debtor, particularly with respect to his work on the Las Palomas project. Various
5 disputes between and among, *inter alia*, (i) the Debtor (individually and through his entity, Abigail
6 Properties, LLC ("**Abigail Properties**")), (ii) the co-developer of Las Palomas--WorldWide Group,
7 S.A. de C.V. ("**Worldwide Group**" or "**WWG**"), and (iii) WWG's lender/financer--Adamantine
8 S.A. de C.V. ("**Adamantine**"), resulted in a parting of the ways between the Debtor and the Las
9 Palomas project and significant litigation between, among others, WWG and Adamantine (the
10 "**WWG/Adamantine Litigation**"). The Debtor invested significant personal assets and funds into
11 the Las Palomas project in an attempt to salvage the rights of condominium owners and to preserve
12 his rights and interests in the project. The Debtor has asserted that WWG still owes fees,
13 commissions and other payments to him and Abigail Properties (the collectability of which is
14 highly suspect); WWG has asserted that the Debtor is indebted to WWG with respect to certain
15 condominium units for which the Debtor had contracts; and Adamantine asserts that it controls
16 certain of WWG's assets, including certain contracts between WWG and the Debtor. In sum, the
17 Debtor's involvement in the Las Palomas project, and his interests in certain real property in
18 Mexico, is currently the subject of significant disputes among several parties.

19 As a result of his attempts to salvage the Las Palomas project and the aftermath of the Great
20 Recession, the Debtor has retained no income producing property. In fact, as reflected in his
21 Schedules of Assets and Statement of Financial Affairs, the Debtor's monthly income is limited to
22 social security payments of approximately \$2,657.50 per month while the Debtor's ordinary living
23 expenses exceed approximately \$13,622 per month. Prior to his bankruptcy filing, the Debtor
24 liquidated certain of his assets, including artwork and jewelry, in order to pay his living expenses.

25 Since the Petition Date, and pursuant to the Court's *Stipulated Interim Order Approving*
26 *Debtor-in-Possession Financing on a Junior Secured Basis* ("**Stipulated DIP Financing Order**")
27 dated March 14, 2016 [Dkt. No. 113], the Debtor has obtained post-petition loans, secured by a
28 junior lien in the Debtor's Membership Interests, from ILMD, LLC ("**ILMD**"), an entity related to

1 his son, Keith Mishkin ("**Keith**"), in the amount of approximately \$12,000 per month for a period
2 of 90 days through June 2016 to pay his post-petition living and business expenses. The Debtor
3 recently submitted, and the Court approved and entered, a subsequent *Unopposed Interim Order*
4 *Authorizing Debtor -In-Possession Financing On An Unsecured, Pari Passu, Basis* ("**Second DIP**
5 **Financing Order**") authorizing the Debtor to obtain additional financing from ILMD in the
6 amount of \$12,000 per month for an additional 90 days on an unsecured basis, *pari passu* with
7 other general unsecured creditors.

8 Despite the Debtor's hard times and nominal income, the Debtor continues to own
9 membership interests in two Arizona limited liability companies that have significant value.
10 Specifically, the Debtor owns a 20% membership interest in McWin, LLC ("**McWin**"). McWin
11 owns a 50% membership interest in 10K, LLC ("**10K**"). The Debtor also owns, directly, an 11%
12 interest in 10K. Thus, in total, the Debtor owns an approximately 21% interest in 10K. 10K, in
13 turn, currently has an interest¹ in approximately 12,105 acres of undeveloped real property in
14 Buckeye, Arizona, generally known as the "**Sun Valley Land.**" The Sun Valley Land has been
15 appraised at approximately \$13,000 per acre for a total value of approximately \$157,365,000. The
16 Debtor's 21% membership interest in 10K (through McWin and directly) (collectively, the
17 "**Membership Interests**"), after adjustments, has been valued by an independent appraiser, Henry
18 & Horne, LLP ("**Henry & Horne**") at between \$27,394,780 and \$30,801,794.

19 Over the years, the Sun Valley Land has been the subject of a series of transactions and
20 significant litigation relating to those transactions. *See e.g.* Cal X-Tra *et al.* v. Phoenix Holdings II,
21 LLC, *et al.*, Case No. CV 2003-008362 (the "**WVSV Litigation**") pending in the Superior Court of
22 Arizona for the County of Maricopa (the "**State Court**"). The ultimate resolution of the WVSV
23 Litigation will define 10K's and McWin's rights in and to the Sun Valley Land, and their claims
24 against WVSV and others involved in the WVSV Litigation. At this time, however, the precise
25 nature of 10K's and McWin's rights and interests in the Sun Valley Land, and its claims and rights
26 against WVSV and others, have not been fully defined and established. Nevertheless, the

27
28 ¹ As discussed below, 10K's interests in the Sun Valley Land are currently the subject of litigation
in Maricopa County Superior Court and are not currently fully defined or established.

1 appraisal of the Debtor's Membership Interests has taken the WVSV Litigation into account.
2 Moreover, as discussed below, the Plan provides that the Bankruptcy Court will make a finding of
3 the value of the Membership Interests based upon evidence presented by interested parties in
4 connection with the confirmation of the Plan.

5 The Debtor's Membership Interests are currently the subject of litigation between the
6 Debtor and SLPR, LLC ("**SLPR**"). Generally, SLPR made a series of loans to the Debtor,
7 purportedly secured by a lien in the Debtor's Membership Interests (the "**SLPR Loans**"). In
8 addition to making the SLPR Loans, SLPR made certain "protective advances" to protect its
9 security interests in the Debtor's interests in 10K and McWin.² Upon information and belief,
10 SLPR advanced approximately \$4.5 million to or for the benefit of the Debtor. However, as set
11 forth in its Proof of Claim (Claim No. 11), SLPR asserts that its unpaid claims against the Debtor
12 total approximately \$12,319,433 and accrue interest at the rate of \$5,463 per day. In addition to
13 certain defenses and counter-claims asserted by the Debtor against SLPR, discussed below, the
14 Debtor vigorously disputes the amount of SLPR's asserted claim and has requested an accounting
15 from SLPR.

16 In 2013, SLPR filed suit against the Debtor in the Superior Court of Maricopa County,
17 initiating Case No. CV2013-015514 (the "**SLPR State Court Litigation**"). Following the
18 Petition Date, the Debtor removed the SLPR State Court Litigation to the Bankruptcy Court,
19 initiating Adversary Proceeding No. 2:16-ap-00048-PS (the "**SLPR Adversary Proceeding**").
20 Generally, SLPR asserts in the SLPR Adversary Proceeding, among other things, that the Debtor
21 and SLPR (through its principal, Leo Beus ("**Beus**")) had reached an agreement for SLPR to
22 purchase the Debtor's Membership Interests. The purchase price equated to approximately \$5,500
23 per acre. SLPR sought to enforce this alleged agreement.

24
25
26 ² SLPR did not call these advances "protective advances," but instead represented to 10K and
27 McWin that it held the Debtor's rights and assumed the Debtor's position with respect to 10K's
28 purchase of 855 acres of Sun Valley Land. The Debtor disputes this assertion by SLPR and asserts
that the Debtor retains his interest in the 855 acres. This is one of many reasons that the Debtor
requires an accounting of SLPR's asserted claim.

1 The Debtor has filed an answer to SLPR's complaint and has asserted certain counterclaims
2 against SLPR and cross-claims against other parties related to SLPR, including Beus, Paul Gilbert
3 ("Gilbert") and the Beus Gilbert PLLC law firm ("**Beus Gilbert**"), in the SLPR Adversary
4 Proceeding. The Debtor has asserted a variety of viable defenses, counter-claims, cross-claims and
5 offsets with respect to SLPR's asserted claims. The Arizona District Court has withdrawn the
6 reference of the Debtor's third-party claims against, among others, Beus, Gilbert and Beus Gilbert.
7 There is currently a motion pending before the District Court to send these claims to arbitration.
8 However, the Bankruptcy Court retains jurisdiction over SLPR's asserted claims against the Debtor
9 and the Debtor's defenses and counter-claims against SLPR. There are currently unresolved
10 dispositive motions by each side pending before the Bankruptcy Court. Ultimately, the
11 Bankruptcy Court will determine the allowed amount of SLPR's asserted claims against the Debtor
12 through the resolution of the SLPR Adversary Proceeding and any related claims allowance
13 proceedings.

14 Prior to filing this Chapter 11 case, multiple parties expressed an interest in either buying
15 the Debtor's Membership Interests, or lending the Debtor enough money to pay his creditors over
16 time, by using the Debtor's Membership Interests as collateral. In fact, about one and a half years
17 before the bankruptcy filing, the Debtor and an outside party discussed the Debtor's potential sale
18 of his Membership Interests to such party for approximately \$23 million. For a variety of reasons,
19 including some that are the subject of the SLPR Adversary Proceeding, the Debtor did not pursue
20 the sale of the Membership Interests at that time. The Debtor is currently conducting discovery
21 regarding these issues.

22 Subsequent to this offer, and about six months before the filing of the Chapter 11 case,
23 another party indicated an interest to either purchase the Membership Interests or loan money to
24 the Debtor secured by the Membership Interests. However, those potential deals never closed for a
25 variety of reasons. Again, the Debtor is conducting discovery relating to these issues.

26 Also, not long before the filing of the Chapter 11 case, the Debtor sent a formal proposal to
27 his fellow members regarding the Membership Interests. The proposal indicated that he would sell
28 his interest to his fellow members at a discount. The Debtor is informed that three of the members

1 indicated an interest but, for unknown reasons, did not pursue their interest. The Debtor intends to
2 conduct discovery with respect to 10K, McWin and their members with respect to these issues.

3 In any event, the Debtor does not intend to sell his Membership Interests pursuant to the
4 Plan, or otherwise, for several reasons. For example, 10K and McWin have insisted that their
5 respective Operating Agreements preclude the sale of the Membership Interests without the
6 unanimous consent of the members, and the Debtor believes that certain members, including Beus,
7 will not consent to a sale of the Membership Interests to certain prospective buyers who have
8 expressed interest in buying the Membership Interests. Moreover, 10K and McWin assert that the
9 Operating Agreements provide that members of 10K and McWin have a right of first refusal to
10 purchase the Membership Interests at a price that is not established by a true market. The Debtor
11 believes that such right of first refusal, if not disallowed by the Court, may negatively impact the
12 Debtor's ability to maximize the value of the Membership Interests. Furthermore, the uncertainty
13 of the outcome of the WVSV litigation could have an adverse impact on the universe of potential
14 buyers and the true value of the Membership Interests.

