

1 Christopher H. Bayley (#010764)
Benjamin W. Reeves (#025708)
2 SNELL & WILMER L.L.P.
One Arizona Center
3 400 E. Van Buren St., Ste. 1900
Phoenix, AZ 85004-2202
4 Telephone: 602.382.6214
Facsimile: 602.382.6070
5 E-Mail: cbayley@swlaw.com
breeves@swlaw.com
6 *Attorneys for the Trustee*

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

10 In Re: Proceedings Under Chapter 11
11 BARBARA LEIGH RICHARDSON, No. 2:15-bk-15806-PS
12 Debtor. No. 2:15-bk-15807-PS

13 In Re: No. 2:15-bk-15808-PS
(Jointly Administered)

14 WORLD WIDE WHEAT-AUSTRALIA,
15 LLC,
16 Debtor.

**DISCLOSURE STATEMENT IN
SUPPORT OF TRUSTEE'S PLAN OF
LIQUIDATION**

17 In Re:
18 WORLD WIDE WHEAT, LLC,
19 Debtor.

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1 **I. INTRODUCTION**

2 Unless otherwise defined in this Disclosure Statement, capitalized terms used in
3 this Disclosure Statement have the same meanings as defined in the Trustee’s Plan of
4 Liquidation proposed by Morris C. Aaron as the Chapter 11 Trustee (the “Trustee” or
5 “Proponent”) over Barbara L. Richardson (“Richardson), World Wide Wheat, LLC
6 (“WWW”), and World Wide Wheat-Australia, LLC (“WWWA”) (collectively, the
7 “Debtors”) dated November 23, 2016 (the “Plan”) and the Bankruptcy Code in Case Nos.
8 2:15-bk-15806 (“Richardson Case”), 2:15-bk-15807 (“WWWA Case”), and 2:15-bk-
9 15808 (“WWW Case”). Terms defined in this Disclosure Statement which are also
10 defined in the Plan are solely for convenience, and Proponent does not intend to change
11 the definitions of those terms from the Plan. If there is any inconsistency between the
12 Plan and this Disclosure Statement, the Plan is, and will be, controlling.

13 **A. Purpose of Disclosure Statement**

14 The Proponent is furnishing this Disclosure Statement to all impaired Creditors
15 who are entitled to vote to accept or reject the Plan, as well as all holders of Equity
16 Interests and unimpaired Creditors of the Debtors. The Disclosure Statement is to be used
17 by each Creditor entitled to vote to accept or reject the Plan solely in connection with
18 determining how to vote on the Plan. Use of the Disclosure Statement for any other
19 purpose is not authorized by the Proponent or the Bankruptcy Court. The purpose of this
20 Disclosure Statement is to provide “adequate information,” as that term is defined in §
21 1125 of the Bankruptcy Code, to enable Creditors who are impaired under the Plan to
22 make an informed decision regarding whether to accept or reject the Plan. Therefore, this
23 Disclosure Statement provides relevant information about the Debtors, their property, and
24 the Plan.

25 -----
26 **THE PROPONENT BELIEVES THE PLAN IS IN THE BEST INTERESTS**
27 **OF THE DEBTORS’ CREDITORS AND THE DEBTORS’ ESTATES.**
28 **ACCORDINGLY, CREDITORS ENTITLED TO VOTE ON THE PLAN ARE**

1 **URGED TO VOTE IN FAVOR OF THE PLAN. (VOTING INSTRUCTIONS ARE**
2 **SET FORTH IN SECTION III OF THIS DISCLOSURE STATEMENT.) TO BE**
3 **COUNTED, YOUR BALLOT MUST BE DULY COMPLETED, EXECUTED, AND**
4 **ACTUALLY RECEIVED NO LATER THAN 5:00 P.M., PREVAILING**
5 **MOUNTAIN STANDARD TIME, ON _____.**

6 **EACH CREDITOR ENTITLED TO VOTE SHOULD READ THIS**
7 **DISCLOSURE STATEMENT, THE PLAN, AND THE EXHIBITS TO THIS**
8 **DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE**
9 **VOTING ON THE PLAN.**

10 **ALL EXHIBITS OR SCHEDULES TO THIS DISCLOSURE STATEMENT**
11 **ARE ANNEXED HERETO AND SUPPLEMENTED WITH CERTAIN**
12 **ADDITIONAL MATERIALS. ALL EXHIBITS OR SCHEDULES TO THIS**
13 **DISCLOSURE STATEMENT OR THE PLAN MAY BE OBTAINED, ONCE**
14 **FILED, THROUGH THE BANKRUPTCY COURT'S WEBSITE:**
15 **<https://ecf.azb.uscourts.gov> WITH A VALID PASSWORD, OR UPON WRITTEN**
16 **REQUEST TO THE FOLLOWING ADDRESS:**

17 **Christopher H. Bayley**
18 **Benjamin W. Reeves**
19 **SNELL & WILMER, LLP**
20 **400 E. Van Buren St., Ste. 1900**
21 **Phoenix, AZ 85004-2202**
22 **Ph: 602.382.6506**
23 **F: 602.382.6070**
24 **Email: cbayley@swlaw.com**
25 **breeves@swlaw.com**

26 **S. Cary Forrester**
27 **FORRESTER & WORTH, PLLC**
28 **3636 N. Central Ave., Suite 700**
Phoenix, AZ 85012-1927
Ph: 602.271.4250
F: 602.271.4300
Email: SCF@forresterandworth.com

PLAN PROVISION SUMMARIES AND ALL OTHER STATEMENTS
MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR

1 ENTIRETY BY REFERENCE TO THE PLAN, THE OTHER EXHIBITS AND
2 SCHEDULES HERETO AND THERETO, AND ANY OTHER DOCUMENTS
3 REFERENCED HEREIN OR THEREIN.

4 IN MAKING A DECISION TO VOTE, CREDITORS MUST RELY ON
5 THEIR OWN EXAMINATION OF THE PLAN, INCLUDING THE MERITS AND
6 RISKS INVOLVED.

7 NO PARTY SHOULD CONSTRUE THE CONTENTS OF THIS
8 DISCLOSURE STATEMENT AS PROVIDING OR RENDERING ANY LEGAL,
9 BUSINESS, FINANCIAL, OR TAX ADVICE. EACH PERSON OR ENTITY
10 SHOULD CONSULT WITH ITS, HIS OR HER OWN LEGAL, BUSINESS,
11 FINANCIAL, AND TAX ADVISORS WITH RESPECT TO ANY SUCH
12 MATTERS CONTEMPLATED THEREBY.

