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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.

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

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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 *Second 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 SLPR disputes the valuation conducted by Henry & Horne. In this regard, SLPR asserts as
20 follows:

21 "SLPR has retained a valuation expert, Lynton Kotzin of Kotzin Valuation Partners, LLC,
22 who has reviewed the Henry & Home appraisal and has also conducted his own valuation of the
23 Debtor's 10K Interest. The Kotzin Preliminary Expert Rebuttal Report dated August 16, 2016
24 ("Report") [prepared for SLPR] makes significant observations and conclusions, including, but not
25 limited to:

- 26 • SLPR's claim of \$12,319,434 is under-secured and the 10K Interest does not provide

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 SLPR with the indubitable equivalent of its secured claim.

2 • The appraisal report prepared by Henry & Home, LLP by Edward M. Burr, Jr. on
3 February 1, 2016 ("Burr Report") is fundamentally flawed and unreliable, is not in compliance
4 with the Uniform Standards of Professional Appraisal Practice or other professional valuations
5 standards, does not adequately address the nature and risks associated with 10K's underlying
6 assets, does not accurately portray Debtor's inability to sell the 10K Interest, misstates Randy
7 Stolworthy's account of Mr. Beus' objection to Debtor selling his 10K Interest, relies on an April
8 2014 real estate appraisal without considering that appraisal's extraordinary assumptions and
9 flawed data with respect to comparable land sales, and ignores the significant costs and time
10 necessary to prepare the Sun Valley land for sale, including the build-out of the infrastructure.

11 • The Burr Report does not accurately reflect the current per acre value of the Sun Valley
12 land project. Real property in the area currently under escrow has a sales price significantly lower
13 than the Burr Report's value of \$13,000 per acre.

14 • The Burr Report unrealistically assumes an immediate/instant time horizon for the
15 unwinding of the transaction, sale of the property and conversion of the underlying assets into
16 cash. Given the status of the State Court litigation, the contested nature of the underlying assets and
17 the holding period to market and sell the property, the Burr Report's time line is unreasonable.

18 • Debtor's deficiencies in not meeting capital calls are not addressed in the Burr Report nor
19 does it consider the financial impact on a purchaser who would be required to cure such
20 deficiencies.

21 • The Burr Report does not adequately address and quantify the lack of
22 marketability/liquidity discount. The Burr Report takes the position that since there have been
23 offers to purchase the 10K Interest there is no reason to factor in a discount for lack of
24 marketability. However, until there is an agreement as to the value of the 10K Interest, there is no
25 "market" for the 10K Interest."

26 The Debtor disagrees with and disputes SLPR's conclusions and criticisms of the Henry and
27 Horne valuation, and its conclusion that SLPR's claim is undersecured.

28 Over the years, the Sun Valley Land has been the subject of a series of transactions and

1 significant litigation relating to those transactions. *See e.g.* Cal X-Tra *et al.* v. Phoenix Holdings II,
2 LLC, *et al.*, Case No. CV 2003-008362 (the "**WVSV Litigation**") pending in the Superior Court of
3 Arizona for the County of Maricopa (the "**State Court**"). The ultimate resolution of the WVSV
4 Litigation will define 10K's and McWin's rights in and to the Sun Valley Land, and their claims
5 against WVSV and others involved in the WVSV Litigation. At this time, however, the precise
6 nature of 10K's and McWin's rights and interests in the Sun Valley Land, and its claims and rights
7 against WVSV and others, have not been fully defined and established. Nevertheless, the
8 appraisal of the Debtor's Membership Interests has taken the WVSV Litigation into account.
9 Moreover, as discussed below, the Plan provides that the Bankruptcy Court will make a finding of
10 the value of the Membership Interests based upon evidence presented by interested parties in
11 connection with the confirmation of the Plan.

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

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

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

20 Prior to filing this Chapter 11 case, multiple parties expressed an interest in either buying
21 the Debtor's Membership Interests, or lending the Debtor enough money to pay his creditors over
22 time, by using the Debtor's Membership Interests as collateral. In fact, about one and a half years
23 before the bankruptcy filing, the Debtor and an outside party discussed the Debtor's potential sale
24 of his Membership Interests to such party for approximately \$23 million. The Debtor did not
25 consummate a transaction.

26 Subsequent to this offer, and about six months before the filing of the Chapter 11 case,
27 another party indicated an interest to either purchase the Membership Interests or loan money to
28 the Debtor secured by the Membership Interests. However, those potential deals never closed for a

1 variety of reasons. Again, the Debtor is conducting discovery relating to these issues.

2 Also, not long before the filing of the Chapter 11 case, the Debtor sent a formal proposal to
3 his fellow members regarding the Membership Interests. The proposal indicated that he would sell
4 his interest to his fellow members at a discount. The Debtor is informed that three of the members
5 indicated an interest but, for unknown reasons, did not pursue their interest. The Debtor intends to
6 conduct discovery with respect to 10K, McWin and their members with respect to these issues.

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

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

24 Consequently, the Debtor's Plan does not provide for the marketing and sale of the
25 Membership Interests. Rather, it provides for the surrender of a portion of the Debtor's
26 Membership Interests to SLPR in full satisfaction of SLPR's allowed secured claim.

27 10K and McWin assert that there are restrictions on the transfer of membership interests in
28 their respective Operating Agreements. The Debtor acknowledges this assertion by 10K and

1 McWin. To the extent that 10K and McWin are required to approve any transactions contemplated
2 in the Plan, the Debtor will endeavor to obtain such asserted approval from 10K and McWin.
3 Absent such approval, however, the Debtor reserves and preserves the right and ability to assert
4 and demonstrate that (a) the transactions contemplated in the Plan do not violate or even implicate
5 the asserted restrictions in the 10K and McWin Operating Agreements and/or (b) the transactions
6 contemplated in the Plan can be accomplished free and clear of any such restrictions, if and to the
7 extent that any such restrictions apply.

8 10K and McWin have indicated in pleadings and otherwise that they do not object to SLPR
9 becoming a member of 10K. Therefore, the Debtor asserts that any restrictions on the ownership
10 of 10K or McWin interests in their respective Operating Agreements will not be implicated by the
11 Plan.