15 The Debtor submits that these factors do not adversely affect the value of the Membership
16 Interests in the context of the Debtor's Plan and its "collateral for debt" provisions because a
17 portion of the Membership Interests will be transferred to SLPR, who has been approved as a
18 member by 10K and McWin and whose principal, Beus, is intimately familiar with the Sun Valley
19 Land and its history and the WVSV Litigation.

20 Consequently, the Debtor's Plan does not provide for the marketing and sale of the
21 Membership Interests. Rather, it provides for the surrender of a portion of the Debtor's
22 Membership Interests to SLPR in full satisfaction of SLPR's allowed secured claim. 10K or
23 McWin have indicated in pleadings and otherwise that they do object to SLPR becoming a member
24 of 10K. Therefore, any restrictions on the ownership of 10K or McWin interests in their respective
25 Operating Agreements will not be implicated by the Plan.

26 **IV. INCIDENTS WHICH LED TO THE FILING OF THE CHAPTER 11 CASE**

27 The primary driver for the Debtor's bankruptcy filing was SLPR's noticing of a UCC
28 foreclosure sale of the Debtor's Membership Interests. Such a foreclosure of the Membership

1 Interests would have deprived the Debtor of significant equity in the Membership Interests which
2 the Debtor intends to use in connection with the payment of all allowed unsecured claims, in full,
3 and to pay his living and other expenses going forward. A foreclosure of the Membership
4 Interests would have provided a substantial windfall to SLPR and would likely have precluded the
5 Debtor's exercise of his defenses and counterclaims against SLPR. The bankruptcy filing will
6 allow the Debtor to timely and properly prosecute his defenses and claims in the SLPR Adversary
7 Proceeding and will allow the Debtor to realize the value of his Membership Interests.

8 Ultimately, it is in the best interests of the Debtor, the creditors and the Debtor's estate for
9 all parties to cooperate to maximize the value of the Membership Interests. The amount owed by
10 the Debtor for capital contributions to 10K and McWin could then be paid and all of the Debtor's
11 creditors could be paid.

12 V. THE DEBTOR'S ASSETS AND LIABILITIES

13 A. The Debtor's Assets

14 1. Real Property

15 The Debtor does not own a personal residence. Rather, he currently leases the house in
16 which he and his wife, Carol, reside.

17 Over the years, the Debtor acquired interests in condominiums in the Las Palomas project
18 as discussed below. Initially, it is important to note that American citizens, like the Debtor, are
19 precluded by Mexican law from directly owning real property in Mexico. Rather, generally,
20 American citizens desiring to "own" property in Mexico must enter into trust contracts or
21 agreements whereby the real property interest is placed into a trust in which a Mexican entity acts
22 as the trustee and the American citizen is the beneficiary. In some instances, the developer of the
23 property (here, with respect to Las Polamas, WWG), would provide financing to the buyer for the
24 acquisition of the interest in the property. In those instances, the developer would be the trustor
25 under the trust and would be able to foreclose on the buyer's interests by removing the buyer from
26 the trust in the event of the buyer's default in paying for the interests.³

27
28 ³ With respect to Las Palomas, the Debtor is informed and believes that WWG borrowed funds
from third party lenders (the "**Third Party Lenders**") and that these Third Party Lenders were

1 Sometimes, an American buyer borrows funds to acquire its interest in Mexican property
2 from a third party lender, such as BMO (as discussed below). In such cases, the lender is named as
3 the primary beneficiary of the trust and the owner/borrower is named as the second beneficiary. In
4 such cases, the lender has the power to instruct the trustee of the trust to remove the borrower as a
5 beneficiary of the trust in the event the borrower defaults under the loan agreement with the lender.

6 The following discussion regarding the Debtor's interests in the Mexican condominiums
7 necessarily describes these beneficial interests in the Mexican trusts rather than a direct ownership
8 interest in the Mexican property.

9 **a. Cordoba 108**

10 In approximately August 2006, the Debtor and two of his partners, Tom Tokoph (the
11 Debtor's son-in-law) ("**Tokoph**") and John Bernhard ("**Bernhard**") put a total of approximately
12 \$356,400 down on the acquisition (through a trust) of a condominium known as Cordoba 108
13 located in the Las Palomas condominium project ("**Cordoba 108**"). The purchase price for
14 Cordoba 108 was \$1,188,000. The Debtor estimates that the unpaid balance for the purchase of
15 Cordoba 108 is approximately \$747,000. Even though Tokoph and Bernhard contributed funds for
16 the acquisition of Cordoba 108, only the Debtor and his wife were named as the beneficiary of the
17 trust agreement relating to Cordoba 108. WWG was the trustor of the trust agreement relating to
18 Cordoba 108 and financed the balance of the Debtor's (and Tokpoh's and Bernhard's) acquisition of
19 Cordoba 108.

20 However, before the balance of the purchase price was paid, Adamantine foreclosed on
21 WWG's interest in the trust agreement concerning Cordoba 108 and has asserted, variously, that
22

23 financed by Adamantine. The loans by the Third Party Lenders to WWG were secured by, among
24 other things, WWG's interests in trust agreements and contracts relating to Las Palomas
25 condominiums. The funding by Adamantine to the Third Party Lenders was, in turn, secured by
26 (among other things) the Third Party Lenders' liens in the WWG contracts and agreements. At
27 some point, the Debtor is informed and believes, the Third Party Lenders defaulted on their
28 obligations to Adamantine. Adamantine then "foreclosed" on the Third Party Lenders' lien
interests in the WWG contracts and agreements. The Debtor further understands that, at some
point, WWG may have defaulted under its obligations to Adamantine, and Adamantine then
foreclosed on its lien interests in its collateral, including certain trust agreements and contracts
under which WWG was a party. In any event, the Debtor is informed and believes that these
transactions and disputes are part of the WWG/Adamantine Litigation.

1 the Debtor either (a) no longer has any interest in Cordoba 108 by virtue of this foreclosure and/or
2 (b) that the Debtor now owes Adamantine, rather than WWG, the balance of the purchase price for
3 Cordoba 108. It is unclear to the Debtor whether and to what extent WWG still asserts a right in
4 Cordoba 108 or a right to the balance of the purchase price for Cordoba 108. The Debtor believes
5 that the WWG/Adamantine Litigation will ultimately address and resolve these issues.
6 Additionally, the Debtor believes that there is currently approximately \$11,000 in unpaid
7 condominium association dues, fees or assessments relating to Cordoba 108.

8 The Debtor does not know the current value of Cordoba 108. However, given the
9 uncertainty created by the WWG/Adamantine Litigation, the balance of the purchase price owed to
10 Adamantine (or WWG), the outstanding condominium association fees, and Tokoph's and
11 Bernhard's interests in Cordoba 108, the Debtor does not believe that there is any value in Cordoba
12 108 for the benefit of his estate or his creditors.

13 In any event, unless an alternative arrangement is made with Adamantine prior to
14 confirmation of the Plan, the Debtor is prepared to relinquish whatever interests he retains in
15 Cordoba 108 to Adamantine in exchange for a full release of any and all claims that Adamantine
16 and/or WWG have or may have against the Debtor with respect to Cordoba 108, including the
17 payment of any delinquent or unpaid condominium association dues, fees or assessments.

18 **b. The Diamante Condo**

19 In accordance with Mexican Law, on June 1, 2007, the Debtor and his wife entered into a
20 trust agreement (the "**Diamante Trust Agreement**") through which a Mexican institution,
21 Scotiabank, would act as Trustee ("**Scotiabank**"), BMO Harris Bank, N.A., successor by merger of
22 M&I Marshall and Ilsley Bank ("**BMO**") would be the first place beneficiary, and the Debtor
23 would be the second place beneficiary with respect to (i) Condominium 1201, Unit 2B of the
24 Diamante Building located at Las Palomas and (ii) Condominium 1202, Unit PH3B of the
25 Diamante Building located at Las Palomas (together with all personal property located thereon, the
26 "**Diamante Condo**"). Under the terms of the Diamante Trust Agreement, the Debtor was entitled
27 to the use and enjoyment of the Diamante Condo during such time that he remained as second
28 place beneficiary under the Diamante Trust Agreement. To finance the purchase of the Debtor's

1 interest under the Diamante Trust Agreement, on October 20, 2006, BMO extended credit to the
2 Debtor in the principal amount of \$990,990.00.

3 Prior to the Petition Date, the Debtor defaulted on his obligations to BMO relating to the
4 Diamante Condo by failing to pay all amounts owing when due. The Debtor failed to cure the
5 default. As a result of the Debtor's uncured default, BMO asserted that it held a claim against the
6 Debtor in excess of \$300,000.00, plus all allowable accrued interest, fees, and charges. On
7 September 10, 2012, BMO issued an Instruction Letter to Scotiabank, directing it to terminate the
8 Debtor's second place beneficial interest in the Diamante Condo under the Diamante Trust
9 Agreement. The Debtor is informed that, on November 28, 2012, Scotiabank carried out BMO's
10 directives by revoking the Debtor's second place beneficial interest in the Diamante Trust
11 Agreement and terminating his interest in the Diamante Condo. BMO has also asserted that the
12 Debtor is obligated to reimburse BMO for any condominium association dues, fees or assessments
13 that BMO has paid or may pay with respect to the Diamante Condo prior to BMO's taking
14 possession and control of the Diamante Condo.

15 BMO filed a proof of claim, Claim #16, against the Debtor with respect to the Diamante
16 Condo, asserting a claim in the amount of \$490,626.05 plus accrued and accruing interest, fees,
17 costs, and other charges authorized by its loan documents relating to the Diamante Condo.

18 In February 2016, the Debtor and BMO entered into that certain *Stipulation Regarding Real*
19 *Property Located in Mexico* ("**BMO Stipulation**") concerning the Diamante Condo, and the
20 Bankruptcy Court entered its *Order Approving Stipulation Regarding Real Property Located in*
21 *Mexico* ("**Order Approving BMO Stipulation**") on March 29, 2016. Pursuant to the BMO
22 Stipulation, the Order Approving BMO Stipulation, and the Plan, the Debtor has, and will, release
23 and relinquish any and all of his rights, title and/or interests in the Diamante Condo and any and all
24 personal property remaining in the Diamante Condo to BMO, and will execute any documents
25 required or requested by BMO with respect to the Debtor's interests in the Diamante Condo in full,
26 final and complete satisfaction of any and all claims that BMO has, or may have against the Debtor
27 relating to the Diamante Condo, either directly, indirectly or derivatively, including without
28 limitation any claims asserted by BMO in Claim No. 16, and any condominium association fees or

1 assessments relating to the Diamante Condo, which condominium association fees or assessments
2 BMO has agreed to satisfy in connection with the foregoing treatment of BMO's claims relating to
3 the Diamante Condo.