13 -----
14 No representation concerning the Debtors, the value of its property, or the value of
15 any benefits offered to Creditors in connection with the Plan are authorized by the
16 Proponent other than as set forth in this Disclosure Statement. Any representations or
17 inducements made to secure your acceptance or rejection of the Plan which are contrary to
18 information contained in this Disclosure Statement should not be relied upon by you in
19 arriving at your decision, and any such representations and inducements should be
20 reported to the following counsel:

21 Christopher H. Bayley
22 Benjamin W. Reeves
23 SNELL & WILMER, LLP
24 400 E. Van Buren St., Ste. 1900
25 Phoenix, AZ 85004-2202
26 Ph: 602.382.6506
27 F: 602.382.6070
28 Email: cbayley@swlaw.com
breeves@swlaw.com

26 S. Cary Forrester
27 FORRESTER & WORTH, PLLC
28 3636 N. Central Ave., Suite 700
Phoenix, AZ 85012-1927
Ph: 602.271.4250

F: 602.271.4300
Email: SCF@forresterandworth.com

B. Limitations on Information Contained in Disclosure Statement

The statements contained in this Disclosure Statement are made as of the date hereof, unless another time is specified, and the delivery of this Disclosure Statement will not, under any circumstance, create any implication that the information contained herein is correct at any time subsequent to the date hereof.

Any estimates of Claims and Equity Interests set forth in this Disclosure Statement may vary from the amounts of Claims or Equity Interests ultimately allowed by the Bankruptcy Court. The information contained in this Disclosure Statement, including, but not limited to, the information regarding the history, business, and operations of the Debtors and the historical financial information of the Debtors is included herein for purposes of soliciting acceptances of the Plan. AS TO CONTESTED MATTERS, HOWEVER, THE INFORMATION IN THE DISCLOSURE STATEMENT IS NOT TO BE CONSTRUED AS AN ADMISSION OR A STIPULATION BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

The Proponent cannot and does not warrant or represent that the information contained in this Disclosure Statement is without inaccuracy. There has been no independent audit by the Proponent of the financial information contained in this Disclosure Statement. **The financial information regarding the Debtors, including the assets and the liabilities of the Debtors, has been derived from the following sources: (a) information received by the Proponent from the Debtors and Debtors' legal counsel, (b) information in the Debtors' Schedules of Assets and Liabilities and Statement of Financial Affairs, (c) public disclosures made by or about the Debtors, and (d) from other third party sources, some of which has been acquired through court ordered discovery. Moreover, the Proponent expressly reserves the right to assert contrary information or facts in any future contested matters or Causes of**

1 **Action, if the Proponent determines through discovery or otherwise, that any of the**
2 **assertions or facts originating from the Debtors are incorrect.**

3 The approval by the Bankruptcy Court of the Disclosure Statement does not
4 constitute an endorsement by the Bankruptcy Court of the Plan or a guaranty of the
5 accuracy and completeness of the information contained herein.

6 **C. Order Governing Plan Confirmation Process and Objections to the Plan**

7 On _____, the Bankruptcy Court entered its order (i) approving this
8 Disclosure Statement as containing “adequate information” pursuant to § 1125 of the
9 Bankruptcy Code, (ii) fixing _____, at 5:00 p.m. prevailing Mountain
10 Standard Time as the deadline for filing and serving any objections to Confirmation of the
11 Plan, (iii) fixing _____, at 5:00 p.m. prevailing Mountain Standard
12 Time as the deadline for voting to accept or reject the Plan, and (iv) setting _____
13 _____, at _____ .m. as the date and time for a preliminary hearing on the
14 confirmation of the Plan. The final hearing, if necessary, will be set by the Bankruptcy
15 Court at the preliminary hearing. No separate notice of the final hearing date, if any, will
16 be served.

17 Bankruptcy Code § 1128(b) provides that any party-in-interest may object to
18 confirmation of a Plan. Any objection(s) to confirmation of the Plan must be in writing,
19 must state with specificity the grounds for any such objections, and must be filed with the
20 Bankruptcy Court and served upon the following parties so as to be received on or before
21 the time fixed by the Bankruptcy Court:

22 **Proponent:**

23 Christopher H. Bayley
24 Benjamin W. Reeves
25 SNELL & WILMER, LLP
26 400 E. Van Buren St., Ste. 1900
27 Phoenix, AZ 85004-2202
28 Ph: 602.382.6506
F: 602.382.6070
Email: cbayley@swlaw.com
breeves@swlaw.com

S. Cary Forrester
FORRESTER & WORTH, PLLC

1 3636 N. Central Ave., Suite 700
2 Phoenix, AZ 85012-1927
3 Ph: 602.271.4250
4 F: 602.271.4300

5 Email: SCF@forresterandworth.com

6 **The Debtors:**

7 David Vandeventer
8 VANDEVENTER LAW
9 7272 E. Indian School Rd., Suite 111
10 Scottsdale, AZ 85251
11 Ph: 502.418.5555
12 Email: drv@tmrc.org

13 **II. INFORMATION REGARDING THE PLAN AND DISCLOSURE STATEMENT**

14 The objective of a Chapter 11 case is the confirmation (*i.e.*, approval by the
15 Bankruptcy Court) of a Plan of reorganization. A Plan describes in detail (and in
16 language appropriate for a legal contract) the means for satisfying the claims against and
17 interests in a debtor. After a Plan has been filed, the holders of such claims and interests
18 are permitted to vote to accept or reject the Plan. Before a debtor and/or any creditor can
19 solicit acceptances of a Plan, Bankruptcy Code § 1125 requires the debtor and/or a
20 creditor to prepare a disclosure statement containing adequate information of a kind, and
21 in sufficient detail, to enable those parties entitled to vote on the Plan to make an informed
22 judgment about the Plan and whether they should accept or reject the Plan.

23 This Disclosure Statement will be used to solicit acceptances of the Plan only after
24 the Bankruptcy Court has entered an order approving this Disclosure Statement.
25 Bankruptcy Court approval of this Disclosure Statement means only that the Bankruptcy
26 Court has found that this Disclosure Statement meets the statutory requirement of
27 Bankruptcy Code § 1125 to provide adequate information. Such approval by the
28 Bankruptcy Court is not an opinion or ruling on any other merits of this Disclosure
Statement; and it does not mean that the Plan has been approved, or will be approved, by
the Bankruptcy Court.

After this Disclosure Statement has been approved by the Bankruptcy Court and
there has been voting on the Plan, there will be a hearing on the Plan to determine whether

1 it should be confirmed. At the hearing, the Bankruptcy Court will consider whether the
2 Plan satisfies the various requirements of the Bankruptcy Code. The Bankruptcy Court
3 also will receive and consider a ballot report prepared by the Proponent which will present
4 a tally of the votes accepting or rejecting the Plan cast by those entitled to vote.
5 Accordingly, all votes are important because they can determine whether the Plan will be
6 confirmed. Once confirmed, the Plan is treated as a contract and is binding on all
7 Creditors, holders of Equity Interests and other parties-in-interest in the Debtors'
8 reorganization case.

9 THIS DISCLOSURE STATEMENT IS NOT THE PLAN. FOR THE
10 CONVENIENCE OF CREDITORS AND HOLDERS OF EQUITY INTERESTS OF
11 THE DEBTOR, THE PLAN IS SUMMARIZED IN THIS DISCLOSURE STATEMENT.
12 ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF.
13 IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE
14 STATEMENT AND THE PLAN, THE PLAN WILL CONTROL.

15 **III. VOTING PROCEDURES AND REQUIREMENTS**

16 **A. Who is Entitled to Vote**

17 If you are a Creditor of one of the Debtors who is “impaired” under the Plan, you
18 are entitled to vote to accept or reject the Plan. Accordingly, to be entitled to vote, your
19 interests must be both “allowed” and “impaired.”

