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12  
13 **IN THE UNITED STATES BANKRUPTCY COURT**  
14 **FOR THE DISTRICT OF ARIZONA**

15 In re:

Chapter 11 Proceeding

No. 2:15-bk-15898-DPC

16 THE ROOMSTORES OF PHOENIX,  
17 L.L.C., d/b/a THE ROOMSTORE,

18 Debtor.

19  
20  
21 **DISCLOSURE STATEMENT IN SUPPORT OF JOINT CHAPTER 11**  
22 **PLAN OF LIQUIDATION DATED NOVEMBER 14, 2016**

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24  
25 **FILED BY THE ROOMSTORES OF PHOENIX, L.L.C., D/B/A THE ROOMSTORE**  
26 **AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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2

**ARTICLE I**  
**INTRODUCTION**

3

**1.1. Plan Proponent**

4 This *Disclosure Statement in Support of the Joint Chapter 11 Plan of Liquidation*  
5 (“**Disclosure Statement**” and “**Plan**”) is submitted by The RoomStores of Phoenix, LLC, the  
6 “**Debtor**” and the Official Committee of Unsecured Creditors (the “Committee”) in this  
7 Chapter 11 proceeding. The Debtor and the Committee are the Proponents of the Plan, a copy  
8 of which is attached to this Disclosure Statement as **Exhibit A**. The Plan sets forth the means  
9 by which the Debtor will be liquidated under the Title 11 of the United States Code  
10 (“**Bankruptcy Code**”).

11

**1.2. Definitions**

12 The capitalized terms used in this Disclosure Statement have the same meaning as  
13 those defined in **Exhibit B** to this Disclosure Statement or in the Bankruptcy Code, Rules, or  
14 as otherwise defined in this Disclosure Statement.

15

**1.3. Purpose of the Plan and Disclosure Statement**

16 A Chapter 11 bankruptcy case such as this one culminates with the Bankruptcy Court’s  
17 approval of a plan. A plan describes how a debtor will reorganize, or, as here, liquidate. The  
18 plan also explains the structure of the liquidation and how and when creditors and interest  
19 holders will receive payment.  
20

21 The Plan in this case proposes the creation of a **Liquidating Trust** (also referred to as  
22 the **Creditor Trust**) and the appointment of a **Liquidating Trustee** (also referred to as the  
23 **Creditor Trustee**) to liquidate the remaining assets of the Debtor’s estate and distribute the  
24 proceeds to Creditors and Interest Holders in accordance with the priorities of payment  
25 established by the Bankruptcy Code. The Plan describes the structure of the Liquidating  
26 Trust and sets forth the means for distributions to Creditors and Interest Holders. Readers are

1 specifically directed to Article VII this Disclosure Statement that describes how the Plan will  
2 be implemented. Creditors are classified according to, among other things, the nature of their  
3 Claims, i.e., whether they are secured or unsecured. Only Creditors and Interest Holders  
4 holding Allowed Claims will be eligible to receive any distributions from the Liquidating  
5 Trust. In the event the Liquidating Trust does not have sufficient funds to pay all creditors in  
6 full, Claimants will be paid in order of priority in accordance with 11 U.S.C. § 507(a). The  
7 last class for which funds are not available to pay members of the class in full will share in  
8 the distribution to its Class on a pro rata basis. Plan approval by the Bankruptcy Court, called  
9 Confirmation, creates a binding contract between the Debtor and its Creditors and Interest  
10 Holders on the “Effective Date” of the Plan. The Plan is the controlling document.

11 Classes 1 and 2(a) are unimpaired; that is, they will receive the full amount of their  
12 Claims on the Effective Date of the Plan. They will not be solicited for voting and will not be  
13 entitled to vote on the Plan. Classes 2(b), 3, 4, 5 and 6 are impaired in that they will not  
14 receive the full amount of their Claims on the Effective Date. These classes will be solicited  
15 for voting and will be entitled to vote on the Plan.