4 **c. The Rubi Condo**

5 In or about 2008, the Debtor (either individually and/or through Abigail Properties de
6 Mexico, an entity owned and controlled by the Debtor) acquired an interest in a Mexican entity
7 known as Access Resources. Access Resources held the beneficial interest in a trust that owned a
8 condominium unit known as Unit 202 of the Rubi Building located in the Las Palomas
9 condominium project ("**Rubi Condo**"). When the Debtor acquired the interest in Access
10 Resources, the Rubi Condo was subject to a lien in the amount of approximately \$99,000 in favor
11 of WWG. Therefore, WWG currently asserts a lien in the Rubi Condo in the amount \$99,000.
12 WWG also asserts that the Debtor is personally liable for this amount. Again, this is a point of
13 contention between the Debtor and WWG. Additionally, there are unpaid and delinquent
14 condominium association dues, fees and expenses owing with respect to the Rubi Condo in the
15 amount of approximately \$13,000. Although the Debtor does not know what the current value of
16 the Rubi Condo may be, he estimates that there is no equity in the Rubi Condo, particularly since
17 there will likely be litigation with WWG regarding the parties' respective rights and interests in the
18 Rubi Condo.

19 As mentioned above, there are a variety of disputes between the Debtor and WWG relating
20 to the Las Palomas project and other Mexican real estate endeavors and agreements between the
21 Debtor and WWG. The Debtor believes that, because of (among other things) WWG's political
22 and business influences in Mexico, any prosecution of his claims against WWG would be
23 prohibitively expensive, extremely time-consuming, largely unsuccessful and, ultimately,
24 uncollectable even if successfully prosecuted. Consequently, the Debtor's Plan proposes that he
25 will release and relinquish any and all of his rights, title and/or interests in the Rubi Condo to
26 WWG, and will execute any documents required or requested by the WWG with respect to the
27 Debtor's interests in the Rubi Condo in full, final and complete satisfaction of any and all claims
28

1 that WWG has, or may have against the Debtor either directly, indirectly or derivatively, including
2 without limitation any condominium association fees or assessments relating to the Rubi Condo.

3 **2. Personal Property**

4 **a. Cash and Accounts**

5 As of the Petition Date, the Debtor had approximately \$18,714 in his Wells Fargo bank
6 account. The Debtor has since used those funds to pay for living expenses and, as discussed above,
7 has been authorized to borrow up to \$12,000 per month from ILMD to pay for on-going post-
8 petition living and business expenses.

9 **b. Vehicles**

10 The Debtor owns two vehicles: (a) a 2010 Lexus SUV LX570 with approximately 177,000
11 miles (the "Lexus") and (b) a 2006 Range Rover with approximately 110,000 miles (the "Range
12 Rover"). The Debtor estimates that the value of the Lexus is approximately \$15,000 given its
13 condition and mileage. The Debtor estimates that the value of the Range Rover is approximately
14 \$6,000 given its condition and mileage.

15 **c. Household Goods and Furnishings**

16 The Debtor owns certain standard household goods and furnishings, clothing, books,
17 pictures and art objects, as identified in his Schedules. The Debtor does not believe that the value
18 of these personal property items exceeds the statutory exemptions to which he is entitled. As
19 discussed above, and as disclosed in his Schedules, prior to the bankruptcy filing, the Debtor sold
20 certain of his non-exempt assets that had any value, to unrelated third parties for negotiated
21 reasonably equivalent value, in order to pay his living expenses. Specifically, for example, in
22 2014, the Debtor sold certain jewelry to E.D. Marshall for \$150,000. In 2015, the Debtor sold
23 other jewelry to various unrelated parties (including Hamra Jewelers and the Liquidation Bureau)
24 for a total of \$46,000. The Debtor also sold certain Indian art work to Peter Lenstrohm, an
25 individual unrelated to the Debtor, for approximately \$33,000.

26 **3. Interests in Entities**

27 **a. 10K and McWin Membership Interests**

28 As discussed in detail above, the Debtor owns the Membership Interests in 10K and

1 McWin relating to the Sun Valley Land. 10K and McWin were both formed in 1995. The
2 Membership Interests have been appraised by Henry & Horne as having an estimated value
3 between \$27,394,780 and \$30,801,794. Ultimately, the Court will determine the value of the
4 Membership Interests in connection with the confirmation of the Debtor's Plan.

5 **b. ACM Biltmore Inc.**

6 The Debtor owns a 50% interests in ACM Biltmore, Inc. ("**ACM Biltmore**"). The Debtor's
7 wife, Carol, owns the other 50% of ACM Biltmore. ACM Biltmore was formed in 1994. ACM
8 Biltmore owns a 50% membership interest in ACM Biltmore/Park, LLC ("**ACM/Park**"). Anne
9 Park owns the other 50% interest in ACM/Park. ACM/Park owns and operates the Cornelia Park
10 retail store in the Biltmore Fashion Square. Anne and David Park operate the store and receive a
11 salary from the store. Neither the Debtor nor Carol currently receive any salary, income or
12 distributions from ACM/Park. ACM/Park has not made a distribution to members in several years
13 and it currently breaks even. ACM/Park did repay approximately \$25,000 to the Debtor in 2015
14 from the sale of inventory that the Debtor had purchased for ACM/Park

15 The Debtor believes that his 50% interest in ACM Biltmore has no value to his bankruptcy
16 estate because, among other things, (a) ACM Biltmore's interest in ACM/Park is only a partial
17 interest in a closely held entity which, inherently, has little value to third parties, (b) ACM/Park
18 does not have the ability to, and has not in recent years, made distributions to ACM Biltmore, and
19 (c) neither ACM Biltmore nor the Debtor receive, or are entitled to receive, any compensation
20 from ACM/Park.

21 **c. Abigail Properties, LLC**

22 The Debtor owns a 50% membership interest in Abigail Properties, LLC ("**Abigail**
23 **Properties**"). Abigail Properties was formed in 2001. The Barger Family Trust and Steve Barger
24 own the other 50% interest in Abigail Properties. The Debtor became the manager of Abigail
25 Properties in 2007 when Steve Barger resigned as manager.

26 Since its inception in 2001 through approximately 2009, Abigail Properties was the entity
27 through which the Debtor conducted most of his real property transactions. For example, Abigail
28 Properties bought, remodeled, refurbished, managed, operated and sold a commercial building in

1 Arizona and a commercial building in Colorado. Abigail Properties is also the entity that the
2 Debtor used in connection with his involvement in the Las Palomas project. Specifically, Abigail
3 Properties (along with the Debtor) was a party to the agreement with WWG with respect to the
4 Debtor's management and operation of the Las Palomas contract. Beginning in approximately
5 2002, the Debtor focused the majority of his efforts on Las Palomas and, since then, Abigail
6 Properties has not been involved in any other projects or developments.

7 Other than uncollectible and unrealizable potential claims against WWG with respect to the
8 Las Palomas project, as discussed elsewhere in this Disclosure Statement, Abigail Properties does
9 not currently own any property and does not conduct any current business. It has no assets, no
10 operations, no contracts and makes no distributions to members. Therefore, the Debtor believes
11 that Abigail Properties has no value to his estate.

12 **d. Ely Radio, LLC**

13 The Debtor is the record owner of a 50% interest in Ely Radio, LLC ("**Ely Radio**"), a
14 revoked Nevada limited liability company. Fred Weinberg owns the other 50% interest in Ely
15 Radio. Ely Radio was formed in 2006. Fred Weinberg asserts that, because the Debtor has not
16 made any contributions, monetarily or otherwise, to Ely Radio for approximately four years, the
17 Debtor no longer has any right or interest in Ely Radio. The Debtor does not challenge this
18 assertion.

19 Moreover, although Ely Radio formerly owned ten radio stations in Nevada, New Mexico
20 and Colorado, Ely Radio currently only owns and operates two radio stations in Ely, Nevada. The
21 radio stations do not make a profit and do not make distributions to members. The Debtor does not
22 receive, and is not entitled to receive, any salary or other compensation from Ely Radio.
23 Accordingly, the Debtor believes that there is no value in his record interest in Ely Radio; indeed,
24 any attempt to recover anything for his interests in Ely Radio would almost certainly be challenged
25 by Fred Weinberg and will entail litigation which the Debtor cannot afford.

26 **e. San Carlos Mexico Property**

27 See discussion, below, concerning John Mellen for information regarding the Debtor's
28 potential interest in certain real property in San Carlos, Mexico, which the Debtor believes does

1 not have any realizable value for his estate.

2 **f. Access Resources**

3 See discussion, above, concerning the Rubi Condo for information regarding the Debtor's
4 interest in Access Resources.

5 **f. Defunct, Assetless and Non-Operating Entities**

6 **i. Abigail Properties de Mexico, S.A.**

7 The Debtor recalls that Abigail Properties de Mexico, S.A. ("**Mexican Abigail**
8 **Properties**") was formed to perform the work in connection with the San Carlos property
9 discussed below. The Debtor believes that, other than potential, uncollectable and unrealizable,
10 claims against John Mellen, discussed below, Mexican Abigail Properties does not have any assets,
11 operations, or contracts and does not make any distributions to members.

12 **ii. Elko 335, LLC**

13 Elko 335, LLC ("**Elko**") is a revoked Nevada entity that formerly held an option to
14 purchase certain real property in Elko, Nevada. The option to purchase expired prior to the
15 Petition Date, is no longer enforceable, and has no value for the Debtor's estate. Elko has no other
16 assets or operations. The seller of the Elko property, Right Partners, LLC, has requested that the
17 Debtor sign documents formally relinquishing any interest that Elko may have in the subject
18 property. The Debtor is prepared to do so with the Court's approval.

19 **iii. Great Western Development Corporation**

20 The Debtor was the owner of Great Western Development Corporation ("**Great Western**").
21 Great Western was formed in 1978 and was dissolved in 2003. Great Western is the entity that the
22 Debtor used for most of his real estate projects from the time that he came to Arizona in the late
23 1970's until the early 2000's. Great Western bought, sold, developed, managed, and operated a
24 variety of residential (apartments and condominium conversion) projects, golf courses and other
25 commercial properties. Great Western has been dissolved by the Arizona corporation commission
26 and no longer has any assets, operations or contracts and does not make any distributions. This
27 entity is defunct and has no value for the Debtor's estate.
28

1 **viii. AP Waterfront Investments, LLC**

2 See discussion below regarding the Debtor's claims against WWG relating to AP
3 Waterfront Investments, LLC ("**Waterfront Investments**"). Other than such uncollectible and
4 unrealizable potential claims, this entity has no assets, operations or contracts and does not make
5 any distributions. It has no value for the benefit of the Debtor's estate.