20 **1. Allowed Claims and Interests**

21 You have an Allowed Claim if: (i) you timely filed a proof of claim, and no
22 objection has been filed to your Claim; (ii) you timely filed a proof of claim, and an
23 objection was filed to your Claim upon which the Bankruptcy Court has ruled and allowed
24 your Claim; (iii) your Claim is listed by the Debtors in their Schedules of Assets and
25 Liabilities, which are on file with the Bankruptcy Court as a public record, as liquidated in
26 amount and undisputed and no objection to your Claim has been filed; or (iv) your Claim
27 is listed by the Debtors in their Schedules of Assets and Liabilities as liquidated in amount
28 and undisputed and an objection was filed to your Claim upon which the Bankruptcy

1 Court has ruled and allowed your Claim. If your Claim is not an Allowed Claim, it is a
2 Disputed Claim; and you will not be entitled to vote on the Plan unless the Bankruptcy
3 Court temporarily or provisionally allows or estimates your Claim for voting purposes
4 pursuant to Bankruptcy Rule 3018. **IF YOU ARE UNCERTAIN REGARDING THE**
5 **STATUS OF YOUR CLAIM, YOU SHOULD CHECK THE BANKRUPTCY**
6 **COURT RECORD CAREFULLY, INCLUDING THE DEBTORS' SCHEDULES**
7 **OF ASSETS AND LIABILITIES; AND YOU SHOULD SEEK APPROPRIATE**
8 **LEGAL ADVICE IF YOU HAVE ANY DISPUTE WITH THE DEBTOR. THE**
9 **PROPONENT AND ITS PROFESSIONALS CANNOT ADVISE YOU ABOUT**
10 **SUCH MATTERS.**

11 **2. Impaired Claims and Interests**

12 Claims and holders of Equity Interests are “impaired” when the full amounts of the
13 Allowed Claims or Allowed Equity Interest will not be paid under the Plan, or when the
14 holders’ legal, equitable, or contractual rights are otherwise altered by the Plan. Creditors
15 and holders of Equity Interests, who are not “impaired” under the Plan, are deemed to
16 have accepted the Plan pursuant to Bankruptcy Code § 1126(f), and their acceptances of
17 the Plan need not be solicited.

18 **B. Procedures for Voting**

19 **1. Submission of Ballots**

20 All Creditors whose votes are solicited will be sent a Ballot, together with
21 instructions for voting, with a copy of this Disclosure Statement as approved by the
22 Bankruptcy Court and a copy of the Plan. You should read the Ballot carefully and follow
23 the instructions contained therein. Please use only the Ballot which was sent with this
24 Disclosure Statement. You should complete your Ballot and return it to:

25 Christopher H. Bayley
26 Benjamin W. Reeves
27 SNELL & WILMER, LLP
28 400 E. Van Buren St., Ste. 1900
Phoenix, AZ 85004-2202
Ph: 602.382.6506
F: 602.382.6070

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Email: cbayley@swlaw.com
breeves@swlaw.com

S. Cary Forrester
FORRESTER & WORTH, PLLC
3636 N. Central Ave., Suite 700
Phoenix, AZ 85012-1927
Ph: 602.271.4250
F: 602.271.4300

Email: SCF@forresterandworth.com

TO BE COUNTED, YOUR BALLOT MUST BE DULY COMPLETED,
EXECUTED AND RECEIVED AT THE ADDRESS LISTED ABOVE NOT LATER
THAN 5:00 P.M. PREVAILING MOUNTAIN STANDARD TIME, ON _____
20____.

A properly addressed return envelope will be included with your Ballot. However,
if the need arises, the facsimile number where your Ballot must be returned also is given
above.

2. Incomplete Ballots

Unless otherwise ordered by the Bankruptcy Court, Ballots which are signed,
dated, and timely received, but on which a vote to accept or reject the Plan has not been
indicated, will not be counted as a vote on the Plan.

3. Withdrawal of Ballots

A Ballot may not be withdrawn or changed after it is cast unless the Bankruptcy
Court permits you to do so after notice and a hearing to determine whether sufficient
cause exists to permit the change.

4. Questions and Lost or Damaged Ballots

If you have any questions concerning voting procedures, if your Ballot is damaged
or lost, or if you believe you should have received a Ballot but did not receive one, you
may contact Christopher H. Bayley or Cary Forrester at the address and telephone or
facsimile numbers listed above.

C. Summary of Voting Requirements

1 For the Plan to be confirmed, the Plan must be accepted by at least one impaired
2 class of Claims. For a class of Claims to have accepted the Plan, votes representing at
3 least two-thirds (2/3) in amount and a majority in number of the Claims voted in that class
4 must be cast for acceptance of the Plan. As more fully described elsewhere in this
5 Disclosure Statement, the Proponent is seeking acceptances from holders of Allowed
6 Claims in the following classes, which are, or may be, “impaired” under the Plan;
7 provided, however that the Proponent will have the right to supplement this Disclosure
8 Statement as to any other impaired classes, if any:

9	Class	Description
10	Unclassified	Allowed Priority and Administrative Claims
11	Class 1	Allowed Secured Claims
12	Class 1(a)	Allowed Secured Claim of Gosport Investments, Ltd.
13	Class 1(b)	Allowed Secured Claim of First Western Trust Bank
14	Class 1(c)	Allowed Secured Claim of TitleMax
15	Class 2	General Allowed Unsecured Claims
16	Class 3	Equity Interests

17 **IT IS IMPORTANT THAT CREDITORS EXERCISE THEIR RIGHTS TO**
18 **VOTE TO ACCEPT OR REJECT THE PLAN.**

19 The specific treatment of each Class under the Plan is described in the Plan and is
20 summarized in this Disclosure Statement.

21 A VOTE FOR ACCEPTANCE OF THE PLAN BY THOSE CREDITORS WHO
22 ARE ENTITLED TO VOTE IS MOST IMPORTANT. THE PROPONENT ASSERTS
23 THAT THE TREATMENT OF CREDITORS UNDER THE PLAN IS THE BEST
24 ALTERNATIVE FOR CREDITORS AND THE PROPONENT RECOMMENDS THAT
25 CREDITORS VOTE IN FAVOR OF THE PLAN.

26 **IV. DESCRIPTION OF THE DEBTORS AND BANKRUPTCY CASES**

27 Notwithstanding anything herein to the contrary, with regard to the information
28 provided in this Section, this information is almost exclusively derived from the Debtors’

1 (a) Lists of Creditors Holding 20 Largest Unsecured Claims (“Lists of 20 Largest
2 Creditors”) (see Richardson Case DE 15, WWWA Case DE 2, and WWW Case DE 14),
3 (b) Debtors’ Schedules of Assets and Liabilities (the “Schedules”) and Statement of
4 Financial Affairs (the “SOFA”) (see Richardson Case DE 23 and 25 and 28, WWWA
5 Case DE 18 and 20, and WWW Case DE 18 and 22), and (c) Monthly Operating Reports
6 for December 2015 through November 2016 (collectively referred to herein as the
7 “MORs”) (see Richardson DE 33, 34, 86-88, 145-46, 157, 168-170, 193-195, 198, 225-
8 227, 240-242, 261-263, 298-99, 301, 305-307, 310-312).