16 A plan proponent, in this case, the Debtor, must provide Creditors and Interest Holders  
17 with a disclosure statement that is approved by the Bankruptcy Court. The primary purpose  
18 of this Disclosure Statement is to provide adequate information to those creditors voting on  
19 the Plan so that they may make a reasonably informed decision with respect to exercising  
20 their right to accept or reject the Plan. This Disclosure Statement is intended for the sole use  
21 of creditors and other parties in interest.

22 You should consult your personal counsel or tax advisor on any questions or concerns  
23 respecting tax, securities, or other legal consequences of the Plan.

#### 24 **1.4. Classes Entitled to Vote and Deadline**

25 As indicated above, only impaired classes will be solicited for voting on the Plan.  
26

1 Ballots will be sent to all Claimants and Interest Holders entitled to vote on the Plan. A  
2 deadline for returning ballots will be established by the Bankruptcy Court. Any Claim or  
3 Interest to which an objection has been or will be made is not an Allowed Claim and will  
4 receive a distribution only after resolution of the objection by the Bankruptcy Court which  
5 may be made after the Plan is confirmed.

6 The Plan must conform to the requirements of 11 U.S.C. § 1129. As the Plan proposes  
7 a liquidation of the Debtor, two requirements of Section 1129(a) are presumably met: (1) that  
8 with respect to each class of Claims or Interests, each holder of a Claim or Interest has  
9 accepted the Plan or will receive or retain under the Plan on account of such Claim or Interest  
10 Property of a value that is not less than the amount such holder would receive if the Debtor  
11 were to be liquidated under Chapter 7 and (2) that confirmation of the Plan is not likely to be  
12 followed by liquidation or the need for further reorganization.

### 13 **1.5. Representations Limited**

14 The Debtor does not make any representations concerning the Debtor or the  
15 Liquidating Trust particularly regarding the value of any assets. The information in this  
16 Disclosure Statement is derived from the Debtor's books and records and is accurate to the  
17 best of the Debtor's belief and knowledge. You should not rely on any other representations  
18 or inducements proffered to you to secure your acceptance in arriving at your decision in  
19 voting on the Plan. Any Person making representations or inducements concerning  
20 acceptance or rejection of the Plan should be reported to counsel for the Debtor and to the  
21 United States Trustee who may be reached at (602) 682-2600. Further, some of the  
22 information contained in the Disclosure Statement may consist of estimations of liquidation  
23 values and distributions. The Debtor does not undertake to certify or warrant the accuracy of  
24 the information contained in this Disclosure Statement and actual results could differ  
25 materially from the projections contained herein.  
26

1 The Bankruptcy Court has not verified the accuracy of the information contained  
2 herein. The Bankruptcy Court's approval of the Disclosure Statement does not imply that the  
3 Bankruptcy Court endorses or approves the Plan, but only that the Disclosure Statement  
4 contains adequate information for Creditors and Interest Holders to make an informed  
5 decision to approve or reject the Plan.

6 **ARTICLE II**  
7 **STRUCTURE OF THE DEBTOR, ASSETS, AND LIABILITIES**

8 **2.1. The History of the Debtor and its Operations**

9 The Debtor is an Arizona limited liability company with its principal operations in  
10 Phoenix, Arizona. Debtor was formed in 1993 to operate two furniture retail locations and  
11 grew such that on the Petition Date it operated a warehouse and eleven leased showrooms  
12 located throughout the Phoenix area, in Casa Grande and Prescott, Arizona. The Debtor's  
13 members on the Petition Date consisted of Alan Levitz (33.5%), Phil Levitz (33.5%), and Dan  
14 Selznick (33%). Phil Levitz passed away in early 2016 and the Debtor believes his estate has  
15 succeeded to his interest.

16 In about October 2014, Alan Levitz assumed the role of managing member of the  
17 Debtor. Prior to that time, Philip Levitz was the managing member. Mr. Selznick oversaw the  
18 company's operations until he left that position at the end of August 2015. Alan Levitz has  
19 presided over the operations of the Debtor since then.