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

13 The primary driver for the Debtor's bankruptcy filing was SLPR's noticing of a UCC
14 foreclosure sale of the Debtor's Membership Interests. Such a foreclosure of the Membership
15 Interests would have deprived the Debtor of significant equity in the Membership Interests which
16 the Debtor intends to use in connection with the payment of all allowed unsecured claims, in full,
17 and to pay his living and other expenses going forward. A foreclosure of the Membership
18 Interests would have provided a substantial windfall to SLPR and would likely have precluded the
19 Debtor's exercise of his defenses and counterclaims against SLPR. The bankruptcy filing will
20 allow the Debtor to timely and properly prosecute his defenses and claims in the SLPR Adversary
21 Proceeding and will allow the Debtor to realize the value of his Membership Interests.

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

1 **V. THE DEBTOR'S ASSETS AND LIABILITIES**

2 **A. The Debtor's Assets**

3 **1. Real Property**

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

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

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

21 _____
22 ³ With respect to Las Palomas, the Debtor is informed and believes that WWG borrowed funds
23 from third party lenders (the "**Third Party Lenders**") and that these Third Party Lenders were
24 financed by Adamantine. The loans by the Third Party Lenders to WWG were secured by, among
25 other things, WWG's interests in trust agreements and contracts relating to Las Palomas
26 condominiums. The funding by Adamantine to the Third Party Lenders was, in turn, secured by
27 (among other things) the Third Party Lenders' liens in the WWG contracts and agreements. At
28 some point, the Debtor is informed and believes, the Third Party Lenders defaulted on their
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 following discussion regarding the Debtor's interests in the Mexican condominiums
2 necessarily describes these beneficial interests in the Mexican trusts rather than a direct ownership
3 interest in the Mexican property.

4 **a. Cordoba 108**

5 In approximately August 2006, the Debtor and two of his partners, Tom Tokoph (the
6 Debtor's son-in-law) ("**Tokoph**") and John Bernhard ("**Bernhard**") put a total of approximately
7 \$356,400 down on the acquisition (through a trust) of a condominium known as Cordoba 108
8 located in the Las Palomas condominium project ("**Cordoba 108**"). The purchase price for
9 Cordoba 108 was \$1,188,000. The Debtor estimates that the unpaid balance for the purchase of
10 Cordoba 108 is approximately \$747,000. Even though Tokoph and Bernhard contributed funds for
11 the acquisition of Cordoba 108, only the Debtor and his wife were named as the beneficiary of the
12 trust agreement relating to Cordoba 108. WWG was the trustor of the trust agreement relating to
13 Cordoba 108 and financed the balance of the Debtor's (and Tokoph's and Bernhard's) acquisition of
14 Cordoba 108.

15 However, before the balance of the purchase price was paid, Adamantine foreclosed on
16 WWG's interest in the trust agreement concerning Cordoba 108 and has asserted, variously, that
17 the Debtor either (a) no longer has any interest in Cordoba 108 by virtue of this foreclosure and/or
18 (b) that the Debtor now owes Adamantine, rather than WWG, the balance of the purchase price for
19 Cordoba 108. It is unclear to the Debtor whether and to what extent WWG still asserts a right in
20 Cordoba 108 or a right to the balance of the purchase price for Cordoba 108. The Debtor believes
21 that the WWG/Adamantine Litigation will ultimately address and resolve these issues.
22 Additionally, the Debtor believes that there is currently approximately \$11,000 in unpaid
23 condominium association dues, fees or assessments relating to Cordoba 108.

24 The Debtor does not know the current value of Cordoba 108. However, given the
25 uncertainty created by the WWG/Adamantine Litigation, the balance of the purchase price owed to
26 Adamantine (or WWG), the outstanding condominium association fees, and Tokoph's and
27 Bernhard's interests in Cordoba 108, the Debtor does not believe that there is any value in Cordoba
28 108 for the benefit of his estate or his creditors.

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

6 **b. The Diamante Condo**

7 In accordance with Mexican Law, on June 1, 2007, the Debtor and his wife entered into a
8 trust agreement (the "**Diamante Trust Agreement**") through which a Mexican institution,
9 Scotiabank, would act as Trustee ("**Scotiabank**"), BMO Harris Bank, N.A., successor by merger of
10 M&I Marshall and Ilsley Bank ("**BMO**") would be the first place beneficiary, and the Debtor
11 would be the second place beneficiary with respect to (i) Condominium 1201, Unit 2B of the
12 Diamante Building located at Las Palomas and (ii) Condominium 1202, Unit PH3B of the
13 Diamante Building located at Las Palomas (together with all personal property located thereon, the
14 "**Diamante Condo**"). Under the terms of the Diamante Trust Agreement, the Debtor was entitled
15 to the use and enjoyment of the Diamante Condo during such time that he remained as second
16 place beneficiary under the Diamante Trust Agreement. To finance the purchase of the Debtor's
17 interest under the Diamante Trust Agreement, on October 20, 2006, BMO extended credit to the
18 Debtor in the principal amount of \$990,990.00.

19 Prior to the Petition Date, the Debtor defaulted on his obligations to BMO relating to the
20 Diamante Condo by failing to pay all amounts owing when due. The Debtor failed to cure the
21 default. As a result of the Debtor's uncured default, BMO asserted that it held a claim against the
22 Debtor in excess of \$300,000.00, plus all allowable accrued interest, fees, and charges. On
23 September 10, 2012, BMO issued an Instruction Letter to Scotiabank, directing it to terminate the
24 Debtor's second place beneficial interest in the Diamante Condo under the Diamante Trust
25 Agreement. The Debtor is informed that, on November 28, 2012, Scotiabank carried out BMO's
26 directives by revoking the Debtor's second place beneficial interest in the Diamante Trust
27 Agreement and terminating his interest in the Diamante Condo. BMO has also asserted that the
28 Debtor is obligated to reimburse BMO for any condominium association dues, fees or assessments

1 that BMO has paid or may pay with respect to the Diamante Condo prior to BMO's taking
2 possession and control of the Diamante Condo.