9 The Proponent does not endorse the foregoing information or warrant that it is
10 correct. The information contained in this Section V must be read from that perspective.

11 **A. Description of the Debtors**

12 Richardson and her late husband, Sheldon E. Richardson (“Mr. Richardson”), own
13 WWW and WWWA. WWW and WWWA’s primary business consisted of “seed
14 development” (see Richardson DE 23, pg. 11). Richardson, however, claimed ownership
15 of certain “germplasm”, which she valued at \$100,000,000 (see Richardson DE 25-1, pg.
16 7). The Trustee believes that the Debtors’ valuation is vastly overstated. The Richardsons
17 granted a security interest in the germplasm to both Gosport and FWT.

18 Prior to filing for bankruptcy, Mr. Richardson passed away suddenly. At the time,
19 the Richardsons, WWW, and/or WWWA were engaged in litigation with Cohen,
20 Kennedy, Dowd, & Quigley, P.C. (“CKQ”), FWT, Econlit, Gosport, Kirk Kroloff, and the
21 University of Arizona, Board of Regents (see Richardson DE 23, pgs. 14-16). Richardson
22 valued her pending claims as having \$50,000,000 in value (see Richardson DE 25-1, pg.
23 8). Again, the Trustee believes that the Debtors’ valuation is vastly overstated.

24 According to the Schedules and SOFAs, Richardson has \$11,759,988 in liabilities
25 (see Richardson DE 25), WWW has \$12,880,128 in liabilities (see WWW DE 22), and
26 WWWA has \$5,100,000 in liabilities (see WWWA DE 20). A total amount of
27 \$16,323,023.74 in claims were submitted by the April 29, 2016 Claims Bar Date, with
28

1 \$4,978,146.92 filed as secured and \$88,858.42 claimed as priority (see Richardson Claims
2 Register Summary).

3 **B. Significant Post-Petition Events in the Bankruptcy Cases**

4 **1. Appointment of the Trustee**

5 The Debtors filed the Richardson Case, WWSA Case, and WWW Case on
6 December 16, 2016 (see Richardson DE 1, WWSA DE 1, and WWW DE 1). On January
7 7, 2016, the Debtors filed a motion for joint administration of the Bankruptcy cases (see
8 Richardson DE 29), which the Court granted (see Richardson DE 58). On January 29,
9 2016, the Debtors stipulated to the appointment of a Chapter 11 Trustee (see Richardson
10 DE 59). On February 8, 2016, the Court approved the appointment of Morris C. Aaron as
11 the Trustee over the Debtors (see Richardson DE 74). The Court further approved the
12 Trustee's engagement of Snell & Wilmer, L.L.P. to serve as Trustee's lead bankruptcy
13 counsel (see Richardson DE 90), MCA Financial Group, Ltd. as the Trustee's Financial
14 Advisors and Liquidation Consultants (see Richardson DE 101), Forrester & Worth,
15 PLLC as the Trustee's conflicts counsel (see Richardson DE 126), and the Udelman Law
16 Firm and the Law Office of David Vandeventer as special litigation counsel to pursue
17 claims against CKQ (see Richardson DE 191 and 232).

18 **2. Settlement with Paradise Investor's Group**

19 On February 25, 2016, Paradise Investor's Group, LLC ("PIG") obtained stay relief
20 to, among other things, evict Richardson from the home she resided in located at 5309 E.
21 Via Del Cielo, Paradise Valley, AZ 85253 (see Richardson DE 105). PIG asserted a
22 post-petition claim for unpaid rent. The Trustee settled with Paradise Investors to resolve
23 the administrative claim, and receive \$15,000 in exchange for the personal property at the
24 residence, with \$6,000 paid to Richardson to satisfy her claimed exemptions (see
25 Richardson DE 136).

26 **3. Settlement with Gosport & FWT re: Germplasm**

27 On March 18, 2016, the Trustee and Gosport filed a *Joint Motion for Entry of*
28 *Order Approving (I) Settlement Agreement Between Gosport and Trustee; (II) Allowing*

1 *Gosport's Secured Claim; and (III) Authorizing Secured Post-Petition Financing on a*
2 *Super Priority Basis Pursuant to 11 U.S.C. §§ 363, 364, and 507(b); and (IV) Granting*
3 *Related Relief* (see Richardson DE 153) (the "Gosport Motion"). The Gosport Motion
4 sought approval to, among other things, loan the Trustee \$50,000 to cover the costs of
5 selling Richardson's germplasm, allowance of Gosport's claim, and a carve-out for
6 unsecured creditors. After hearing a limited objection from FWT, the Court approved the
7 Gosport Motion (see Richardson DE 175), and the Trustee proceeded to market the
8 germplasm for sale.

9 **4. Sale of Germplasm**

10 On May 18, 2016, the Trustee filed a *Motion for Approval to: (1) Sell Germplasm;*
11 *(2) Approve Bidding Procedures; and (3) Set Final Hearing* (see Richardson DE 200) (the
12 "Sale Motion"). By Order dated June 29, 2016 entered in *In re the estate of Sheldon E.*
13 *Richardson*, No. PB2016-00429 (Maricopa County Superior Court), the Trustee obtained
14 approval to sell Mr. Richardson's probate estate's interest in the germplasm through the
15 Bankruptcy Court (see Richardson DE 235-1). By Order dated June 7, 2016, the Court
16 approved bidding procedures (see Richardson DE 217). By Order dated August 23, 2016,
17 the Court approved the sale of the germplasm for \$650,000 (see Richardson DE 276).
18 The Trustee filed a *Trustee's Report of Sale of Germplasm* on September 22, 2016,
19 disclosing the receipt of \$61,739.03 for the estate (see Richardson DE 304).

20 **5. Interim Fee Applications Approved**

21 On June 20, 2016, the Trustee's professionals filed their first interim applications
22 for compensation (see Richardson DE 243-45, 268), to which CDQ objected (see
23 Richardson DE 273). The Court approved the interim fee applications by Order dated
24 September 12, 2016 (see Richardson DE 292).

25 **6. Settlement With FWT, Bryan Cave and Tiffany & Bosco, P.A.**

26 On June 23, 2016, the Trustee, FWT, Bryan Cave, LLP, and Tiffany & Bosco, P.A.
27 filed a *Joint Motion Under Rule 9019, Fed. R. Bankr. P., to Approve Settlement of Pre-*
28 *Petition Litigation Filed by Barbara Richardson Against First Western Trust Bank;*

1 *Athene Annuity & Life Company; Bryan Cave, LLP; and Tiffany and Bosco, P.A.* (see
2 Richardson DE 228) to settle pre-petition claims filed by the Debtors for a payment of
3 \$3,750, which the Court approved by Order dated August 18, 2016 (see Richardson DE
4 267).