20 **2.2. The Sale of Debtor's Inventory**

21 As described more fully below, after continuing financial losses caused by the  
22 downturn in the housing market and increased competition in the furniture industry, the  
23 Debtor determined in November 2015 that it could provide a better recovery for its creditors  
24 by selling its inventory through an experienced furniture consultant under the protection of a  
25 bankruptcy proceeding. Consequently, prior to the bankruptcy filing, on or about  
26

1 December 10, 2015, the Debtor entered into a Sale Promotion Consulting Agreement (the  
2 “Agreement”) with a joint venture comprised of International Rug Group, LLC, Watch Hill  
3 Furniture Capital, LLC, and SB Capital Group, LLC (collectively, the “Consultant”). The  
4 Agreement provided for the Consultant to act as Debtor’s exclusive agent for conducting  
5 going out of business liquidation sales events (the “Sale Event”) at the Debtor’s multiple store  
6 locations (“Sale Location”). The Agreement contemplated that the Debtor would file a  
7 Chapter 11 proceeding and seek Bankruptcy Court approval of the Agreement. Shortly after  
8 the Petition Date on January 6, 2016, the Court approved the Debtor’s assumption of the  
9 Agreement and authorized the Sale Event (the “Sale Approval Order”) (the Agreement as  
10 amended by the Sale Approval Order is referred to herein as the “Sale Agreement”). The Sale  
11 Agreement expired by its terms 180 days after entry of the Sale Approval Order, or July 4,  
12 2016, however, the Debtor and the Consultant agreed to extend the termination date until July  
13 15, 2016.

14 The Sale Agreement required the Consultant to pay to Debtor 105 percent of the cost  
15 value of its inventory less certain “Advances,” described below, immediately after the entry  
16 of the Approval Order. Prior to the Petition Date, Consultant paid Debtor \$1,613,948.42  
17 (“Advances”) which Debtor used to pay operational expenses as well as to satisfy the secured  
18 claim of BOKF, NA in the amount of \$200,500 and the secured claim of American Express  
19 Bank, FSB in the amount of \$663,448.82. After payment of the Advances, the Consultant  
20 paid to the Debtor \$5,111,346.67 (the “Consultant Payment”) after the Petition Date.

21 The Sale Agreement provided for the Consultant to pay the Debtor a percentage of its  
22 Gross Sales from the Sale Event with a “Minimum Sales Override” of \$500,000. The Debtor  
23 received the Minimum Sales Override; however, the volume of the Consultant’s Gross Sales  
24 did not warrant any additional payment.

25 The Sale Agreement provided for the Debtor to realize proceeds from “Pre-Sale  
26 Orders,” derived from sales made to customers prior to the Sale Agreement but fulfilled

1 afterward. Debtor was able to fulfill a number of these orders and reduce the customer  
2 deposit claims significantly. In addition, a minimal amount of inventory was excluded from  
3 the company inventory on which the Guaranteed Payment was based. The Debtor has sold  
4 this Excluded Inventory, principally at auction.

5 Beginning December 16, 2015, prior to the Petition Date, the Consultant assumed  
6 responsibility for all Sale Expenses including rent payroll, maintenance, utilities, advertising,  
7 supplies and the like as defined in Section 4.4 of the Agreement.

8 For the most part, Debtor paid the expenses and the Consultant reimbursed the Debtor.  
9 As of the date of this Disclosure Statement the Debtor and the Consultant have not completed  
10 the reconciliation of the amounts owed to the Debtor by the Consultant.

11 Up until early spring of 2016, the Debtor believed it might be possible to salvage one  
12 or two stores and recommence its own operations. After further review of the outcome of the  
13 Consultant's sales, Debtor determined it would not be financially sound to attempt a new  
14 operation and turned instead to a liquidation mode. As further described below, all store  
15 leases and the warehouse lease were rejected by July 15, 2016.