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

6 In February 2016, the Debtor and BMO entered into that certain *Stipulation Regarding Real*
7 *Property Located in Mexico* ("**BMO Stipulation**") concerning the Diamante Condo, and the
8 Bankruptcy Court entered its *Order Approving Stipulation Regarding Real Property Located in*
9 *Mexico* ("**Order Approving BMO Stipulation**") on March 29, 2016. Pursuant to the BMO
10 Stipulation, the Order Approving BMO Stipulation, and the Plan, the Debtor has, and will, release
11 and relinquish any and all of his rights, title and/or interests in the Diamante Condo and any and all
12 personal property remaining in the Diamante Condo to BMO, and will execute any documents
13 required or requested by BMO with respect to the Debtor's interests in the Diamante Condo in full,
14 final and complete satisfaction of any and all claims that BMO has, or may have against the Debtor
15 relating to the Diamante Condo, either directly, indirectly or derivatively, including without
16 limitation any claims asserted by BMO in Claim No. 16, and any condominium association fees or
17 assessments relating to the Diamante Condo, which condominium association fees or assessments
18 BMO has agreed to satisfy in connection with the foregoing treatment of BMO's claims relating to
19 the Diamante Condo.

20 **c. The Rubi Condo**

21 In or about 2008, the Debtor (either individually and/or through Abigail Properties de
22 Mexico, an entity owned and controlled by the Debtor) acquired an interest in a Mexican entity
23 known as Access Resources. Access Resources held the beneficial interest in a trust that owned a
24 condominium unit known as Unit 202 of the Rubi Building located in the Las Palomas
25 condominium project ("**Rubi Condo**"). When the Debtor acquired the interest in Access
26 Resources, the Rubi Condo was subject to a lien in the amount of approximately \$99,000 in favor
27 of WWG. Therefore, WWG currently asserts a lien in the Rubi Condo in the amount \$99,000.
28 WWG also asserts that the Debtor is personally liable for this amount. Again, this is a point of

1 contention between the Debtor and WWG. Additionally, there are unpaid and delinquent
2 condominium association dues, fees and expenses owing with respect to the Rubi Condo in the
3 amount of approximately \$13,000. Although the Debtor does not know what the current value of
4 the Rubi Condo may be, he estimates that there is no equity in the Rubi Condo, particularly since
5 there will likely be litigation with WWG regarding the parties' respective rights and interests in the
6 Rubi Condo.

7 As mentioned above, there are a variety of disputes between the Debtor and WWG relating
8 to the Las Palomas project and other Mexican real estate endeavors and agreements between the
9 Debtor and WWG. The Debtor believes that, because of (among other things) WWG's political
10 and business influences in Mexico, any prosecution of his claims against WWG would be
11 prohibitively expensive, extremely time-consuming, largely unsuccessful and, ultimately,
12 uncollectable even if successfully prosecuted. Consequently, the Debtor's Plan proposes that he
13 will release and relinquish any and all of his rights, title and/or interests in the Rubi Condo to
14 WWG, and will execute any documents required or requested by the WWG with respect to the
15 Debtor's interests in the Rubi Condo in full, final and complete satisfaction of any and all claims
16 that WWG has, or may have against the Debtor either directly, indirectly or derivatively, including
17 without limitation any condominium association fees or assessments relating to the Rubi Condo.

18 2. Personal Property

19 a. Cash and Accounts

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

24 b. Vehicles

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

1 \$6,000 given its condition and mileage.

2 **c. Household Goods and Furnishings**

3 The Debtor owns certain standard household goods and furnishings, clothing, books,
4 pictures and art objects, as identified in his Schedules. The Debtor does not believe that the value
5 of these personal property items exceeds the statutory exemptions to which he is entitled. As
6 discussed above, and as disclosed in his Schedules, prior to the bankruptcy filing, the Debtor sold
7 certain of his non-exempt assets that had any value, to unrelated third parties for negotiated
8 reasonably equivalent value, in order to pay his living expenses. Specifically, for example, in
9 2014, the Debtor sold certain jewelry to E.D. Marshall for \$150,000. In 2015, the Debtor sold
10 other jewelry to various unrelated parties (including Hamra Jewelers and the Liquidation Bureau)
11 for a total of \$46,000. The Debtor also sold certain Indian art work to Peter Lenstrohm, an
12 individual unrelated to the Debtor, for approximately \$33,000.

13 **3. Interests in Entities**

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

15 As discussed in detail above, the Debtor owns the Membership Interests in 10K and
16 McWin relating to the Sun Valley Land. 10K and McWin were both formed in 1995. The
17 Membership Interests have been appraised by Henry & Horne as having an estimated value
18 between \$27,394,780 and \$30,801,794. Ultimately, the Court will determine the value of the
19 Membership Interests in connection with the confirmation of the Debtor's Plan.

20 **b. ACM Biltmore Inc.**

21 The Debtor owns a 50% interests in ACM Biltmore, Inc. ("**ACM Biltmore**"). The Debtor's
22 wife, Carol, owns the other 50% of ACM Biltmore. ACM Biltmore was formed in 1994. ACM
23 Biltmore owns a 50% membership interest in ACM Biltmore/Park, LLC ("**ACM/Park**"). Anne
24 Park owns the other 50% interest in ACM/Park. ACM/Park owns and operates the Cornelia Park
25 retail store in the Biltmore Fashion Square. Anne and David Park operate the store and receive a
26 salary from the store. Neither the Debtor nor Carol currently receive any salary, income or
27 distributions from ACM/Park. ACM/Park has not made a distribution to members in several years
28 and it currently breaks even. ACM/Park did repay approximately \$25,000 to the Debtor in 2015

1 from the sale of inventory that the Debtor had purchased for ACM/Park

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

8 **c. Abigail Properties, LLC**

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

13 Since its inception in 2001 through approximately 2009, Abigail Properties was the entity
14 through which the Debtor conducted most of his real property transactions. For example, Abigail
15 Properties bought, remodeled, refurbished, managed, operated and sold a commercial building in
16 Arizona and a commercial building in Colorado. Abigail Properties is also the entity that the
17 Debtor used in connection with his involvement in the Las Palomas project. Specifically, Abigail
18 Properties (along with the Debtor) was a party to the agreement with WWG with respect to the
19 Debtor's management and operation of the Las Palomas contract. Beginning in approximately
20 2002, the Debtor focused the majority of his efforts on Las Palomas and, since then, Abigail
21 Properties has not been involved in any other projects or developments.