5 **7. Settlement with EconLit**

6 On August 19, 2016, the Trustee filed a *Motion to Approve Settlement with EconLit*
7 (see Richardson DE 270) to resolve the claims asserted by and against EconLit, LLC in a
8 walk-away. The Court approved this settlement by Order dated September 14, 2016 (see
9 Richardson DE 300).

10 **8. Settlement with University of Arizona**

11 On November 8, 2016, the Trustee reported that he had reached a settlement with
12 the University of Arizona and the Arizona Board of Regents (see Richardson DE 308).
13 The terms of the settlement will be set forth in a to-be-filed motion.

14 **9. Status of Malpractice Action Against CDQ**

15 In regards to the malpractice claim against CDQ, the Trustee has filed an
16 application to engage David Dodge as an expert witness (see Richardson DE 293), which
17 the Court approved by Order dated September 15, 2016 (see Richardson DE 302), and
18 filed a motion to make a binding offer of judgment on CDQ (see Richardson DE 277),
19 which the Court also approved by Order dated September 14, 2016 (see Richardson DE
20 286). If there is any recovery from the malpractice action, special litigation counsel is to
21 receive fees out of the recovery in accordance with their respective Orders approving their
22 engagements (see Richardson DE 191 and 232). On November 18, 2016, the Trustee filed
23 *Counterclaimant's Motion for Partial Summary Judgment on Count Nine of Their*
24 *Counterclaim Breach of Fiduciary Duty in Cohen Kennedy Dowd & Quigley v. World*
25 *Wide Wheat, LLC, et al.*, No. CV2014-011089 (Maricopa County Superior Court (the
26 "Malpractice Action"), which seeks summary judgment on one of the Debtors' claims
27 against CDQ.

28 **V. DESCRIPTION OF PROPONENT'S PLAN**

1 **A. Summary of Plan**

2 The Proponent proposed Plan is a simple liquidating plan. Proponent proposes to
3 create a separate and distinct Liquidating Trust, with the appointment of the Trustee as the
4 Liquidating Trustee, into which all of the Debtors’ assets (real, personal, general
5 intangibles, claims and causes of action) will be transferred. All of the available non-
6 exempt assets will be liquidated under the control of the Liquidating Trustee. The
7 Liquidating Trustee will be responsible for reviewing and evaluating the creditors’
8 asserted claims for possible allowance or disallowance. Finally, the Liquidating Trustee
9 will oversee distribution of the net proceeds from liquidation of all of the Debtors’ assets
10 to all allowed claimants as set forth under the Bankruptcy Code priority scheme.

11 Generally, for administrative and priority claims, the Plan contemplates either: (i)
12 payment of the claims, in full, on the Effective Date; or (ii) reaching an agreement for
13 deferred payment.

14 Generally, for secured claims, the Plan contemplates either: (i) liquidating any
15 property subject to a lien and—after the costs of sale—paying 90% to the secured creditor
16 with a carve-out of 10% for the estate; or (ii) abandonment of the collateral. The last
17 known property of the Estates subject to a lien is some equipment secured by FWT, and
18 two vehicles secured by TitleMax.

19 Generally, for unsecured claims, the Plan contemplates a distribution from the
20 Liquidating Trust based on the *pro rata* portion of the total amount of allowed claims.

21 All creditors are encouraged to specifically review the proposed Plan. This brief
22 description is intended to be a summary only. The specific terms and conditions of the
23 Plan will control if there are any discrepancies between any general summary descriptions
24 of the Plan’s terms and conditions in this Disclosure Statement.

25 **B. Classification of Claims and Equity Interests and Their Treatment Under the**
26 **Plan**

27 This Section summarizes the classification and treatment of Equity Interests and
28 Claims under the Plan. The Plan divides Claims and Equity Interests into Classes and sets

1 forth the treatment afforded to each Class. The classification of Claims and Equity
2 Interests, and the distributions to be made under such classification takes into account the
3 relative priorities of Claims and Equity Interests. The Proponent believes they have
4 classified all Claims and Equity Interests in compliance with the provisions of Section
5 1122 of the Bankruptcy Code.

6 If the Plan is confirmed by the Bankruptcy Court, each holder of an Allowed Claim
7 will receive the same treatment as all holders of other Allowed Claims in the same Class,
8 regardless of whether a particular holder voted to accept the Plan. Moreover, upon
9 confirmation, the Plan will be binding on all Creditors and holders of Equity Interests
10 regardless of whether such individuals or entities voted to accept the Plan.

11 The following sets forth the specific classification and treatment under the Plan of
12 each of the Classes:

13 **1. Treatment of Unclassified Allowed Priority & Administrative Claims**

14 Unclassified Claims are all Allowed Claims entitled to priority under § 507(a)(8) of
15 the Bankruptcy Code. Unless otherwise agreed by the Liquidating Trustee and the holder
16 of such Claim, each Allowed Administrative Claim (including all accrued U.S. Trustee
17 quarterly fees and Debtors' Professional Fees), shall be paid by the Liquidating Trustee
18 from the Liquidating Trust in full in Cash upon the later to occur of (a) the Effective Date,
19 or as soon thereafter as practicable; or (b) the thirtieth (30th) Business Day after such
20 claim is Allowed, by a Final Order, or as soon thereafter as practicable.

21 **2. Treatment of Class 1 Allowed Secured Claims:**

22 **Treatment of Class 1 Allowed Secured Claims.** Unless otherwise agreed by the
23 Liquidating Trustee and the holder of such Allowed Secured Claim, each Allowed
24 Secured Claimant shall be paid as follows:

25 **Class 1(a): Gosport Secured Claim.** If the Gosport Secured Claim is
26 Allowed by a Final Order, then the Liquidating Trustee shall liquidate
27 Gosport's Collateral and use the proceeds as follows: (i) first, to satisfy the
28 reasonable costs of sale; (ii) second, 90% of the net proceeds to Gosport;

1 and (iii) third, the remaining 10% of the net proceeds to the Distribution
2 Fund for ultimate distribution to junior Claimants. If the Trustee deems it
3 advisable to do so, he may abandon Gosport's Collateral rather than
4 liquidate it. Any amount of Gosport's Secured Claim that remains unpaid
5 after the liquidation or abandonment of its Collateral shall be deemed a
6 Class 2 Claim. Class 1(a) is impaired.

7 **Class 1(b): FWT Secured Claim.** If the FWT Secured Claim is Allowed
8 by a Final Order, then the Liquidating Trustee shall liquidate FWT's
9 Collateral and use the proceeds as follows: (i) first, to satisfy the reasonable
10 costs of sale; (ii) second, 90% of the net proceeds to FWT; and (iii) third,
11 the remaining 10% of the net proceeds to the Distribution Fund for ultimate
12 distribution to junior Claimants. If the Trustee deems it advisable to do so,
13 he may abandon FWT's Collateral rather than liquidate it. Any amount of
14 FWT's Secured Claim that remains unpaid after the liquidation or
15 abandonment of its Collateral shall be deemed a Class 2 Claim. Class 1(b)
16 is impaired.