6 **ix. 59 South Holdings, LLC**

7 See discussion below concerning the 59 South litigation for a discussion of the Debtor's
8 indirect limited partnership interest in 59 South.

9 **x. Shelf Entities**

10 The Debtor periodically formed entities for a specific purpose which never came to fruition
11 and/or were never funded or operated. For example, the Debtor believes that ARMCAM, LLC
12 and AM-Resort Complex, Inc., which are entities listed in the Debtor's Schedules and Statements,
13 were entities that were formed but were never funded or capitalized with any assets. These
14 entities, to the extent that they still exist, have no value for the Debtor's estate.

15 Similarly, the Arizona Corporation Commission's website indicates that the Debtor is a
16 member or manager of other entities, which are not listed in the Debtor's Schedules because they
17 are defunct, such as West US Media, LLC, Executive Lending Center, LLC, Executive Loan
18 Center, LLC, Las Palomas Resales, Inc., Cat's With an Attitude, Inc., Bradshaw Gold, LLC, ACM
19 Estrella, Inc., ACM Skye Top, Inc., ACM Mill Street, Inc., ACM Lots, Inc., Great Western Real
20 Estate Auctions, LLC, Natus Management, Inc., MCM Restaurant Group, LC, PWAL Gold
21 Canyon, LLC, Arizona Capital Fund 2000, LLC, and Chad Management Company, LLC.

22 None of these entities have any assets, operations or contracts and they do not make any
23 distributions. They are each defunct and have no value for the benefit of the Debtor's estate.

24 **4. Litigation and Potential Causes of Action**

25 **a. 59 South Litigation**

26 The Debtor held an indirect limited partnership interest in an entity known as 59 South
27 Holdings, LLC ("**59 South**"). Pre-petition, 59 South was engaged in litigation as a plaintiff against
28 Jaguar Premium Properties, LLP and Walter Chomichuk, as defendants, concerning a contract

1 dispute over the acquisition of a golf course. This litigation resulted in a settlement shortly after
2 the Petition Date which provided for the dismissal of the litigation and allowed the Debtor to
3 recover a total of approximately \$3,600 from the settlement proceeds in approximately late January
4 and early February 2016. The Debtor does not believe that he will receive any further distributions
5 from the settlement of this litigation and the litigation has been dismissed.

6 **b. John Mellen--potential cause of action in Mexico**

7 The Debtor believes that he (either individually or through Mexican Abigail Properties)
8 may have a cause of action against John Mellen ("**Mellen**") relating to certain management fees,
9 expenses reimbursements and other remuneration in connection with the Debtor's operation and
10 management of certain commercial and residential properties in San Carlos, Mexico. Mellen failed
11 and refused to pay the Debtor such management fees, expense reimbursements and other
12 remuneration which the Debtor believes to be in excess of \$2,000,000. However, the Debtor has
13 not initiated an action against Mellen to recover these claims because (a) the Debtor does not have
14 funds to prosecute such an action, (b) the Debtor's agreement was with Mellen, and Mellen has
15 passed away, and (c) Mellen lost control of the San Carlos properties such that the collectability of
16 any successful judgment is very highly unlikely. Therefore, the Debtor does not intend to pursue
17 these potential causes of action, and does not believe that they have any value for the bankruptcy
18 estate.

19 **c. WWG**

20 As discussed above, the Debtor has several disputes with, and potential claims against,
21 WWG in connection with, among other dealings in Mexico, the Las Palomas project and a project
22 known as the Waterfront. With respect to Las Palomas, the Debtor believes that WWG owes him
23 approximately \$3.8 million in unpaid commissions, fees, expense reimbursements and other
24 remuneration based upon services provided by the Debtor to WWG. WWG disputes the Debtor's
25 claims and, rather, asserts that it has certain claims against the Debtor, including claims associated
26 with the Rubi Condo. With respect to the Waterfront project, the Debtor believes that, in
27 approximately 2006, WWG fraudulently induced the Debtor to raise \$2.5 million from investors
28 (through Waterfront Investments) to contribute to the project. WWG did not use the funds raised

1 by Waterfront Investments as it promised, and did not acquire or manage the Waterfront project as
2 it promised. Rather, WWG financed the project with a loan, defaulted on the loan, and lost the
3 property to foreclosure. The funds invested by Waterfront Investments were lost.

4 The Debtor has not initiated an action against WWG to recover on his claims because (a)
5 such litigation would be very expensive and time consuming, and the Debtor does not have funds
6 to prosecute such an action, (b) any such action would likely have to be prosecuted in Mexico, (c)
7 WWG has significant political and economic influence in Mexico, particularly with respect to the
8 Las Palomas project, and (d) even if the Debtor were successful in any such litigation, the
9 collectability of any judgment is suspect and dubious. Therefore, the Debtor does not intend to
10 pursue these potential causes of action, and does not believe that they have any value for the
11 bankruptcy estate.

12 **d. Russo v. Mishkin, et al.**

13 The Debtor is a defendant in a lawsuit filed by Michael Russo in Maricopa County Superior
14 Court, Case No. CV2009-018954 (the "**Russo Lawsuit**"), relating to claims by Russo with respect
15 to Russo's attempted purchase of a condominium at Las Palomas. Russo asserts that he lost his
16 investment in a Las Palomas condominium and blames the Debtor, among others, for the lost
17 investment. The Russo Lawsuit is currently stayed by § 362 of the Bankruptcy Code. The Debtor
18 disputes Russo's assertions and does not believe that Russo has an allowed or allowable claim
19 against the Debtor.

20 **e. SLPR Adversary Proceeding**

21 Finally, as discussed above, the Debtor is a defendant and a counter-claimant in the SLPR
22 Adversary Proceeding.

23 **B. The Debtor's Liabilities**

24 The total amount of claims filed in the case is \$15,331,358.23. Of that amount,
25 \$12,889,280.47 are asserted as secured claims, \$173,954.12 are asserted as priority unsecured
26 claims and \$2,268,123.64 are asserted as general unsecured claims. By Order of the Bankruptcy
27 Court (Dkt. No. 58), the claims bar date was February 29, 2016. Thus, the claims bar date has
28 passed.

1 **1. Secured Claims**

2 As discussed above, (i) Admantine asserts a secured claim against the Debtor in the
3 estimated amount of \$747,000 secured by Cordoba 108, (ii) as of the Petition Date, BMO held a
4 secured claim, estimated by the Debtor to be approximately \$895,000, secured by the Debtor's
5 interests in the Diamante Condo, and (iii) WWG asserts a secured claim, in the amount of
6 approximately \$99,000, secured by the Rubi Condo.

7 Additionally, also as discussed above, SLPR asserts a secured claim in the amount of
8 \$12,319,433.70, secured by the Membership Interests. The Debtor disputes SLPR's claims and is
9 litigating that claim in the SLPR Adversary Proceeding.

10 ILMD holds a secured claim against the Debtor in the pre-petition amount of approximately
11 \$570,000 secured by a junior lien on the Membership Interests and a lien on the Debtor's other
12 personal property (which, as discussed above, is nominal). The Plan also identifies Turtle
13 Investments (another entity related to Keith) as having a potential secured claim against the Debtor
14 but the Debtor does not believe that Turtle Investments holds a valid, perfected secured claim.

15 Finally, as of the Petition Date, the Debtor owed approximately \$4,500 to US Bank which
16 claim was secured by the Lexus. The Debtor continued making his regular payments to US Bank
17 post-petition, and that lien has now been paid off.

18 **2. Administrative Priority Claims**

19 The Debtor's administrative expenses will include the approved fees and costs of attorneys
20 and other professionals necessary to the Debtor's operations, the administration of the Debtor's
21 bankruptcy case, and the formulation and confirmation of the Plan. These professionals include
22 the Debtor's counsel, the Debtor's special counsel, Gordon Rees, LLP, and the Committee's
23 counsel. The allowed amount of the fees and costs of these professionals will not be precisely
24 known until the Bankruptcy Case is completed. However, each of these professionals will be
25 required to submit fee applications and obtain final approval by the Court of their respective fees
26 and costs before they may receive final payment. As of this Disclosure Statement, the Debtor's
27 counsel has applied for fees and costs in the total amount of \$162,467.90, the Debtor's special
28

1 counsel has applied for fees and costs in the total amount of \$60,792.42, and the Committee's
2 counsel has applied for fees and costs in the total amount of \$37,798.77.

3 **3. Priority Claims**

4 The IRS has filed a proof of claim against the Debtor asserting a priority claim, pursuant to
5 11 U.S.C. § 507(a)(8), in the amount of \$173,954.12 based upon (a) asserted civil penalties and
6 accrued interest for the tax periods ending 6/30/10, 3/31/2011, 6/30/2011, 9/30/2011 and
7 12/31/2011 and (b) unpaid income taxes assessed for the tax periods ending 12/31/2012,
8 12/31/2013 and 12/31/2014. The Debtor intends to dispute the IRS claims but was unable to retain
9 his long-time tax accountant in this case because the tax account holds a relatively nominal pre-
10 petition claim for fees. In any event, the Debtor intends to retain a replacement tax advisor to
11 assist in addressing and challenging the IRS claims.

12 **4. Unsecured Claims**

13 The total estimated amount of unsecured claims against the Debtor, before objections are
14 filed but with the removal of BMO's Claim #16 (which is being satisfied in Class 2-B, as discussed
15 herein), is approximately \$2,260,046. These claims consist of, among other claims, (a) the
16 unsecured claim asserted by BMO in Claim #15 relating to a judgment against the Debtor, his
17 spouse, Steven Barger and Abigail Properties, LLC in the face amount of \$276,935.70, (b)
18 unsecured claims asserted by 10K and McWin relating to asserted unpaid capital contributions of
19 the Debtor in the amounts of \$110,000 and \$100,000, respectively; and (c) unsecured claims of
20 Keith and his related entity, Turtle Investments, LLC, in the total amount of approximately
21 \$698,000. This amount also includes a claim listed by the Debtor in favor of the Diamante
22 Condo's condominium association in the approximate amount of \$134,783.12 which claim BMO
23 has satisfied or will satisfy in connection with its treatment in the Plan.

24 **VI. INCOME OF THE DEBTOR, ANTICIPATED FUTURE AND SOURCE OF PLAN** 25 **PAYMENTS**

26 The Debtor's current monthly income is comprised of approximately \$2,657.50 in social
27 security payments (this includes social security payments for Debtor and his non-filing spouse).
28 Pursuant to the Stipulated DIP Financing Order and Second DIP Financing Order, Debtor has also

1 received, and will continue to receive, up to \$12,000 per month from a post-petition loan by ILMD
2 thought at least September 2016. The social security and loan amounts provide the Debtor with the
3 funds to meet living expenses.