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

27 **d. Ely Radio, LLC**

28 The Debtor is the record owner of a 50% interest in Ely Radio, LLC ("**Ely Radio**"), a

1 revoked Nevada limited liability company. Fred Weinberg owns the other 50% interest in Ely
2 Radio. Ely Radio was formed in 2006. Fred Weinberg asserts that, because the Debtor has not
3 made any contributions, monetarily or otherwise, to Ely Radio for approximately four years, the
4 Debtor no longer has any right or interest in Ely Radio. The Debtor does not challenge this
5 assertion.

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

13 **e. San Carlos Mexico Property**

14 See discussion, below, concerning John Mellen for information regarding the Debtor's
15 potential interest in certain real property in San Carlos, Mexico, which the Debtor believes does
16 not have any realizable value for his estate.

17 **f. Access Resources**

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

20 **g. Defunct, Assetless and Non-Operating Entities**

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

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

27 **ii. Elko 335, LLC**

28 Elko 335, LLC ("**Elko**") is a revoked Nevada entity that formerly held an option to

1 purchase certain real property in Elko, Nevada. The option to purchase expired prior to the
2 Petition Date, is no longer enforceable, and has no value for the Debtor's estate. Elko has no other
3 assets or operations. The seller of the Elko property, Right Partners, LLC, has requested that the
4 Debtor sign documents formally relinquishing any interest that Elko may have in the subject
5 property. The Debtor is prepared to do so with the Court's approval.

6 **iii. Great Western Development Corporation**

7 The Debtor was the owner of Great Western Development Corporation ("**Great Western**").
8 Great Western was formed in 1978 and was dissolved in 2003. Great Western is the entity that the
9 Debtor used for most of his real estate projects from the time that he came to Arizona in the late
10 1970's until the early 2000's. Great Western bought, sold, developed, managed, and operated a
11 variety of residential (apartments and condominium conversion) projects, golf courses and other
12 commercial properties. Great Western has been dissolved by the Arizona corporation commission
13 and no longer has any assets, operations or contracts and does not make any distributions. This
14 entity is defunct and has no value for the Debtor's estate.

15 **iv. MCW Entities**

16 In the 1990's, the Debtor was partners with Theodore Claassen and William Was in several
17 commercial development projects in Tempe, Arizona, including MCW Holdings, LLC, MCW
18 Fifth & Mill, LLC, MCW 7th & Mill Commercial/Parking, LLC, MCW Orchidhouse, LLC, and
19 other MCW entities (including MCW TNB, LLC, MCW Gold Canyon, LLC, and MCW Eleven
20 East 7th Street, LLC). These entities bought, developed, managed, operated and sold commercial
21 and residential properties in Tempe. None of these entities currently have any assets, operations or
22 contracts and do not make any distributions. They are defunct and have no value for the Debtor's
23 estate.

24 **v. ACM Investments. LLC**

25 The Debtor is the sole member of ACM Investments, LLC ("**ACM Investments**") which
26 was formed in 1996. To the best of the Debtor's recollection, the only asset ever owned by ACM
27 Investment was a condominium in Coronado, California which was sold by ACM Investments
28 approximately 10 years ago. This entity no longer has any assets, operations or contracts and does

1 not make any distributions. This entity is defunct and has no value for the Debtor's estate.

2 **vi. ACM Wings, LLC**

3 The Debtor is the sole member of ACM Wings, LLC ("**ACM Wings**") which was formed
4 in 2004. To the best of the Debtor's recollection, the only asset ever owned by ACM Wings was an
5 airplane which was sold by ACM Wings in 2006 or 2007. This entity no longer has any assets,
6 operations or contracts and does not make any distributions. This entity is defunct and has no
7 value for the Debtor's estate.

8 **vii. AM-FM Media, LLC**

9 The Debtor formed AM-FM Media, LLC ("**AM-FM**") with the intent to own and operate a
10 radio station to broadcast Phoenix Suns basketball games in Spanish. Ultimately, this project never
11 got off the ground. In any event, this entity does not have any assets, operations or contracts and
12 makes no distributions. It is defunct and has no value for the Debtor's estate.

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

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

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

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

21 **x. Shelf Entities**

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

27 Similarly, the Arizona Corporation Commission's website indicates that the Debtor is a
28 member or manager of other entities, which are not listed in the Debtor's Schedules because they

1 are defunct, such as West US Media, LLC, Executive Lending Center, LLC, Executive Loan
2 Center, LLC, Las Palomas Resales, Inc., Cat's With an Attitude, Inc., Bradshaw Gold, LLC, ACM
3 Estrella, Inc., ACM Skye Top, Inc., ACM Mill Street, Inc., ACM Lots, Inc., Great Western Real
4 Estate Auctions, LLC, Natus Management, Inc., MCM Restaurant Group, LC, PWAL Gold
5 Canyon, LLC, Arizona Capital Fund 2000, LLC, and Chad Management Company, LLC.

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

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

9 **a. 59 South Litigation**

10 The Debtor held an indirect limited partnership interest in an entity known as 59 South
11 Holdings, LLC ("**59 South**"). Pre-petition, 59 South was engaged in litigation as a plaintiff against
12 Jaguar Premium Properties, LLP and Walter Chomichuk, as defendants, concerning a contract
13 dispute over the acquisition of a golf course. This litigation resulted in a settlement shortly after
14 the Petition Date which provided for the dismissal of the litigation and allowed the Debtor to
15 recover a total of approximately \$3,600 from the settlement proceeds in approximately late January
16 and early February 2016. The Debtor does not believe that he will receive any further distributions
17 from the settlement of this litigation and the litigation has been dismissed.