17 **Class 1(c): TitleMax Secured Claim.** If the TitleMax Secured Claim is
18 Allowed by a Final Order and the amount of TitleMax's Allowed Secured
19 Claim is less than the value of its Collateral minus the exemption amount,
20 then the Liquidating Trustee shall liquidate TitleMax's Collateral and use
21 the proceeds as follows: (i) first, to satisfy the reasonable costs of sale; (ii)
22 second, pay off TitleMax's Secured Claim; (iii) third, to pay to Barbara L.
23 Richardson her exempt amount; and (iv) fourth, the remainder to the
24 Distribution Fund for ultimate distribution to junior Claimants. If the
25 TitleMax Secured Claim is allowed by a Final Order and the amount of
26 TitleMax's Allowed Secured Claim is more than the value of its Collateral
27 minus the exemption amount, then the Liquidating Trustee shall abandon
28 the Collateral to Barbara L. Richardson. Class 1(c) is impaired.

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3. Treatment of Class 1 Allowed Secured Claims:

Treatment of Class 2 Allowed Unsecured Claims. Unless otherwise agreed by the Liquidating Trustee and the holder of such Allowed Unsecured Claim, each Allowed Unsecured Claimant shall be paid by the Liquidating Trustee from the Distribution Fund its pro rata portion of the Liquidating Trust Proceeds-Net after the payment of all senior Claims on the Distribution Date. Class 2 is impaired.

4. Treatment of Class 1 Allowed Secured Claims:

Treatment of Class 3 Equity Interests. Unless otherwise agreed to by the Liquidating Trustee and Barbara L. Richardson, Barbara L. Richardson shall pay to the Liquidating Trust her Net Disposable Income for a period of no less than thirty-six (36) months, commencing on the Effective Date. The Liquidating Trustee shall pay any surplus funds or property remaining after the satisfaction, in full, pursuant to the Plan and Liquidating Trust Agreement, of all Claims in the Unclassified Class, Class 1, and Class 2.

C. Means for Execution of the Plan

The means for execution of the Plan are and will be as follows:

1. Establishment of Liquidating Trust and Transfer of all Non-Exempt Assets

On the Effective Date, the Debtors shall be deemed to have transferred and conveyed all right, title, and interest in the Causes of Action, Estate Litigation (including the Malpractice Action), and the Liquidating Trust Assets, which Assets shall automatically and irrevocably vest in the Liquidating Trust without further action on the part of the Debtors or the Court, and with no reversionary interest in the Debtors, except as otherwise provided in the Plan.

The transfer of the Liquidating Trust Assets to the Liquidating Trust shall be made for the benefit and on behalf of all holders of Allowed Claims entitled to receive distributions from the Liquidating Trust under the Plan. The Assets comprising the Liquidating Trust Assets will be treated for tax purposes as being transferred by the

1 Debtors to the Beneficiaries entitled to receive distributions from the Liquidating Trust
2 under the Plan in exchange for their Allowed Claims, and then by the Beneficiaries
3 entitled to receive distributions from the Liquidating Trust under the Plan to the
4 Liquidating Trust in exchange for a beneficial interest in the Liquidating Trust. Such
5 Beneficiaries shall be treated as the grantors and owners of the Liquidating Trust. Upon
6 the transfer of the Liquidating Trust Assets, the Liquidating Trust shall succeed to all of
7 the Debtors' rights, title, and interest in the Liquidating Trust Assets, and the Debtors will
8 have no further interest in or with respect to the Liquidating Trust Assets, except as
9 otherwise provided in the Plan.

10 Upon the transfer of the Liquidating Trust Assets to the Liquidating Trust, the
11 Debtors shall have no other or further rights or obligations with respect to the Liquidating
12 Trust except as specifically set forth in the Plan; provided, however, that the Debtors will
13 use their best efforts to cooperate with the Liquidating Trustee in achieving and
14 effectuating the intent and purpose of the Plan and the Liquidating Trust.

15 **2. Funding on the Effective Date**

16 The Plan does not require additional funding above and beyond what the Trustee
17 already has in the Estates.

18 **3. Payments Effective on Tender**

19 Whenever the Plan requires a payment to be made, such payment will be deemed
20 made and effective upon tender thereof by the Liquidating Trustee to the Creditor to
21 which payment is due. Such tender will be effective when and if made in Cash. If any
22 Creditor refuses a tender, the amount tendered and refused will be held by the Liquidating
23 Trustee for the benefit of that Creditor pending final adjudication of the dispute.
24 However, when and if the dispute is finally adjudicated and the Creditor receives the
25 funds previously tendered and refused, the Creditor will be obliged to apply the funds in
26 accordance with the Plan as of the date of the tender; and while a dispute is pending and
27 after adjudication thereof, the Creditor will not have the right to claim interest or other
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1 charges or to exercise any other right which would be enforceable by the Creditor if the
2 Liquidating Trustee failed to pay the tendered payment.

3 **4. Operative Documents**

4 Proponent may prepare any and all documents, including, but not limited to,
5 modification documents, which are necessary or appropriate to execute the Plan. If there
6 is any dispute regarding the reasonableness or propriety of any such documents after
7 reasonable and good faith efforts by the Proponent to negotiate and obtain approval of the
8 documents by the other affected person(s), any such dispute will be presented to the
9 Bankruptcy Court for determination at or in conjunction with the Confirmation Hearing.

10 **5. Causes of Action Against Insiders, Creditors and Other Third Parties**

11 Through the Liquidating Trust, the Liquidating Trustee expressly holds any and all
12 Claims and Causes of Action against any and all third parties, including but not limited to
13 the Malpractice Action.

14 FAILURE OF PROPONENT TO FULLY DISCLOSE ANY AND ALL CLAIMS
15 AND CAUSES OF ACTION TO THE BANKRUPTCY COURT AND THE DEBTORS
16 AND/OR ANY OTHER THIRD PARTIES AND ANY ALLEGED LACK OF
17 SPECIFICITY IN THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED
18 AS LIMITING OR IMPAIRING IN ANY MANNER THE RIGHTS OF THE
19 LIQUIDATING TRUSTEE, INCLUDING BUT NOT LIMITED TO ANY
20 ALLEGATIONS OF RES JUDICATA AND/OR COLLATERAL ESTOPPEL, TO
21 PURSE ANY AND ALL CLAIMS AND CAUSES OF ACTION HELD BY THE
22 DEBTOR IN ANY MANNER.

23 **II. TAX CONSEQUENCES OF PLAN**

24 The tax impact of the consummation of the Plan on Claim holders and holders of
25 Equity Interests will depend upon their individual tax circumstances, including without
26 limitation their basis in the Claims or Equity Interests they hold. The Proponent cannot
27 provide such holders with tax advice. Each holder should consult with its own tax
28 professional.

1 **III. TREATMENT OF EXECUTORY CONTRACTS AND REJECTION CLAIMS**

2 **BAR DATE**

3 **A. Rejection of Executory Contracts**

4 All executory contracts and unexpired leases that have not already been assumed
5 and assigned or rejected by the Debtors, or that are the subject of a pending motion to
6 assume or reject as of the date the Confirmation Order is entered will be deemed rejected.