4 The Debtor is attempting to reestablish his real estate development business, and the Exit
5 Funding will provide him with additional funds to pay living and business expenses following the
6 confirmation of the Plan.

7 VII. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE

8 A. The Bankruptcy Filing and First Meeting of Creditors

9 The Debtor filed his voluntary petition for relief under Chapter 11 of the Bankruptcy Code
10 on December 7, 2015 (the “**Petition Date**”), and a first meeting of creditors was commenced on
11 January 12, 2016 and concluded on January 28, 2016.

12 B. Schedules and Amendments

13 The Debtor initially filed his Schedules of Assets and Liabilities on December 22, 2015
14 [Dkt. Nos. 23-24] and has amended the Schedules on January 11, 2016 [Dkt. Nos. 40-42] and
15 January 20, 2016 [Dkt. Nos. 49-51].

16 C. Debtor's Retention of Professionals

17 Prior to the Petition Date, the Debtor retained Sacks Tierney, P.A. (“**ST**” or “**Sacks**
18 **Tierney**”) to act as its bankruptcy counsel. The Court signed an order approving the Debtor’s
19 retention of Sacks Tierney on December 10, 2015. [Dkt No. 8].

20 The Debtor has also retained Gordon Rees Skully Mansukhani (“**GR**” or “**Gordon Rees**”)
21 as his special counsel to prosecute and defend the SLPR Adversary Proceeding. The Court entered
22 an order approving Gordon Rees' retention on February 24, 2016. [Dkt. No. 97].

23 D. Appointment of Unsecured Creditors Committee

24 On January 5, 2016, the United States Trustee’s Office (“**UST**”) appointed the Official
25 Committee of Unsecured Creditors (the “**Committee**”). The Committee was comprised of the
26 following creditors: Curtis Drew, Barry Zemel and Beus Gilbert. [Dkt. No 36]. Subsequently, on
27 January 29, 2016, the UST amended the members of the Committee by removing Beus Gilbert and
28 adding Vanderbilt Farms, LLC. [Dkt. No. 70]. The Committee has retained Gallagher &

1 Kennedy, P.A. ("G&K") as its legal counsel. The Court entered an order authorizing the
2 Committee's retention of G&K on January 29, 2016. [Dkt. No. 74].

3 **E. Post-Petition Financing**

4 On March 14, 2016, the Court entered the Stipulated DIP Financing Order [Dkt. No. 113]
5 authorizing the Debtor to borrow up to \$12,000 per month for a period of 90 days from ILMD,
6 which post-petition loan is secured by a junior lien in the Debtor's Membership Interests.
7 Following the expiration of that initial post-petition funding period, the Court entered the Second
8 DIP Financing Order authoring the Debtor to borrow \$12,000 per month for an additional 90 days
9 on an unsecured basis, *pari passu* with other general unsecured creditors. [Dkt. No. 259].

10 **F. The Committee's Attempt to Force the Involuntary Sale the Membership**
11 **Interests to SLPR**

12 On May 18, 2016, the Committee filed its *Motion Of The Unsecured Creditors Committee*
13 *For Leave To: (A) Accept The Offer [Of SLPR, LLC To Acquire The Debtor's Membership*
14 *Interests]; (B) Initiate And Complete A Sale Of The Mishkin 10k Interest Pursuant To 11 U.S.C. §*
15 *363; And (C) Settle (On Notice To All Interested Parties In The Bankruptcy Case) The SLPR-*
16 *Mishkin Litigation On Behalf Of The Debtor's Estate ("Motion to Force Sale of Estate Assets")*
17 [Dkt. No. 189] requesting that the Court authorize the Committee to sell the Debtor's Membership
18 Interests to SLPR and to settle the SLPR Adversary Proceeding. Following briefing and oral
19 argument, the Court denied the Motion to Force Sale of Estate Assets. [Dkt. No. 256].

20 **G. Discovery Issues**

21 The Debtor and SLPR (and related entities) have engaged in on-going discovery directed at
22 each other regarding, among other things, SLPR's claims and the value of the Debtor's Membership
23 Interests. The Debtor and SLPR (and the related entities) are working cooperatively to conduct
24 such discovery in a timely manner. The Debtor also anticipates that it will request certain
25 discovery from 10K, McWin and their respective members concerning pertinent matters such as
26 information concerning the value of the Debtor's Membership Interests and facts and circumstances
27 asserted in the SLPR Adversary Proceeding.
28

1 **VIII. PLAN SUMMARY**

2 The Plan provides for the Debtor to obtain Exit Funding from ILMD (or a related entity) in
3 an amount sufficient to pay all allowed unsecured claims, in full, on the Effective Date of the Plan.
4 The Plan also provides that the Debtor will surrender to SLPR sufficient units of the Membership
5 Interests to pay SLPR's allowed secured claim in full following the Court's determination of (a) the
6 value of the Membership Interests and (b) the amount of SLPR's Allowed Secured Claim. The
7 Plan provides that the Debtor will relinquish his interests in Cordoba 108, the Diamante Condo and
8 the Rubi Condo to the secured creditors with claims encumbering those assets and in full and final
9 satisfaction of any and all claims that those entities have or may have against the Debtor.

10 The Plan classifies creditors for treatment in a structure that is envisioned by the
11 Bankruptcy Code. Generally, priority creditors are treated in their own classes and have no vote
12 because the Bankruptcy Code requires them to be paid in a certain manner. These claims generally
13 include attorneys' fees, U.S. Trustee fees, and unpaid taxes. It is anticipated that the only priority
14 claims in this case will be the Debtor's attorneys' fees, committee fees, taxes owed to the IRS and
15 any unpaid US Trustee fees.

16 The Debtor's classification of claims in his Plan follows the classification scheme
17 contemplated by the Code in that each Secured Creditor is in its own class and unsecured creditors
18 are in one class.

19 **IX. CLASSIFICATION OF CLAIMS AND INTERESTS.**

20 **A. Class 1: Priority Claims**

21 1. Class 1-A consists of Allowed Priority Claims under 11 U.S.C. §§ 503 and
22 507(a)(2) (Administrative Claims). Class 1-A includes Claims for compensation of a professional
23 person (including attorneys), court fees, expenses of administration, post-petition operating
24 expenses due and unpaid at the time of Confirmation and actual and necessary costs of preserving
25 the estate.

26 2. Class 1-B consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8)
27 (Tax Claims). The Internal Revenue Service ("IRS") has filed a priority tax Claim for
28

1 \$173,954.12. The Debtor intends to challenge the IRS' claim and disputes that any penalties
2 included in the IRS' asserted claim are entitled to priority treatment.

3 **B. Class 2: Secured Claims**

4 1. Class 2-A consists of the Allowed Secured Claim of Adamantine secured by
5 a lien on the Debtor's interest in Cordoba 108 and any and all other rights and claims that
6 Adamantine has or may have against the Debtor relating to Cordoba 108.

7 2. Class 2-B consists of the Allowed Secured Claim of BMO secured by a lien
8 on the Debtor's interest in the Diamante Condo and any and all other rights and claims that BMO
9 has or may have against the Debtor relating to the Diamante Condo.

10 3. Class 2-C consists of the Allowed Secured Claim of the World Wide Group
11 which is secured by a lien in the Debtor's interests in the Rubi Condo and any and all other rights
12 and claims that World Wide Group has or may have against the Debtor relating to the Rubi Condo.

13 4. Class 2-D consists of the Allowed Secured Claim of SLPR secured by a lien
14 on the Debtor's Membership Interests. SLPR's asserted claims are the subject of the SLPR
15 Adversary Proceeding and are disputed by the Debtor.

16 5. Class 2-E consists of the Allowed Secured Claim of ILMD, secured by
17 Debtor's Membership Interests and certain personal property of the Debtor.

18 6. Class 2-F consists of the Allowed Secured Claim of Turtle Investments, if
19 any. The Debtor does not believe that Turtle Investments holds a secured claim against him.
20 Therefore, this Class is empty.

21 **C. Class 3: Unsecured Claims**

22 1. Class 3-A consists of the Allowed Unsecured Claim of BMO asserted in
23 Claim No. 15 relating to a judgment against the Debtor, his spouse, Steven Barger and Abigail
24 Properties, LLC.

25 2. Class 3-B consists of the Allowed Unsecured Claims of 10K relating to
26 asserted unpaid capital contributions of the Debtor to 10K.

27 3. Class 3-C consists of the Allowed Unsecured Claims of McWin relating to
28 asserted unpaid capital contributions of the Debtor to McWin.

1 4. Class 3-D consists of all other Allowed Unsecured Claims against the
2 Debtor not otherwise classified or treated in the Plan.

3 **X. IMPAIRMENT OF CLASSES.**

4 Classes 1-A, 1-B, 3-B, 3-C and 3-D are unimpaired under the Plan. All other Classes are
5 impaired, as that term is defined in Section 1124 of the Bankruptcy Code.

6 **XI. TREATMENT OF CLASSES.**

7 **A. Class 1: Priority Claims**

8 1. Class 1-A: Administrative Claims

9 This class consists of Allowed Administrative Priority Claims under 11 U.S.C. §§ 503 and
10 507(a)(2). Unless Claimants holding Claims in this Class agree to an alternative form of treatment,
11 the Allowed Claims of Class 1-A shall be paid in full, in cash, on or before the Effective Date, or
12 as the same are allowed and ordered paid by the Court, from the proceeds of the Exit Funding or
13 from any retainers held by a professional with an Allowed Priority Claim. Any Class 1-A Claim
14 not allowed as of the Effective Date shall be paid as soon thereafter as it is allowed by the Court
15 according to the terms of this Class.

16 This Class is not impaired.

17 2. Class 1-B: Tax Claims

18 This class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8) which are not
19 otherwise treated as secured claims herein. As provided in 11 U.S.C. § 1129(a)(9)(C), unless
20 Claimants holding Claims in this Class agree to an alternative form of treatment, the Allowed
21 Priority Claims of Class 1-B shall be paid on account of such Allowed Priority Claims, deferred
22 cash payments, over a period not extending beyond the fifth anniversary of the Petition Date,
23 having a value, as of the Effective Date of the Plan, equal to the allowed amount of such Allowed
24 Priority Claim.

25 Notwithstanding the foregoing, at the Debtor's sole option and discretion, and so long as
26 sufficient funds remain after paying other Allowed Claims from the Exit Funding, the Debtor may
27 pay, in whole or in part, Allowed Priority Claims in this Class on the Effective Date from the
28 proceeds of the Exit Funding.

1 Any Class 1-B Claims not allowed as of the Effective Date shall be paid as soon thereafter
2 as they are allowed by the Court according to the terms of this Class.