### 16 **2.3. Employees**

17 Immediately upon execution of the Agreement, the Debtor began reducing the number  
18 of employees and retained only a skeletal staff to fulfill its obligations under the Sale  
19 Agreement with respect to the Sale Event and to perform the administrative tasks associated  
20 with the Sale Event. The remaining employees duties included dealing with the Consultant  
21 and paying expenses, and completing those tasks necessary with respect to the bankruptcy,  
22 including communicating with creditors and prior customers. During the bankruptcy,  
23 pursuant to the Sale Agreement, the Consultant paid to the Debtor compensation for Alan  
24 Levitz in the weekly amount of \$2,500.00. As of August 20, 2016, Mr. Levitz has accepted  
25 reduced compensation of \$500 per week. In addition, the Debtor continues to employ a  
26

1 comptroller, Carol Sheridan on an hourly basis as needed. All other employees have been  
2 terminated.

### 3 **2.4. Assets**

4 The Debtor's assets currently consist of (1) cash in the approximate amount of  
5 \$4,000,000 derived from the Consultant Payment, the Pre-Sale Orders, the Excluded  
6 Inventory Sales and the collection of pre-petition accounts receivable; (2) the Debtor's post-  
7 petition receivable from the Consultant believed to be approximately \$300,000 based on the  
8 reconciliation of reimbursements owed to the Debtor pursuant to the Sale Agreement; (3) the  
9 Debtor's right to use the name the "RoomStore" and certain related marks; (4) a settlement  
10 claim in the class action lawsuit *In re Payment Card Interchange Fee and Merchant Discount*  
11 *Antitrust Litigation* pending in the United States District Court for the Eastern District of New  
12 York (the "**Card Litigation**"); (5) bankruptcy avoidance actions including preferences and  
13 fraudulent conveyances; (6) the proceeds from auction sales of remaining inventory and  
14 equipment; and (7) utility deposits. These assets will be transferred to a Liquidating Trust as  
15 described below to be liquidated and the cash proceeds distributed to creditors (referred to as  
16 the "**Liquidating Trust Assets**" or the "**Creditor Trust Assets**").

17 The Debtor has filed a motion to auction its license to use the RoomStore name, but  
18 cannot predict whether there will be any bidders. Pursuant to the *Order Approving Motion to*  
19 *Engage Services Of Managed Care Advisory Group to Pursue Class Action Claim*, Doc. No.  
20 390, the Debtor has engaged Managed Care Advisory Group to pursue its claim in the  
21 Litigation. In the event the settlement is approved, the Debtor could receive as much as  
22 \$261,800. The Debtor has identified a number of potential causes of actions, many arising  
23 out of payments to insiders and vendors that may be avoided and the amounts recovered for  
24 the estate. The Debtor has attached a schedule of transfer recipients on **Exhibit G**. This list  
25  
26



1 is not exclusive and there may be additional transfer recipients discovered. The Debtor cannot  
2 estimate how many or how much of these claims are collectible.

3 The estimated cash amounts available for distribution are identified in **Exhibit E**.  
4 These are estimates only and subject to change.

### 5 **2.5. Liabilities**

6 Debtors' secured debt currently consists solely of a trade debt owed to Tempur-Sealy  
7 International, Inc. ("Sealy") secured by a purchase money security interest in certain  
8 identified goods. Sealy has filed proof of claim number 384 asserting a secured claim of  
9 \$1,622,632.25. Debtor believes the value of Sealy's collateral at the time of the petition was  
10 \$637,034.14 and therefore Sealy has a secured claim in this amount and an unsecured claim  
11 for the remainder. Debtor has segregated the amounts received from the post-petition sales of  
12 Sealy's inventory and believes Sealy's secured claim is no more than \$637,034.14.

13 Debtor's unsecured priority debt consists principally of: 1) administrative expenses  
14 including professional fees incurred post-petition, vendor claims under 11 U.S.C. § 503(b)(9)  
15 and certain post-petition rent claims; 2) priority wage and tax claims; and, 3) consumer  
16 deposit claims. Debtor's general unsecured debt consists principally of trade vendors and  
17 lessors. **Exhibit D** specifies the estimated claims of creditors.