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

19 The Debtor believes that he (either individually or through Mexican Abigail Properties)
20 may have a cause of action against John Mellen ("**Mellen**") relating to certain management fees,
21 expenses reimbursements and other remuneration in connection with the Debtor's operation and
22 management of certain commercial and residential properties in San Carlos, Mexico. Mellen failed
23 and refused to pay the Debtor such management fees, expense reimbursements and other
24 remuneration which the Debtor believes to be in excess of \$2,000,000. However, the Debtor has
25 not initiated an action against Mellen to recover these claims because (a) the Debtor does not have
26 funds to prosecute such an action, (b) the Debtor's agreement was with Mellen, and Mellen has
27 passed away, and (c) Mellen lost control of the San Carlos properties such that the collectability of
28 any successful judgment is very highly unlikely. Therefore, the Debtor does not intend to pursue

1 these potential causes of action, and does not believe that they have any value for the bankruptcy
2 estate.

3 **c. WWG**

4 As discussed above, the Debtor has several disputes with, and potential claims against,
5 WWG in connection with, among other dealings in Mexico, the Las Palomas project and a project
6 known as the Waterfront. With respect to Las Palomas, the Debtor believes that WWG owes him
7 approximately \$3.8 million in unpaid commissions, fees, expense reimbursements and other
8 remuneration based upon services provided by the Debtor to WWG. WWG disputes the Debtor's
9 claims and, rather, asserts that it has certain claims against the Debtor, including claims associated
10 with the Rubi Condo. With respect to the Waterfront project, the Debtor believes that, in
11 approximately 2006, WWG fraudulently induced the Debtor to raise \$2.5 million from investors
12 (through Waterfront Investments) to contribute to the project. WWG did not use the funds raised
13 by Waterfront Investments as it promised, and did not acquire or manage the Waterfront project as
14 it promised. Rather, WWG financed the project with a loan, defaulted on the loan, and lost the
15 property to foreclosure. The funds invested by Waterfront Investments were lost.

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

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

25 The Debtor is a defendant in a lawsuit filed by Michael Russo in Maricopa County Superior
26 Court, Case No. CV2009-018954 (the "**Russo Lawsuit**"), relating to claims by Russo with respect
27 to Russo's attempted purchase of a condominium at Las Palomas. Russo asserts that he lost his
28 investment in a Las Palomas condominium and blames the Debtor, among others, for the lost

1 investment. The Russo Lawsuit is currently stayed by § 362 of the Bankruptcy Code. The Debtor
2 disputes Russo's assertions and does not believe that Russo has an allowed or allowable claim
3 against the Debtor.

4 **e. SLPR Adversary Proceeding**

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

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

8 The total amount of claims filed in the case is \$15,331,358.23. Of that amount,
9 \$12,889,280.47 are asserted as secured claims, \$173,954.12 are asserted as priority unsecured
10 claims and \$2,268,123.64 are asserted as general unsecured claims. By Order of the Bankruptcy
11 Court (Dkt. No. 58), the claims bar date was February 29, 2016. Thus, the claims bar date has
12 passed.

13 **1. Secured Claims**

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

19 Additionally, also as discussed above, SLPR asserts a secured claim in the amount of
20 \$12,319,433.70, secured by the Membership Interests. The Debtor disputes SLPR's claims and is
21 litigating that claim in the SLPR Adversary Proceeding.

22 ILMD holds a secured claim against the Debtor in the pre-petition amount of approximately
23 \$570,000 secured by a junior lien on the Membership Interests and a lien on the Debtor's other
24 personal property (which, as discussed above, is nominal). The Plan also identifies Turtle
25 Investments (another entity related to Keith) as having a potential secured claim against the Debtor
26 but the Debtor does not believe that Turtle Investments holds a valid, perfected secured claim.

27 Finally, as of the Petition Date, the Debtor owed approximately \$4,500 to US Bank which
28 claim was secured by the Lexus. The Debtor continued making his regular payments to US Bank

1 post-petition, and that lien has now been paid off.

2 **2. Administrative Priority Claims**

3 The Debtor's administrative expenses will include the approved fees and costs of attorneys
4 and other professionals necessary to the Debtor's operations, the administration of the Debtor's
5 bankruptcy case, and the formulation and confirmation of the Plan. These professionals include
6 the Debtor's counsel, the Debtor's special counsel, Gordon Rees, LLP, and the Committee's
7 counsel. The allowed amount of the fees and costs of these professionals will not be precisely
8 known until the Bankruptcy Case is completed. However, each of these professionals will be
9 required to submit fee applications and obtain final approval by the Court of their respective fees
10 and costs before they may receive final payment. As of this Disclosure Statement, the Debtor's
11 counsel has applied for fees and costs in the total amount of \$162,467.90, the Debtor's special
12 counsel has applied for fees and costs in the total amount of \$60,792.42, and the Committee's
13 counsel has applied for fees and costs in the total amount of \$37,798.77.

14 **3. Priority Claims**

15 The IRS has filed a proof of claim against the Debtor asserting a priority claim, pursuant to
16 11 U.S.C. § 507(a)(8), in the amount of \$173,954.12 based upon (a) asserted civil penalties and
17 accrued interest for the tax periods ending 6/30/10, 3/31/2011, 6/30/2011, 9/30/2011 and
18 12/31/2011 and (b) unpaid income taxes assessed for the tax periods ending 12/31/2012,
19 12/31/2013 and 12/31/2014. The Debtor intends to dispute the IRS claims but was unable to retain
20 his long-time tax accountant in this case because the tax account holds a relatively nominal pre-
21 petition claim for fees. In any event, the Debtor intends to retain a replacement tax advisor to
22 assist in addressing and challenging the IRS claims.