3 This Class is not impaired.

4 **B. Class 2: Secured Claims**

5 1. Class 2-A – Allowed Secured Claim of Adamantine

6 This class consists of the Allowed Secured Claim of Adamantine, which is secured by a
7 lien on the Debtor's interests in Cordoba 108.

8 As of the Effective Date of the Plan, unless an alternative arrangement is reached with
9 Adamantine prior to the Confirmation Date, the Debtor will release and relinquish any and all of
10 his rights, title and/or interests in Cordoba 108 to Adamantine, and will execute any documents
11 required or requested by Adamantine with respect to the Debtor's interests in Cordoba 108 in full,
12 final and complete satisfaction of any and all claims that Adamantine has, or may have against the
13 Debtor either directly, indirectly or derivatively through World Wide Group or any other entity or
14 Person, including without limitation any condominium association fees or assessments relating to
15 Cordoba 108.

16 This Class is impaired.

17 2. Class 2-B – Allowed Secured Claim of BMO

18 This class consists of the Allowed Secured Claim of BMO, which is secured by a lien on
19 the Debtor's interests in the Diamante Condo.

20 The Debtor incorporates into the Plan the BMO Stipulation and Order Approving BMO
21 Stipulation. Pursuant to the BMO Stipulation, the Order Approving BMO Stipulation, the Plan,
22 the Debtor has, and will, release and relinquish any and all of his rights, title and/or interests in the
23 Diamante Condo and any and all personal property remaining in the Diamante Condo to BMO,
24 and will execute any documents required or requested by BMO with respect to the Debtor's
25 interests in the Diamante Condo in full, final and complete satisfaction of any and all claims that
26 BMO has, or may have against the Debtor relating to the Diamante Condo, either directly,
27 indirectly or derivatively, including without limitation any claims asserted by BMO in Claim No.
28 16 filed in this case and any condominium association fees or assessments relating to the

1 Diamante Condo, which condominium association fees or assessments BMO has agreed to satisfy
2 in connection with the foregoing treatment of BMO's claims relating to the Diamante Condo.

3 This Class is impaired.

4 3. Class 2-C – Allowed Secured Claim of World Wide Group

5 This class consists of the Allowed Secured Claim of the World Wide Group, which is
6 secured by a lien on the Debtor's interests in the Rubi Condo.

7 As of the Effective Date of the Plan, the Debtor will release and relinquish any and all of
8 his rights, title and/or interests in the Rubi Condo to World Wide Group, and will execute any
9 documents required or requested by the World Wide Group with respect to the Debtor's interests
10 in the Rubi Condo in full, final and complete satisfaction of any and all claims that World Wide
11 Group has, or may have against the Debtor either directly, indirectly or derivatively, including
12 without limitation any condominium association fees or assessments relating to the Rubi Condo.

13 This Class is impaired.

14 4. Class 2-D – Allowed Secured Claim of SLPR

15 This class consists of the Allowed Secured Claim of SLPR, which is asserted to be secured
16 by a lien on the Debtor's Membership Interests.

17 The amount, extent and validity of SLPR's Allowed Secured Claim will be determined by
18 the Bankruptcy Court pursuant to the SLPR Adversary Proceeding and/or any other claims
19 allowance process relating to SLPR's asserted claims against the Debtor.

20 Additionally, in connection with the confirmation of the Debtor's Plan, the Bankruptcy
21 Court will determine the value of the Debtor's Membership Interests as of the Effective Date.

22 On the Effective Date, based upon the valuation of the Membership Interests established
23 by the Bankruptcy Court, SLPR shall receive as many of the Debtor's Membership Interest units
24 as necessary to fully satisfy the undisputed portion of the SLPR claim. SLPR's security interest
25 shall continue against as many of the Debtor's Membership Interest units as necessary to fully
26 satisfy the disputed portion of the SLPR claim until the later of the Effective Date or the date upon
27 which the amount of SLPR's Allowed Secured Claim is finally determined by a Final Order, at
28 which time the Debtor will transfer and convey to SLPR as many of the Membership Interest units

1 that remain subject to the SLPR security interest as necessary to fully satisfy any additional
2 amount of SLPR's Allowed Secured Claim in full and final satisfaction of SLPR's Allowed
3 Secured Claim. The Membership Interests that are transferred to SLPR in satisfaction of SLPR's
4 Allowed Secured Claim are defined as the "**Transferred Membership Interests.**"

5 The Debtor's Membership Interests that, based upon the valuation, are not necessary to
6 satisfy either the undisputed or disputed portion of the SLPR claim (the "**Initial Retained**
7 **Membership Interests**") shall be released to the Reorganized Debtor on the Effective Date free
8 and clear of any claim, lien, security interest, encumbrance or other interest of SLPR.

9 Upon its receipt of the Transferred Membership Interests, to the extent not already
10 released, SLPR's lien in the Membership Interests shall be deemed paid, released and satisfied in
11 full, and the remaining portion of the Membership Interests retained by the Debtor shall be
12 deemed free and clear of any and all interests, liens, claims or encumbrances of SLPR. Any
13 Membership Interests that are not Transferred Membership Interests, including the Initial Retained
14 Membership Interests, following the final determination of SLPR's Allowed Secured Claim are
15 defined as the "**Retained Membership Interest.**"

16 This class is impaired.

17 5. Class 2-E –Allowed Secured Claim of ILMD

18 This class consists of the Allowed Secured Claim of ILMD, which is secured by Debtor's
19 Membership Interests and certain other personal property of the Debtor. ILMD is an entity related
20 to Keith.

21 Upon ILMD's contribution of the Exit Funding to the Debtor's estate to pay Allowed
22 Claims as provided in the Plan, ILMD's Allowed Secured Claims will be deemed to be secured by
23 the Initial Retained Membership Interests, and upon final determination of SLPR's Allowed
24 Secured Claim, ILMD's Allowed Secured Claims will also be deemed to be secured by the
25 Retained Membership Interests. ILMD's Allowed Secured Claim will be paid pursuant to the
26 terms of the Exit Funding Agreement described below.

27 This class is impaired.
28

1 6. Class 2-G –Allowed Secured Claim of Turtle Investments

2 This class consists of the Allowed Secured Claim of Turtle Investments, if any. The
3 Debtor does not believe that Turtle Investments holds a secured claim against him and, therefore,
4 this Class is empty. In any event, as discussed below, upon ILMD's contribution of the Exit
5 Funding to the Debtor's estate to pay Allowed Claims as provided in the Plan, Turtle Investments'
6 claim will be satisfied pursuant to the terms of the Exit Funding Agreement described below.

7 This Class is impaired.

8 **C. Class 3: Unsecured Claims**

9 1. Class 3-A –Allowed Unsecured Claim of BMO

10 This class consists of the Allowed Unsecured Claim of BMO asserted in Claim No. 15
11 relating to a judgment against the Debtor, his spouse, Steven Barger and Abigail Properties, LLC
12 (the "**Judgment**").

13 On the Effective Date of the Plan, the Debtor will pay to the owner and holder of the
14 Judgment, in cash, from the proceeds of the Exit Funding, one-third of the outstanding amount due
15 under the Judgment as of the Petition Date, in full, final and complete satisfaction of any and all
16 obligations of the Debtor and his spouse under the Judgment. This payment will have no effect on
17 the obligations of the other defendants under the Judgment.

18 This class is impaired.

19 2. Class 3-B –Allowed Unsecured Claim of 10K

20 This class consists of the Unsecured Claims of 10K relating to asserted unpaid capital
21 contributions of the Debtor to 10K.

22 On the Effective Date of the Plan, the Debtor will pay to 10K, in cash, from the proceeds
23 of the Exit Funding, the full amount of 10K's Allowed Claim as of the Petition Date.

24 This class is not impaired.

25 3. Class 3-C –Allowed Unsecured Claim of McWin

26 This class consists of the Unsecured Claims of McWin relating to asserted unpaid capital
27 contributions of the Debtor to McWin.
28

1 On the Effective Date of the Plan, the Debtor will pay to McWin, in cash, from the
2 proceeds of the Exit Funding, the full amount of McWin's Allowed Claim as of the Petition Date.

3 This class is not impaired.

4 4. Class 3-D –Allowed General Unsecured Claims Not Otherwise Treated

5 This class consists of the all other Allowed Unsecured Claims against the Debtor not
6 otherwise classified or treated in the Plan.

7 On the Effective Date of the Plan, the Debtor will pay to each holder of an Allowed
8 Unsecured Claim which is not otherwise classified or treated in the Plan, in cash, from the
9 proceeds of the Exit Funding, the full amount of each such creditors' Allowed Claim as of the
10 Petition Date.

11 This class is not impaired.

12 **XII. MEANS FOR EXECUTING THE PLAN.**

13 **A. Funding**

14 The Plan will be funded by (a) ILMD's contribution of the Exit Funding to the Debtor's
15 Estate pursuant to the Exit Funding Agreement between ILMD and the Debtor and (b) with
16 respect to SLPR's Allowed Secured Claim, the Debtor's transfer and conveyance to SLPR of the
17 Transferred Membership Interests in an amount equal to SLPR's Allowed Secured Claim as
18 determined by a Final Order of the Court.

19 ILMD's commitment to fund is conditioned upon the Court's finding a value for the
20 Membership Interests that is equal to or greater than the value ascribed thereto (*i.e.*, \$15 million)
21 in the SLPR offer that was the subject of the Committee's Motion to Force Sale of Estate Assets.
22 As discussed elsewhere in this Disclosure Statement, the Court has denied the Committee's
23 Motion to Force Sale of Estate Assets.

24 1. Outline of the Exit Funding Agreement

25 The general terms of the Exit Funding Agreement are set forth in that certain letter dated
26 June 20, 2016 from Keith's counsel to the Debtor's counsel, attached to the Plan as Exhibit "A"
27 and incorporated into the Plan (the "**Commitment Letter**"). To the extent that there are any
28 differences between the Plan and the Commitment Letter, the Commitment Letter will control.

1 The Exit Funding Agreement is subject to final documentation acceptable to ILMD and the Debtor
2 that is consistent with the Commitment Letter and that will be prepared and submitted to the Court
3 prior to the Confirmation Hearing.