## 18 **ARTICLE III**

### 19 **FACTORS LEADING TO DEBTOR'S BANKRUPTCY AND**

### 20 **OTHER PRE-PETITION EVENTS**

#### 21 **3.1. Operational Problems**

22 Prior to the economic downturn in 2008, the Debtor grossed as much as \$125 million  
23 in annual sale revenues. During the 2008 economic recession, Debtor suffered significant  
24 losses but was able to weather the storm, hoping that when the market improved it would  
25 return to its pre-recession revenues. Unfortunately, when business began to improve  
26 competition among furniture retailers had increased and the Debtor was unable to return to its

1 pre-recession income levels. The Debtor suffered losses in 2014 and 2015 and accordingly  
2 filed for bankruptcy protection on December 18, 2015. Debtor does not believe it can  
3 effectively reorganize and has decided to proceed with an orderly liquidation of its assets.

4 **ARTICLE IV**  
5 **SIGNIFICANT BANKRUPTCY EVENTS**

6 **4.1. Bankruptcy Filing**

7 The Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code on  
8 December 18, 2015 (the "**Petition Date**"). Since the Petition Date, Debtor has operated its  
9 business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

10 **4.2. Appointment of the Committee**

11 On January 5, 2016, the United States Trustee appointed the Official Committee of  
12 Unsecured Creditors (the "**Committee**") [Docket #88]. Its members are Magnussen Home  
13 Furnishings Ltd., Suns Legacy Partners, L.L.C. d/b/a Phoenix Suns; Phoenix Arena  
14 Development Limited Partnership; Tempur Sealy International, Inc. and Progressive  
15 Furniture, Inc.

16 **4.3. Employment of Professionals/Fee Applications**

17 On December 24, 2015, the Court approved on an interim basis, the retention of  
18 Dickinson Wright, PLLC ("DW") as attorneys for the Debtor. [Docket #41]. A final order  
19 approving the retention of DW was entered on January 8, 2016. [Docket #110]. On April 12,  
20 2016, DW filed its *First Interim Fee Application as Counsel for the Debtor*. [Docket #208].  
21 The Application was approved by Court Order dated May 13, 2016. [Docket #245]. On July  
22 20, 2016, DW filed its Second Interim Fee Application as Counsel for the Debtor [Docket  
23 #341]. The Application was approved by Court Order dated August 20, 2016. [Docket #413].

24 Debtor also retained Michael W. Carmel, Ltd., as conflicts counsel. Mr. Carmel's  
25 employment was approved by the Court on January 6, 2016. [Docket #101]. On April 20,  
26

1 2016, Carmel filed the *First Interim Application of Michael W. Carmel, Ltd. for Allowance of*  
2 *Compensation and Reimbursement of Expenses for Services Rendered as Conflicts Counsel*  
3 *for Debtor*. [Docket #219]. The Court approved the Application by Order dated May 17,  
4 2016. [Docket #248]. On July 25, 2016, Carmel filed the *Second Interim Application of*  
5 *Michael W. Carmel, Ltd. for Allowance of Compensation and Reimbursement of Expenses for*  
6 *Services Rendered as Conflicts Counsel for Debtor*. [Docket #358]. The Second Application  
7 was approved by Court Order dated August 20, 2016. [Docket #415].

8 On January 8, 2016, the Court approved the retention of David Gonzales and CKS  
9 Advisors LLC (“CKS”) to serve jointly as the Debtor’s and the Committee’s financial advisor  
10 [Docket #162]. CKS filed its *First Interim Application for Compensation as Financial*  
11 *Advisor to the Debtor* on April 27, 2016. [Docket #226]. The Application was approved by  
12 the Court Order dated May 26, 2016. [Docket #260]. On July 20, 2016, CKS filed its *Second*  
13 *Interim Application for Compensation as Financial Advisor to the Debtor*. [Docket #338].  
14 The Second Application was approved by Court Order dated August 20, 2016. [Docket #412].

15 On January 28, 2016, the Court approved the retention of Platzer, Swergold, Levine,  
16 Goldberg, Katz & Jaslow, LLP as attorneys for the Committee [Docket #143]. On July 9,  
17 2016, the Court approved the retention of Jennings, Haug & Cunningham, LLP as local  
18 counsel for the Committee. [Docket #328].