7 **B. Rejection Claims Bar Date**

8 Every Claim asserted by a Creditor arising from the rejection of an Executory
9 Contract must be filed with the Bankruptcy Court no later than the first Business Day that
10 is twenty (20) days after the Effective Date. Every such Claim which is timely filed, as
11 and when it becomes an Allowed Claim, will be treated as a General Unsecured Creditor
12 under the Plan. Every such Claim which is not timely filed by the deadline stated above
13 will be forever barred and discharged and the Creditor holding the Claim will not receive
14 or be entitled to any distribution under the Plan on account of such Claim.

15 **IV. OBJECTION TO AND ALLOWANCE OF CLAIMS AND INTERESTS**

16 Unless any earlier time is fixed by order of the Bankruptcy Court, and subject to
17 amendment rights and the relation back of amendments under applicable federal or state
18 procedural rules, any objection by Proponent or Liquidating Trustee to the allowance of
19 any Claim must be filed on or before the first Business Day that is one hundred eighty
20 (180) days after the Confirmation Date, unless otherwise ordered by the Bankruptcy
21 Court.

22 **V. BAR DATES FOR ALL CLAIMS**

23 Claimants holding Administrative Claims against the Estate must submit proofs of
24 Claim thirty days after the Effective Date (the “Administrative Claim Bar Date”).
25 Claimants holding Claims (other than Administrative Claims Fees) against the Estate were
26 required to file Proofs of Claim on or before April 29, 2016. Any late filed Proofs of
27 Claim shall be deemed rejected and disallowed.

28 **VI. IDENTITY AND QUALIFICATIONS OF PROPOSED LIQUIDATING TRUSTEE**

1 Proponent proposes the Trustee serve as the Liquidating Trustee under the
2 proposed Liquidating Plan. The Trustee is already familiar with the Estates Assets and,
3 most importantly, the Malpractice Action, and has already been approved by the Court.

4 **VII. CONFIRMATION OF THE PLAN**

5 **A. Requirements For Confirmation Of The Plan**

6 For a Plan to be confirmed, the Plan must satisfy the requirements stated in
7 Bankruptcy Code § 1129. In this regard, the Plan must satisfy, among other things, the
8 following requirements:

9 **1. Best Interests Of Creditors And Liquidation Analysis**

10 Even if the Plan is accepted by each Class of holders of Impaired Claims, the
11 Bankruptcy Court must find that the Plan is in the best interests of all holders of Claims
12 that are impaired by the Plan and that have not accepted the Plan. The “best interests”
13 test, as set forth in § 1129(a)(7) of the Bankruptcy Code, requires the Bankruptcy Court to
14 find either that all members of an impaired Class of Claims have accepted the Plan or that
15 the Plan will provide a member who has not accepted the Plan with property of a value, as
16 of the Effective Date of the Plan, that is not less than the amount that such holder would
17 receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on that date.

18 To calculate the probable distribution to members of each impaired Class of Claims
19 if a debtor were liquidated under Chapter 7, the Bankruptcy Court must first determine the
20 aggregate dollar amount that would be generated from the Debtors’ assets if its Chapter 11
21 case was converted to Chapter 7 under the Bankruptcy Code. This “liquidation value”
22 would consist primarily of the proceeds from a forced sale of the Debtors’ assets by a
23 Chapter 7 trustee. This liquidation value would be distributed based on statutory priorities
24 (i.e., no junior Class of Claims may be paid anything unless all Classes of Claims senior
25 to such junior Class are paid in full). Therefore, no Class of Claims that is contractually
26 subordinated to another Class would receive any payment on account of its Claims, unless
27 all senior Classes are paid in full.
28

1 The Proponent believes that under the Plan all holders of impaired Claims will
2 receive property with a value not less than the value such holder would receive in a
3 liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. The Proponent's
4 belief is based primarily on the following facts: Chapter 7 would substantially reduce the
5 proceeds available for distribution to Creditors, including, but not limited to (a) the
6 increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to
7 a Chapter 7 trustee and professional advisors to the trustee, (b) the potential lack of funds
8 available to a Chapter 7 trustee to pursue the Litigation Claims and the Avoidance
9 Actions, (c) because Proponent will carve-out 10% of any collateral liquidated by the
10 Liquidating Trustee, there will necessarily be more money available to the Debtors'
11 creditors because similar treatment is not provided for in Chapter 7, and (d) the Plan
12 requires Richardson to pay her Net Disposable Income to the Liquidating Trust for thirty
13 six (36) months after the Effective Date, which would not be available in a chapter 7 (the
14 "Liquidation Analysis"). Accordingly, the Plan provides for recovery of assets that would
15 not be available in a chapter 7 proceeding, and Creditors are better off under the Plan than
16 they would be under Chapter 7.

17 As the Liquidation Analysis demonstrates, the Unsecured Creditors will receive a
18 greater distribution under the Plan. The Liquidation Analysis did not include all costs that
19 would be associated with a Chapter 7 liquidation (e.g., the costs and expenses arising from
20 a Chapter 7 trustee's professional advisors). If the Liquidation Analysis includes the costs
21 associated with a Chapter 7 trustee's professional advisors, then the net distributions to the
22 Unsecured Creditors in a Chapter 7 liquidation would be reduced even further.

23 Proponent believes that any liquidation analysis is inherently speculative; as such
24 an analysis necessarily is premised on assumptions and estimates which are inherently
25 subject to significant uncertainties and contingencies, many of which would be beyond
26 Proponent's control. Thus, there can be no assurance as to values that would actually be
27 realized in a Chapter 7 liquidation, nor can there be any assurance that the Bankruptcy
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1 Court would accept Proponent's conclusions or concur with such assumptions in making
2 its determinations under Bankruptcy Code § 1129(a)(7).

3 If no Plan is confirmed, the Chapter 11 Case may be converted to a case under
4 Chapter 7. In a Chapter 7, a trustee would be elected or appointed to liquidate the
5 Debtors' assets for distribution to Creditors in accordance with the priorities set by the
6 Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation
7 would be distributed to the respective holders of Claims against or Interests in the Debtor.
8 Proponent believes, however, that the distributions to each Creditor in Chapter 7 would be
9 less than the distributions they would receive under the Plan because: (i) the appointment
10 of a Chapter 7 trustee would add an additional layer of administrative expense and,
11 therefore, reduce the potential recovery to unsecured creditors; (ii) the Plan contemplates
12 a carve-out of property secured by Claims that would not be available under a Chapter 7;
13 and (ii) the Plan requires Richardson to pay her Net Disposable Income to the Liquidating
14 Trust for thirty-six (36) months after the Effective Date, which would not be available in a
15 Chapter 7 proceeding.

16 **2. Feasibility of the Plan**

17 Bankruptcy Code § 1129(a)(11) includes what is commonly described as the
18 "feasibility" standard. When the feasibility standard applies, it requires that confirmation
19 of a Plan will not be followed by liquidation or the need for further financial
20 reorganization unless the Plan provides for that alternative. Because the Liquidating Trust
21 will dissolve upon the distribution of all of its assets, the feasibility requirements of
22 Bankruptcy Code § 1129(a)(11) do not apply.