4 Generally, the terms of the Commitment Letter are paraphrased as follows:

5 1. Except as set forth in paragraph five below, Keith and the Debtor
6 shall have joint control, management, ownership, and voting rights with respect to
7 the Retained Membership Interests, which Keith and/or ILMD may require to be
8 placed in a limited liability company, a trust, or some other vehicle. If the Debtor
9 becomes deceased or incapacitated, then sole management and control of the
10 Retained Membership Interests shall vest entirely in Keith. The Debtor shall be
11 prohibited from conveying, pledging, securing, or hypothecating his interests in the
12 Retained Membership Interests. The creation, priority and perfection of Keith's
13 interests in the Retained Membership Interests, and the prohibition against their
14 transfer imposed upon the Debtor, shall be made a matter of public record, and the
15 Debtor agrees to execute instruments, financing statements, and other documents
16 that Keith requests to achieve those objectives.

17 2. All distributions, profits, and proceeds (the “**Distributions**”) made or
18 distributed on account of the Retained Membership Interests shall be used first to
19 pay all the Obligations⁴ the Debtor has incurred to Keith, together with interest at
20 ten percent (10%) per annum from the date the Obligation was first incurred.
21 Distribution payments shall be applied first to interest, and then to principal. There
22 is no due date as to when the Obligations are required to be satisfied, and interest
23 shall continue to accrue on the Obligations at the stated rate until paid. After
24 principal and interest due on account of the Obligations have been paid in full to
25 Keith, subsequent Distributions shall be shared equally between the Parties until
26 Keith has received an additional amount equal to the total principal advanced by
27 reason of the Obligations. After Keith has received this amount, subsequent
28 Distributions shall be made to the Debtor until the Debtor has received \$2.1 million.
After this amount has been distributed to the Debtor, all subsequent Distributions
shall be shared equally between the Parties. The creation, priority and perfection of
Keith’s interests in the Distributions described herein shall be made a matter of

23 ⁴ The term “**Obligations**” is defined broadly, and includes, without limitation, the following: (a) all
24 claims asserted by Keith directly or indirectly through his entities such as Turtle Investments and
25 ILMD in the Bankruptcy Case, (b) all advances made under the debtor-in-possession financing, (c)
26 all advances for SLPR litigation fees and costs, (d) all advances for living expenses not included in
27 (b) above, (e) all advances for capital calls and protective advances not included in (b) above, (f)
28 reasonable legal fees and costs incurred by Keith to his legal counsel, Schian Walker, P.L.C, and
other professional fees and costs, (g) funds loaned or advanced with respect to the AP Waterfront
in the approximate amount of \$250,000, and (h) all other out-of-pocket costs, advances, fees, and
payments made by Keith in matters related to the Plan, the SLPR Adversary Proceeding, and the
Retained Membership Interests.

1 public record, and the Debtor shall execute instruments, financing statements, and
2 other documents that Keith requests to achieve that objective.

3 3. Except as set forth in paragraph five below, pursuant to 11 U.S.C.
4 § 1123(b)(3)(B), the Joint Plan shall appoint Keith and the Debtor as joint estate
5 representatives to hold and administer all rights and privileges associated with the
6 Retained Membership Interests. If one of the Parties dies or becomes incapacitated,
7 then the surviving party shall serve as the sole estate representative. Neither party
8 shall be liable to the other party, or to any third party, for any decision, action, or
9 inaction taken as the joint or sole estate representative.

10 4. Upon the effective date of the Joint Plan, Keith agrees to fund
11 advances for living expenses of the Debtor in an amount not to exceed \$236,000
12 inclusive of advances made under the debtor-in-possession financing at a rate of
13 \$12,000 per month, which Keith shall pay to the Debtor without demand or
14 presentment. Keith shall take such other and further steps as are reasonably
15 necessary to assure the Debtor that the advances for living expenses as described
16 herein will be timely made.

17 5. Notwithstanding anything to the contrary, upon the effective date of
18 the Joint Plan, any decision to prosecute, settle, and/or resolve the SLPR litigation
19 shall vest solely in Keith as the estate representative or otherwise, and any such
20 decision that Keith makes with respect to the SLPR Adversary Proceeding shall be
21 made without liability to any third party. Keith shall commit to advance the fees
22 and costs related to the SLPR Adversary Proceeding up to \$2 million.

23 2. Appointment of Joint Estate Representatives

24 Pursuant to 11 U.S.C. § 1123(b)(3)(B), Keith and the Debtor shall be appointed as joint
25 estate representatives to own, hold and administer all rights and privileges associated with the
26 Retained Membership Interests. If either Keith or the Debtor die or become incapacitated, then
27 the surviving party shall serve as the sole estate representative. Neither Keith nor the Debtor shall
28 be liable to the other, or to any third party, for any decision, action, or inaction taken as the joint or
sole estate representative. Keith and Alan, as the estate representatives, will comply with any and
all terms and conditions of the Operating Agreements of 10K and McWin.

3. Transfer of the Transferred Membership Interests

Upon the determination of the amount of the Transferred Membership Interests that the
Debtor will transfer to SLPR in satisfaction of SLPR's Allowed Secured Claim, the Debtor will
work with 10K and McWin to execute the necessary and appropriate documents to effectuate the
transfer and conveyance of the Transferred Membership Interests in accordance with the

1 requirements of the 10K and McWin Operating Agreements. Upon the transfer of the Transferred
2 Membership Interests to SLPR, SLPR will responsible for any future capital calls with respect to
3 the Transferred Interests.

4 4. The Debtor's Future Business

5 Following the Effective Date, the Debtor intends to continue the business he was engaged
6 in pre-petition, including developing, buying and selling real estate.

7 **B. Liquidation of Estate Property**

8 The Reorganized Debtor shall have the authority to retain such brokers, agents, counsel, or
9 representatives as he deems necessary to market, lease and/or sell assets of the Reorganized
10 Debtor.

11 **C. Management**

12 The Plan will be implemented by the Reorganized Debtor.

13 **D. Disbursing Agent**

14 The Reorganized Debtor shall act as the Disbursing Agent under the Plan.

15 **E. Documentation of Plan Implementation**

16 In the event any entity which possesses an Allowed Secured Claim or any other lien in any
17 of the Debtor's property for which the Plan requires the execution of any documents to incorporate
18 the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to
19 satisfy the requirements of the Plan, the Debtor may record a copy of the Plan or the Confirmation
20 Order with the appropriate governmental agency and such recordation shall constitute the lien
21 release and creation of any necessary new liens to satisfy the terms of the Plan. If the Debtor
22 deems advisable, he may obtain a further Order from the Court that may be recorded in order to
23 implement the terms of the Plan.

24 **F. New Obligations**

25 Any Allowed Claims which are otherwise impaired herein, and which are paid in deferred
26 payments, shall be a New Obligation of the Reorganized Debtor under the terms described herein
27 and completely replace any pre-confirmation obligations of the Debtor.
28

1 **XIII. EFFECT OF CONFIRMATION.**

2 Pursuant to § 1141(d)(5) of the Bankruptcy Code, the Debtor will not receive a discharge
3 upon confirmation of the Plan, but, rather, upon completion of all payments under the Plan.
4 However, notwithstanding § 1141(d)(5) of the Bankruptcy Code, the Debtor's surrender of
5 Cordoba 108 to Adamantine shall be in full and final satisfaction and release of any and all claims
6 that Adamantine has against the Debtor, and the Debtor's surrender of the Rubi Condo to WWG
7 shall be in full and final satisfaction and release of any and all claims that WWG has against the
8 Debtor.

9 The Debtor shall be permitted to close his bankruptcy case during the term of the Plan,
10 however, so as to minimize administrative burden and expense, and to reopen their case
11 subsequently to seek the entry of discharge.

12 Any pre-confirmation obligations of the Debtor dealt with in the Plan shall be considered
13 New Obligations of the Debtor, and these New Obligations shall not be considered in default
14 unless and until the Reorganized Debtor defaults on the New Obligations pursuant to the terms of
15 the Plan. The New Obligations provided for in the Plan shall be in the place of, and completely
16 substitute for, any pre-Confirmation obligations of the Debtor. Once the Plan is confirmed, the
17 only obligations of the Debtor shall be such New Obligations as provided for under the Plan.

18 **XIV. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS.**

19 **A. Objections and Bar Date for Filing Objections.**

20 As soon as practicable, but in no event later than 90 days after the Effective Date,
21 objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each
22 of the Claims to which objections are made pursuant to the Bankruptcy Code and the Bankruptcy
23 Rules. The Debtor reserves the right and ability to object to any Claims, including those listed in
24 the Schedules, even if the Schedules do not indicate that the scheduled claim is disputed,
25 contingent or unliquidated. Objections filed after such objection date will be barred.

26 Keith shall have standing to file and prosecute any objections to claims.
27
28

1 **B. Settlement of Claims.**

2 Settlement of any objection to a Claim not exceeding \$10,000 shall be permitted on the
3 eleventh (11th) day after notice of the settlement has been provided to the Debtor, the Creditors,
4 the settling party, and other persons specifically requesting such notice, and if on such date there is
5 no written objection filed, such settlement shall be deemed approved. In the event of a written
6 objection to the settlement, the settlement must be approved by the Court on notice to the
7 objecting party.

8 **C. Estimation of Claims.**

9 For purposes of making distributions provided for under the Plan, all Claims objected to
10 may be estimated by the Disbursing Agent at an amount equal to (i) the amount, if any,
11 determined by the Court pursuant to § 502(c) of the Bankruptcy Code as an estimate for
12 distribution purposes; (ii) an amount agreed to between the Debtor and the Claimant; or, (iii) that
13 amount set forth as an estimate in the Plan or Disclosure Statement. Notwithstanding anything
14 herein to the contrary, no distributions shall be made on account of any Claim until such Claim is
15 an Allowed Claim.

16 **D. Unclaimed Funds and Interest.**

17 Distributions to Claimants shall be mailed by the Reorganized Debtor to the Claimants at
18 the address appearing on the master mailing matrix unless the Claimant provides the Reorganized
19 Debtor with an alternative address. For a period of one year from the date that a distribution was
20 to be made by the Disbursing Agent but has gone uncollected by the Claimant, the Disbursing
21 Agent shall retain any distributions otherwise distributable hereunder which remain unclaimed or
22 as to which the Disbursing Agent has not received documents required pursuant to the Plan.
23 Thereafter, the unclaimed funds shall be deposited in the appropriate distribution account for
24 distribution to other Claimants entitled to participate in such respective fund.

25 **XV. NON-ALLOWANCE OF PENALTIES AND FINES.**

26 No distribution shall be made under the Plan on account of, and no Allowed Claim,
27 whether Secured, Unsecured, Administrative, or Priority, shall include any fine, penalty,
28 exemplary or punitive damages, late charges, default interest or other monetary charges relating to

1 or arising from any default or breach by the Debtor, and any Claim on account thereof shall be
2 deemed disallowed, whether or not an objection was filed to it.