23 **4. Unsecured Claims**

24 The total estimated amount of unsecured claims against the Debtor, before objections are
25 filed but with the removal of BMO's Claim #16 (which is being satisfied in Class 2-B, as discussed
26 herein), is approximately \$2,260,046. These claims consist of, among other claims, (a) the
27 unsecured claim asserted by BMO in Claim #15 relating to a judgment against the Debtor, his
28 spouse, Steven Barger and Abigail Properties, LLC in the face amount of \$276,935.70, (b)

1 unsecured claims asserted by 10K and McWin relating to asserted unpaid capital contributions of
2 the Debtor in the amounts of \$110,000 and \$100,000, respectively; and (c) unsecured claims of
3 Keith and his related entity, Turtle Investments, LLC, in the total amount of approximately
4 \$698,000. This amount also includes a claim listed by the Debtor in favor of the Diamante
5 Condo's condominium association in the approximate amount of \$134,783.12 which claim BMO
6 has satisfied or will satisfy in connection with its treatment in the Plan.

7 **VI. INCOME OF THE DEBTOR, ANTICIPATED FUTURE AND SOURCE OF PLAN**
8 **PAYMENTS**

9 The Debtor's current monthly income is comprised of approximately \$2,657.50 in social
10 security payments (this includes social security payments for Debtor and his non-filing spouse).
11 Pursuant to the Stipulated DIP Financing Order and Second DIP Financing Order, Debtor has also
12 received, and will continue to receive, up to \$12,000 per month from a post-petition loan by ILMD
13 thought at least September 2016. The social security and loan amounts provide the Debtor with the
14 funds to meet living expenses.

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

18 **VII. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

19 **A. The Bankruptcy Filing and First Meeting of Creditors**

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

23 **B. Schedules and Amendments**

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

27 **C. Debtor's Retention of Professionals**

28 Prior to the Petition Date, the Debtor retained Sacks Tierney, P.A. ("ST" or "Sacks

1 Tierney”) to act as its bankruptcy counsel. The Court signed an order approving the Debtor’s
2 retention of Sacks Tierney on December 10, 2015. [Dkt No. 8].

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

6 **D. Appointment of Unsecured Creditors Committee**

7 On January 5, 2016, the United States Trustee’s Office (“UST”) appointed the Official
8 Committee of Unsecured Creditors (the “Committee”). The Committee was comprised of the
9 following creditors: Curtis Drew, Barry Zemel and Beus Gilbert. [Dkt. No 36]. Subsequently, on
10 January 29, 2016, the UST amended the members of the Committee by removing Beus Gilbert and
11 adding Vanderbilt Farms, LLC. [Dkt. No. 70]. The Committee has retained Gallagher &
12 Kennedy, P.A. (“G&K”) as its legal counsel. The Court entered an order authorizing the
13 Committee’s retention of G&K on January 29, 2016. [Dkt. No. 74].

14 **E. Post-Petition Financing**

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

21 **F. The Committee’s Attempt to Force the Involuntary Sale the Membership**
22 **Interests to SLPR**

23 On May 18, 2016, the Committee filed its *Motion Of The Unsecured Creditors Committee*
24 *For Leave To: (A) Accept The Offer [Of SLPR, LLC To Acquire The Debtor’s Membership*
25 *Interests]; (B) Initiate And Complete A Sale Of The Mishkin 10k Interest Pursuant To 11 U.S.C. §*
26 *363; And (C) Settle (On Notice To All Interested Parties In The Bankruptcy Case) The SLPR-*
27 *Mishkin Litigation On Behalf Of The Debtor’s Estate (“Motion to Force Sale of Estate Assets”)*
28 [Dkt. No. 189] requesting that the Court authorize the Committee to sell the Debtor’s Membership

1 Interests to SLPR and to settle the SLPR Adversary Proceeding. Following briefing and oral
2 argument, the Court denied the Motion to Force Sale of Estate Assets. [Dkt. No. 256].

3 **G. Discovery Issues**

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

11 **VIII. PLAN SUMMARY**

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

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

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

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

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

3 1. Class 1-A consists of Allowed Priority Claims under 11 U.S.C. §§ 503 and
4 507(a)(2) (Administrative Claims). Class 1-A includes Claims for compensation of a professional
5 person (including attorneys), court fees, expenses of administration, post-petition operating
6 expenses due and unpaid at the time of Confirmation and actual and necessary costs of preserving
7 the estate.

8 2. Class 1-B consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8)
9 (Tax Claims). The Internal Revenue Service (“IRS”) has filed a priority tax Claim for
10 \$173,954.12. The Debtor intends to challenge the IRS' claim and disputes that any penalties
11 included in the IRS' asserted claim are entitled to priority treatment.

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

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

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

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

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

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

27 6. Class 2-F consists of the Allowed Secured Claim of Turtle Investments, if
28 any. The Debtor does not believe that Turtle Investments holds a secured claim against him.

1 Therefore, this Class is empty.

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

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

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

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

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

12 **X. IMPAIRMENT OF CLASSES.**

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

15 **XI. TREATMENT OF CLASSES.**

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

17 1. Class 1-A: Administrative Claims

18 This class consists of Allowed Administrative Priority Claims under 11 U.S.C. §§ 503 and
19 507(a)(2). Unless Claimants holding Claims in this Class agree to an alternative form of treatment,
20 the Allowed Claims of Class 1-A shall be paid in full, in cash, on or before the Effective Date, or
21 as the same are allowed and ordered paid by the Court, from the proceeds of the Exit Funding or
22 from any retainers held by a professional with an Allowed Priority Claim. Any Class 1-A Claim
23 not allowed as of the Effective Date shall be paid as soon thereafter as it is allowed by the Court
24 according to the terms of this Class.

25 This Class is not impaired.

26 2. Class 1-B: Tax Claims

27 This class consists of Allowed Priority Claims under 11 U.S.C. § 507(a)(8) which are not
28 otherwise treated as secured claims herein. As provided in 11 U.S.C. § 1129(a)(9)(C), unless

1 Claimants holding Claims in this Class agree to an alternative form of treatment, the Allowed
2 Priority Claims of Class 1-B shall be paid on account of such Allowed Priority Claims, deferred
3 cash payments, over a period not extending beyond the fifth anniversary of the Petition Date,
4 having a value, as of the Effective Date of the Plan, equal to the allowed amount of such Allowed
5 Priority Claim.