23 **3. Accepting Impaired Class**

24 For the Plan to be confirmed, the Plan must be accepted by at least one impaired
25 Class of Claims. For an impaired Class of Claims to accept the Plan, votes representing at
26 least two-thirds (2/3) in amount and a majority in number of the Allowed Claims voted in
27 that Class must be cast for acceptance of the Plan (not including the votes of insiders of
28 the Debtor).

1 **4. Confirmation Over Dissenting Class (Cram Down)**

2 Even if an impaired Class of Claims does not accept the Plan, the Bankruptcy
3 Court nevertheless may confirm the Plan over the objection of such Class at the
4 Proponent’s request. Bankruptcy Code § 1129(b) provides that if all other requirements
5 of Bankruptcy Code § 1129(a) are satisfied and if the Bankruptcy Court finds that: (i) the
6 Plan does not discriminate unfairly; and (ii) the Plan is fair and equitable with respect to
7 the rejecting Class(es) of Claims impaired under the Plan, the Bankruptcy Court may
8 confirm the Plan despite the rejection of the Plan by a dissenting impaired Class. All
9 claimants are put on notice that the Proponent will seek confirmation by § 1129(b) if so
10 required.

11 **a. No Unfair Discrimination**

12 A Plan of reorganization “does not discriminate unfairly” if: (i) the legal rights of
13 a non-accepting class are treated in a manner that is consistent with the treatment of other
14 classes whose legal rights are related to those of the non-accepting class; and (ii) no class
15 receives payments in excess of those that it is legally entitled to receive on account of its
16 Claims. The Proponent asserts that under the Plan: (a) all Classes of impaired Claims are
17 being treated in a manner which is consistent with the treatment of other similar Classes
18 of Claims; and (b) no Class of Claims will receive payments or property with an aggregate
19 value greater than the sum of the Allowed Claims in the Class. The Proponent believes
20 that the Plan does not discriminate unfairly as to any impaired Class of Claims.

21 **b. Fair And Equitable**

22 The Bankruptcy Code establishes different “fair and equitable” tests for creditors
23 as follows:

24 **(1) Secured Creditors**

25 Either: (i) each impaired Secured Creditor retains its lien and receives deferred
26 cash payments having a present value equal to the amount of its Allowed Secured Claim;
27 (ii) each impaired secured Creditor realizes the “indubitable equivalent” of its Allowed
28 secured Claim; or (iii) the property securing the Claim is sold free and clear of liens

1 (subject to Bankruptcy Code § 363(k) credit bidding rights) with such liens attaching to
2 the sale proceeds, and those liens are treated in accordance with clause (i) or (ii) of this
3 subsection.

4 **(2) Unsecured Creditors**

5 Either: (i) each impaired Unsecured Creditor receives or gains under the Plan
6 property of a value equal to the amount of its Allowed Claim as of the Effective Date; or
7 (ii) the holders of Claims which are junior to the Claims of the non-accepting Class do not
8 receive any property under the Plan on account of such Claims (except as may be
9 permitted by the new value corollary to the absolute priority rule).

10 Proponent believes that the Plan satisfies the “fair and equitable” test with respect
11 to all impaired classes.

12 Proponent has requested, if necessary, confirmation of the Plan pursuant to
13 Bankruptcy Code § 1129(b) with respect to any impaired Class of Claims which does not
14 vote to accept the Plan. Proponent believes that the Plan satisfies all of the statutory
15 requirements for confirmation as discussed above; that Proponent has complied or will
16 have complied with all the statutory requirements for confirmation of the Plan; and that
17 the Plan is proposed in good faith. At the hearing on confirmation of the Plan, the
18 Bankruptcy Court will determine whether the Plan satisfies the statutory requirements for
19 confirmation of the Plan.

20 **VIII. ALTERNATIVES TO THE PLAN**

21 Proponent believes that the Plan will enable the Debtor to maximize recovery to its
22 Creditors. Under Chapter 7, the Trustee would sell the assets of the Estate. The Chapter 7
23 Trustee would be entitled to administrative fees of up to three percent (3%) of the sales
24 proceeds (in addition to paying standard commissions, closing costs, and other expenses).
25 Proponent believes that the Plan provides the greatest possible recovery with its
26 combination of orderly liquidation of assets. Accordingly, Proponent believes that the
27 Plan, as described herein, enables all Creditors to receive the most value under the
28 circumstances.

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IX. RECOMMENDATION AND CONCLUSION

Proponent recommends that all Creditors who are entitled to vote on the Plan should vote to accept the Plan.

1 DATED this 23rd day of November, 2016.

2 SNELL & WILMER L.L.P.

3
4 By: s/Benjamin W. Reeves
5 Christopher H. Bayley
6 Benjamin W. Reeves
7 One Arizona Center
400 E. Van Buren St., Ste. 1900
Phoenix, AZ 85004-2202
Attorneys for Chapter 11 Trustee

8 **FILED** and **COPY** mailed or emailed
9 this 23rd day November, 2016, to:

10 Christopher J. Pattock
11 U.S. Trustee's Office
230 N. First Ave., Suite 204
Phoenix, AZ 85003
12 Christopher.J.Pattock@usdoj.gov

13 Thomas H. Allen
14 ALLEN BARNES & JONES, PLC
1850 N. Central Avenue, Suite 1150
Phoenix, Arizona 85004
15 tallen@allenbarneslaw.com
Attorneys for Paradise Investors Group, LLC

16 David Vandeventor
17 VANDEVENTER LAW
7272 E. Indian School Road, Suite 111
Scottsdale, Arizona 85251
18 drv@tmrc.org
Attorneys for Ms. Richardson

19 Todd A. Burgess
20 GALLAGHER & KENNEDY
2575 East Camelback Road, Suite 1100
Phoenix, Arizona 85016
21 todd.burgess@gknet.com
22 Attorneys for Kirk Kroloff

23 Steven M. Cox
24 David Michael Mandig
WATERFALL ECONOMIDIS CALDWELL
Williams Center Eighth Floor
5210 East Williams Circle
Tucson, Arizona 85711
25 smcox@wechv.com
26 mmandig@wechv.com
27 Attorneys for Arizona Board of Regents & University
28 Of Arizona

1 Jason D. Curry
Craig L. Friedrichs
2 QUARLES & BRADY LLP
One Renaissance Square
3 Two North Central Avenue
Phoenix, Arizona 85004
4 jason.curry@quarles.com
craig.friedrichs@quarles.com
5 Attorneys for Gosport Investments Limited

6 Michael W. Mcgrath
MESCH CLARK & ROTHSCHILD
7 259 North Meyer Avenue
Tucson, Arizona 85701
8 ecfbk@mcrazlaw.com
Attorneys for Cohen Kennedy Dowd & Quigley, P.C.

9 Douglas B. Rosner
10 GOULSTON & STORRS, P.C.
400 Atlantic Avenue
11 Boston, MA 02110-3333
drosner@goulstonstorrs.com
12 Attorneys for 5th Generation Seed, LLC

13 Robert W. Shely
BRYAN CAVE LLP
14 Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004
15 rwshely@bryancave.com
Attorneys for Bryan Cave, LLP and
16 First Western Trust Bank

17 s/Jennifer Thomes
25207578

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