3 **XVI. CLOSING OF CASE.**

4 Until this case is officially closed, the Reorganized Debtor will be responsible for filing
5 pre- and post-confirmation reports required by the United States Trustee and paying the quarterly
6 post-confirmation fees of the United States Trustee, in cash, pursuant to 28 U.S.C. § 1930, as
7 amended. Pursuant to 11 U.S.C. § 1129(a)(12), all fees payable under § 1930 of Title 28, as
8 determined by the Court at the hearing on confirmation of the Plan, will be paid, in cash, on the
9 Effective Date.

10 **XVII. MODIFICATION OF THE PLAN.**

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

19 **XVIII. JURISDICTION OF THE COURT.**

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

22 1. To hear and determine all aspects of the SLPR Adversary Proceeding and the
23 allowance and amount of SLPR's Allowed Secured Claim.

24 2. To determine the classification of the Claims of any Creditors and the re-
25 examination of any Claims which have been allowed for the purposes of voting, and for the
26 determination of such objections as may be filed to the Creditor's Claims. The failure by the
27 Debtor or the Reorganized Debtor to object to or examine any Claim for the purpose of voting
28

1 shall not be deemed to be a waiver of the right to object to or to re-examine the Claim in whole or
2 in part.

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

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

13 5. To correct any defect, cure any omission or make any reconciliation of any
14 inconsistencies in the Plan, or the Confirmation Order, as may be necessary to carry out the
15 purposes and intent of the Plan.

16 6. To address and approve any proposed modification of the Plan after Confirmation,
17 pursuant to the Bankruptcy Rules and the Bankruptcy Code.

18 7. To enforce and interpret the terms and conditions of the Plan, including enforcing
19 the releases of Adamantine's and WWG's claims against the Debtor.

20 8. To enter any order, including injunctions, necessary to enforce the title, rights and
21 powers of the Debtor or the Reorganized Debtor, and to impose such limitations, restrictions,
22 terms and conditions of such title, right and power that this Court may deem necessary.

23 9. To hear, determine, and resolve any disputes that may arise in connection with the
24 Reorganized Debtor's efforts to market, manage, operate, finance, or sell any of the Debtor's
25 property, and the manner in which any resulting proceeds are distributed.

26 10. To enter an order concluding and terminating this case.
27
28

1 **XIX. RETENTION AND ENFORCEMENT OF CLAIMS.**

2 Pursuant to § 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtor shall retain and
3 may enforce any and all claims of the Debtor except any claims specifically waived herein. Any
4 retained causes of action include, but are not limited to, any claims asserted in the SLPR
5 Adversary Proceeding (including any claims asserted therein that have been withdrawn by the
6 District Court), all avoidance actions, fraudulent conveyance actions, preference actions, and other
7 claims and causes of action of every kind and nature whatsoever, arising before the Effective Date
8 which have not been resolved or disposed of prior to the Effective Date, whether or not such
9 claims or causes of action are specifically identified in the Plan or Disclosure Statement.

10 Any recovery obtained from retained causes of action shall become an additional asset of
11 the Debtor, unless otherwise ordered by the Court, and shall be available for distribution in
12 accordance with the terms of the Plan.

13 **XX. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

14 To the extent that the 10K and McWin Operating Agreements are, or are deemed to be,
15 executory contracts, the Debtor assumes the 10K and McWin Operating Agreements. Executory
16 contracts and/or unexpired leases of the Debtor not expressly assumed by the Plan or by separate
17 order of the Court are hereby rejected. Claims under § 502(g) of the Code arising as a result of the
18 rejection of executory contracts or unexpired leases shall be filed no later than 30 days after the
19 Confirmation Date. Any such Claims not timely filed and served shall be disallowed.

20 **XXI. REVESTING.**

21 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date, the
22 Reorganized Debtor shall be vested with all the property of the Estate free and clear of all claims,
23 liens, charges, and other interests of Creditors, arising prior to the Effective Date. Upon the
24 Effective Date, the Reorganized Debtor shall operate free of any restrictions.

25 **XXII. LIQUIDATION ANALYSIS**

26 If the Plan is not confirmed, and the Debtor's assets were liquidated under Chapter 7 of the
27 Bankruptcy Code instead, it is likely that only the Debtor's secured creditors would achieve any
28 return, while all other creditors would likely not recover any distribution from the Debtor's Estate

1 at all. The Debtor's ability to fully repay unsecured creditors is completely contingent upon of his
 2 ability to use the Membership Interests as collateral for the Exit Funding.

3 The following chart demonstrates the likeliest scenario in the event of a liquidation:

4 **Liquidation Value of Assets:**

5	Cordoba 108 (est. value less Adamantine claim and HOA fees):	\$0
6	Diamante Condo (est. value less BMO claim and HOA fees):	\$0
7	Rubi Condo (est. value less WWG claim, litigation expenses and HOA fees):	\$0
8	Cash (est. as of Confirmation Date)	\$0
9	Vehicles (after exemptions):	\$9,000
10	Personal Property (after exemptions):	\$0
11	Membership Interests (less SLPR's asserted claim) ⁵ :	\$0
12	Interests in other closely held entities:	\$0
13	Net Recovery to Creditors	\$9,000

14 The foregoing analysis demonstrates that the net recovery to unsecured creditors in a
 15 liquidation would likely be approximately \$9,000. Such an amount would likely not be sufficient
 16 to pay for the costs of the liquidation, and general unsecured creditors will likely recover nothing
 17 in a liquidation.

18 The Debtor's Plan, which provides for the payment, in full, of all allowed unsecured
 19 claims, provides a far better recovery than such a liquidation and is a far better alternative for
 20 creditors.

21
 22 _____
 23 ⁵ In a liquidation scenario, it is unlikely that the Debtor will be able to continue prosecuting his
 24 claims and defenses against SLPR. Consequently, in such a situation, SLPR's secured claim will
 25 exceed \$12.5 million. Further, SLPR will be able credit bid its asserted claim in any forced sale of
 26 the Membership Interests. Any such forced liquidation sale will likely be adversely influenced by,
 27 among other things, the fact that the Membership Interests are minority interests in a closely held
 28 company, 10K's and McWin's assertion of the restrictions on alienation set forth in their respective
 Operating Agreements (to the extent that such restrictions are enforceable and enforced in a
 bankruptcy sale), the spectre of the ongoing WVSU Litigation, and the prospects that the buyer
 will be partners with potentially uncooperative members. Ultimately, a forced liquidation sale of
 the Membership Interests will likely result in SLPR obtaining the Membership Interests through a
 credit bid of its asserted claim. The Debtor submits that these adverse influences do not exist in
 the context of the Debtor's collateral for debt treatment of SLPR's claim in the Plan.

1 **XXIII. DISCLAIMER**

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

6 **XXIV. DEBTOR'S RECOMMENDATIONS**

7 The Debtor recommends that all creditors entitled to vote for the Plan do so and
8 affirmatively cast their ballots to accept the Plan. The Debtor's Plan will pay all Allowed Claims,
9 in full. The most likely alternatives to confirmation of the Plan would be conversion of this case to
10 a case under Chapter 7 of the Bankruptcy Code or dismissal, and neither of those options would
11 serve to benefit the Debtor's creditor body as a whole. Rather, in such a scenario, SLPR will likely
12 foreclose on its asserted interests in the Membership Interests, and no other creditors will receive
13 any distribution.

14 For these reasons, the Debtor urges you to vote to accept his Plan and to return your ballots
15 in time to be counted.

16 DATED: July 13, 2016.

17 SACKS TIERNEY P.A.

18
19 By: 

20 Philip R. Rudd
21 Wesley D. Ray
22 James S. Samuelson
23 Attorneys for Debtor

24 COPY OF THE FOREGOING
25 e-mailed this 13th day of July, 2016, to:

26 Christopher J. Pattock
27 * Christopher.J.Pattock@usdoj.gov
28 Office of the U.S. Trustee
230 North First Avenue, Suite 204
Phoenix, AZ 85003-1706

Bradley J. Stevens * BStevens@jsslaw.com
JENNINGS STROUSS & SALMON, PLC
One E. Washington Street, Suite 1900
Phoenix, AZ 85004-2554
Attorneys for SLPR, L.L.C.

1 David J. Hindman * DHindman@mcrazlaw.com
2 Michael McGrath * mmcgrath@mcrazlaw.com
3 MESCH, CLARK & ROTHSCHILD, P.C.
4 259 N. Meyer Avenue
5 Tucson, AZ 85701-1090
6 *Attorneys for 10K, L.L.C.*

7 Curtis D. Drew * Curtis.Drew@azbar.org
8 P.O. Box 8034
9 Scottsdale, AZ 85252
10 *Official Committee of Unsecured Creditors*

11 Brian Sirower * brian.sirower@quarles.com
12 Jason D. Curry * jason.curry@quarles.com
13 QUARLES & BRADY LLP
14 Renaissance One
15 Two North Central Avenue
16 Phoenix, AZ 85004-2391
17 *Attorneys for BMO Harris Bank, N.A.*

18 John R. Clemency * john.clemency@gknet.com
19 Lindi Weber * lindi.weber@gknet.com
20 GALLAGHER & KENNEDY, P.A.
21 2575 East Camelback Road
22 Phoenix, AZ 85016-9225
23 *Attorneys for Official Committee of Unsecured*
24 *Creditors*

25 Trevor D. Cox * tcox@beusgilbert.com
26 Timothy J. Paris * tparis@beusgilbert.com
27 BEUS GILBERT, PLLC
28 701 N. 44th Street
Phoenix, AZ 85008-6504
Attorneys for SLPR, LLC and PEG 20, LLC

Ashton Wolfswinkel * ashtonw@wholdings.com
VANDERBILT FARMS, LLC
1121 W. Warner Road, Suite 109
Tempe, AZ 85284
Official Committee of Unsecured Creditors

Barry Zemel * zemel3636@gmail.com
P.O. Box 47638
Phoenix, AZ 85068
Official Committee of Unsecured Creditors

S. Cary Forrester * scf@forresterandworth.com
FORRESTER & WORTH, PLLC
3636 North Central Ave., Suite 700
Phoenix, AZ 85012
Attorneys for Vanderbilt Farms, LLC

Dale C. Schian * bkdocket@biz.law
Scott R. Goldberg
SCHIAN WALKER, P.L.C.
1850 N. Central Avenue, Suite 900
Phoenix, AZ 85004-4531
Attorneys for Keith Mishkin, ILM D, LLC, and
Turtle Investments, LLC

Cindy L. Greene *
cgreene@greenelawfirmaz.com
LAW OFFICE OF CINDY GREENE, P.C.
18444 N. 25th Avenue, Ste. 420
Phoenix, AZ 85023
Attorneys for Adamantine

By: /s/ Cathie Misquez