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

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

12 This Class is not impaired.

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

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

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

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

25 This Class is impaired.

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

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

1 The Debtor incorporates into the Plan the BMO Stipulation and Order Approving BMO
2 Stipulation. Pursuant to the BMO Stipulation, the Order Approving BMO Stipulation, the Plan,
3 the Debtor has, and will, release and relinquish any and all of his rights, title and/or interests in the
4 Diamante Condo and any and all personal property remaining in the Diamante Condo to BMO,
5 and will execute any documents required or requested by BMO with respect to the Debtor's
6 interests in the Diamante Condo in full, final and complete satisfaction of any and all claims that
7 BMO has, or may have against the Debtor relating to the Diamante Condo, either directly,
8 indirectly or derivatively, including without limitation any claims asserted by BMO in Claim No.
9 16 filed in this case and any condominium association fees or assessments relating to the
10 Diamante Condo, which condominium association fees or assessments BMO has agreed to satisfy
11 in connection with the foregoing treatment of BMO's claims relating to the Diamante Condo.

12 This Class is impaired.

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

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

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

22 This Class is impaired.

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

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

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

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

3 On the Effective Date, based upon the valuation of the Membership Interests established
4 by the Bankruptcy Court, SLPR shall receive as many of the Debtor's Membership Interest units
5 as necessary to fully satisfy the undisputed portion of the SLPR claim. SLPR's security interest
6 shall continue against as many of the Debtor's Membership Interest units as necessary to fully
7 satisfy the disputed portion of the SLPR claim until the later of the Effective Date or the date upon
8 which the amount of SLPR's Allowed Secured Claim is finally determined by a Final Order, at
9 which time the Debtor will transfer and convey to SLPR as many of the Membership Interest units
10 that remain subject to the SLPR security interest as necessary to fully satisfy any additional
11 amount of SLPR's Allowed Secured Claim in full and final satisfaction of SLPR's Allowed
12 Secured Claim. The Membership Interests that are transferred to SLPR in satisfaction of SLPR's
13 Allowed Secured Claim are defined as the "**Transferred Membership Interests.**"

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

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

25 This class is impaired.

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

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

1 to Keith.

2 Upon ILMD's contribution of the Exit Funding to the Debtor's estate to pay Allowed
3 Claims as provided in the Plan, ILMD's Allowed Secured Claims will be deemed to be secured by
4 the Initial Retained Membership Interests, and upon final determination of SLPR's Allowed
5 Secured Claim, ILMD's Allowed Secured Claims will also be deemed to be secured by the
6 Retained Membership Interests. ILMD's Allowed Secured Claim will be paid pursuant to the
7 terms of the Exit Funding Agreement described below.

8 This class is impaired.

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

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

15 This Class is impaired.

16 C. Class 3: Unsecured Claims

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

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

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

26 This class is impaired.

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

28 This class consists of the Unsecured Claims of 10K relating to asserted unpaid capital

1 contributions of the Debtor to 10K.

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

4 This class is not impaired.

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

6 This class consists of the Unsecured Claims of McWin relating to asserted unpaid capital
7 contributions of the Debtor to McWin.

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

10 This class is not impaired.

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

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

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

18 This class is not impaired.

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

20 **A. Funding**

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

26 **ILMD's commitment to fund is conditioned upon the Court's finding a value for the**
27 **Membership Interests that is equal to or greater than the value ascribed thereto (i.e., \$15**
28 **million) in the SLPR offer that was the subject of the Committee's Motion to Force Sale of**

1 **Estate Assets.** As discussed elsewhere in this Disclosure Statement, the Court has denied the
2 Committee's Motion to Force Sale of Estate Assets.

3 1. Outline of the Exit Funding Agreement

4 The general terms of the Exit Funding Agreement are set forth in that certain letter dated
5 June 20, 2016 from Keith's counsel to the Debtor's counsel, attached to the Plan as Exhibit "A"
6 and incorporated into the Plan (the "**Commitment Letter**"). To the extent that there are any
7 differences between the Plan and the Commitment Letter, the Commitment Letter will control.
8 The Exit Funding Agreement is subject to final documentation acceptable to ILMD and the Debtor
9 that is consistent with the Commitment Letter and that will be prepared and submitted to the Court
10 prior to the Confirmation Hearing.

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

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

24 2. All distributions, profits, and proceeds (the "**Distributions**") made or
25 distributed on account of the Retained Membership Interests shall be used first to
26 pay all the Obligations⁴ the Debtor has incurred to Keith, together with interest at
27

28 ⁴ The term "**Obligations**" is defined broadly, and includes, without limitation, the following: (a) all
claims asserted by Keith directly or indirectly through his entities such as Turtle Investments and
ILMD in the Bankruptcy Case, (b) all advances made under the debtor-in-possession financing, (c)
all advances for SLPR litigation fees and costs, (d) all advances for living expenses not included in
(b) above, (e) all advances for capital calls and protective advances not included in (b) above, (f)
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 ten percent (10%) per annum from the date the Obligation was first incurred.
2 Distribution payments shall be applied first to interest, and then to principal. There
3 is no due date as to when the Obligations are required to be satisfied, and interest
4 shall continue to accrue on the Obligations at the stated rate until paid. After
5 principal and interest due on account of the Obligations have been paid in full to
6 Keith, subsequent Distributions shall be shared equally between the Parties until
7 Keith has received an additional amount equal to the total principal advanced by
8 reason of the Obligations. After Keith has received this amount, subsequent
9 Distributions shall be made to the Debtor until the Debtor has received \$2.1 million.
10 After this amount has been distributed to the Debtor, all subsequent Distributions
11 shall be shared equally between the Parties. The creation, priority and perfection of
12 Keith's interests in the Distributions described herein shall be made a matter of
13 public record, and the Debtor shall execute instruments, financing statements, and
14 other documents that Keith requests to achieve that objective.

15 3. Except as set forth in paragraph five below, pursuant to 11 U.S.C.
16 § 1123(b)(3)(B), the Joint Plan shall appoint Keith and the Debtor as joint estate
17 representatives to hold and administer all rights and privileges associated with the
18 Retained Membership Interests. If one of the Parties dies or becomes incapacitated,
19 then the surviving party shall serve as the sole estate representative. Neither party
20 shall be liable to the other party, or to any third party, for any decision, action, or
21 inaction taken as the joint or sole estate representative.

22 4. Upon the effective date of the Joint Plan, Keith agrees to fund
23 advances for living expenses of the Debtor in an amount not to exceed \$236,000
24 inclusive of advances made under the debtor-in-possession financing at a rate of
25 \$12,000 per month, which Keith shall pay to the Debtor without demand or
26 presentment. Keith shall take such other and further steps as are reasonably
27 necessary to assure the Debtor that the advances for living expenses as described
28 herein will be timely made.

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

2. Appointment of Joint Estate Representatives

Pursuant to 11 U.S.C. § 1123(b)(3)(B), Keith and the Debtor shall be appointed as joint
estate representatives to own, hold and administer all rights and privileges associated with the
Retained Membership Interests. If either Keith or the Debtor die or become incapacitated, then
the surviving party shall serve as the sole estate representative. Neither Keith nor the Debtor shall
be liable to the other, or to any third party, for any decision, action, or inaction taken as the joint or

1 sole estate representative. Keith and Alan, as the estate representatives, will comply with any and
2 all terms and conditions of the Operating Agreements of 10K and McWin.

3 3. Transfer of the Transferred Membership Interests

4 Upon the determination of the amount of the Transferred Membership Interests that the
5 Debtor will transfer to SLPR in satisfaction of SLPR's Allowed Secured Claim, the Debtor will
6 work with 10K and McWin to execute the necessary and appropriate documents to effectuate the
7 transfer and conveyance of the Transferred Membership Interests in accordance with the
8 requirements of the 10K and McWin Operating Agreements. Upon the transfer of the Transferred
9 Membership Interests to SLPR, SLPR will responsible for any future capital calls with respect to
10 the Transferred Interests.

11 4. The Debtor's Future Business

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

14 **B. Liquidation of Estate Property**

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

18 **C. Management**

19 The Plan will be implemented by the Reorganized Debtor.

20 **D. Disbursing Agent**

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

22 **E. Documentation of Plan Implementation**

23 In the event any entity which possesses an Allowed Secured Claim or any other lien in any
24 of the Debtor's property for which the Plan requires the execution of any documents to incorporate
25 the terms of the Plan, fails to provide a release of its lien or execute the necessary documents to
26 satisfy the requirements of the Plan, the Debtor may record a copy of the Plan or the Confirmation
27 Order with the appropriate governmental agency and such recordation shall constitute the lien
28 release and creation of any necessary new liens to satisfy the terms of the Plan. If the Debtor

1 deems advisable, he may obtain a further Order from the Court that may be recorded in order to
2 implement the terms of the Plan.

3 **F. New Obligations**

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

7 **XIII. EFFECT OF CONFIRMATION.**

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

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

18 Any pre-confirmation obligations of the Debtor dealt with in the Plan shall be considered
19 New Obligations of the Debtor, and these New Obligations shall not be considered in default
20 unless and until the Reorganized Debtor defaults on the New Obligations pursuant to the terms of
21 the Plan. The New Obligations provided for in the Plan shall be in the place of, and completely
22 substitute for, any pre-Confirmation obligations of the Debtor. Once the Plan is confirmed, the
23 only obligations of the Debtor shall be such New Obligations as provided for under the Plan.

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

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

26 As soon as practicable, but in no event later than 90 days after the Effective Date,
27 objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each
28 of the Claims to which objections are made pursuant to the Bankruptcy Code and the Bankruptcy

1 Rules. The Debtor reserves the right and ability to object to any Claims, including those listed in
2 the Schedules, even if the Schedules do not indicate that the scheduled claim is disputed,
3 contingent or unliquidated. Objections filed after such objection date will be barred.

4 Keith shall have standing to file and prosecute any objections to claims.

5 **B. Settlement of Claims.**

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

12 **C. Estimation of Claims.**

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

20 **D. Unclaimed Funds and Interest.**

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

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

2 No distribution shall be made under the Plan on account of, and no Allowed Claim,
3 whether Secured, Unsecured, Administrative, or Priority, shall include any fine, penalty,
4 exemplary or punitive damages, late charges, default interest or other monetary charges relating to
5 or arising from any default or breach by the Debtor, and any Claim on account thereof shall be
6 deemed disallowed, whether or not an objection was filed to it.

7 **XVI. CLOSING OF CASE.**

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

14 **XVII. MODIFICATION OF THE PLAN.**

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

23 **XVIII. JURISDICTION OF THE COURT.**

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

26 1. To hear and determine all aspects of the SLPR Adversary Proceeding and the
27 allowance and amount of SLPR's Allowed Secured Claim.
28

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

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

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

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

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

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

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

27 9. To hear, determine, and resolve any disputes that may arise in connection with the
28 Reorganized Debtor's efforts to market, manage, operate, finance, or sell any of the Debtor's

1 property, and the manner in which any resulting proceeds are distributed.

2 10. To enter an order concluding and terminating this case.

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

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

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

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

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

22 **XXI. REVESTING.**

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

1 **XXII. LIQUIDATION ANALYSIS**

2 If the Plan is not confirmed, and the Debtor's assets were liquidated under Chapter 7 of the
3 Bankruptcy Code instead, it is likely that only the Debtor's secured creditors would achieve any
4 return, while all other creditors would likely not recover any distribution from the Debtor's Estate
5 at all. The Debtor's ability to fully repay unsecured creditors is completely contingent upon of his
6 ability to use the Membership Interests as collateral for the Exit Funding.

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

8 **Liquidation Value of Assets:**

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

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

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

4 **XXIII. DISCLAIMER**

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

9 **XXIV. DEBTOR'S RECOMMENDATIONS**

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

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

19 DATED: September 2, 2016.

20 SACKS TIERNEY P.A.

21
22 By: 

23 Philip R. Rudd
24 Wesley D. Ray
25 James S. Samuelson
26 Attorneys for Debtor
27
28

1 COPY OF THE FOREGOING
2 e-mailed this 2nd day of September, 2016, to:

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35 By: /s/ Cathie Misquez