19 Debtor and the Committee agreed that the estate’s professionals will be paid on an  
20 interim basis eighty percent of the allowed fees and one hundred percent of allowed costs.  
21 The remaining twenty percent will be paid upon final approval of the interim fee applications.

22 On March 18, 2016, the Court approved the employment of Dennis Schmich &  
23 Co., Ltd. as accountant for the Debtor as of February 8, 2016 to assist the Debtor in  
24 completing its income taxes. [Docket #184]. On June 23, 2016, the Court approved the  
25 employment of Cunningham & Associates as auctioneer for the Debtor to auction Debtor’s  
26 remaining assets. [Docket #296].

1 **4.4. Debtor’s First-Day Motions**

2 On December 18, 2015, the Debtor filed motions providing for its immediate  
3 operational needs (the “**First-Day Motions**”). The First-Day Motions included:  
4 (1) *Emergency Motion for Entry of Interim and Final Orders Under 11 U.S.C. § 366*  
5 *Determining Adequate Assurance of Payment for Future Utility Services and Establishing*  
6 *Determination and Objection Procedures* [Docket #6]; (2) *Emergency Motion Authorizing,*  
7 *But Not Directing, Debtor to Honor Prepetition Commitments Under Customer Programs*  
8 [Docket #7]; (3) *Emergency Motion for Order Authorizing Debtor to Pay Pre-Petition Wages*  
9 *and Salaries and to Honor and Continue Pre-Petition Employee Benefits* [Docket #9];  
10 *Emergency Motion for Order Establishing Official Service List for Limiting Notice ad for*  
11 *Allowing Hearings to be Conducted in Phoenix, Arizona* [Docket #10]; and (4) *Emergency*  
12 *Motion For Entry of an Order (a) Authorizing Debtor to Assume Pre-Petition Executory*  
13 *Contract and (b) Authorizing the Debtor to Conduct a Going-Out-of-Business Sale (the “Sale*  
14 *Motion”)[Docket #11]. The First-Day Motions were considered at an expedited hearing on*  
15 *December 22, 2015 and, with the exception of the Sale Motion, all granted as of*  
16 *December 24, 2015 [Docket ##42, 43, 45 & 46].*

17 **4.5. The Sale Motion**

18  
19 Through the Sale Motion the Debtor sought to assume the Agreement with the  
20 Consultant. The Sale Motion was approved by the Court’s January 6, 2016 *Order (A)*  
21 *Authorizing Debtor to Assume Pre-Petition Executory Contract and (B) Authorizing the*  
22 *Debtor to Conduct a Going-Out-Of-Business Sale (the “Sale Order”)* [Dkt. #100]. The Sale  
23 Agreement and the monetary results for the Debtor are described above in Article II.2.2. The  
24 Sale Event terminated on July 15, 2016. The Debtor and Consultant are in the process of  
25 reconciling any remaining amounts owed to the Debtor.  
26

1 **4.6. Other Sale Motions**

2 On March 9, 2016, the Debtor filed the *Motion for Authority to Liquidate Estate*  
3 *Property*. [Docket #171]. Through this Motion the Debtor sought to liquidate the cash value  
4 of a life insurance policy for Daniel Selznick, the former managing member of the Debtor.  
5 The Court approved the Motion on March 29, 2016 and Debtor has received the value of the  
6 life insurance policy in the amount of \$81.016/48. [Docket #197].

7 On June 9, 2016, the Debtor filed the *Motion to Approve Auction and Assumption and*  
8 *Assignment of Commercial Real Property Leases* (“Lease Auction Motion”) [Docket # 263].  
9 Several landlords filed objections to the Lease Auction Motion. [Docket ##271, 275, 276].  
10 The Court held a hearing to consider the Lease Auction Motion on June 16, 2016. Debtor was  
11 able to resolve the objections to the Lease Auction Motion and negotiate a stipulated order  
12 with all landlords except DDRA Ahwatukee Foothills, LLC (“DDRA”). Debtor and DDRA  
13 submitted competing orders to the Court and on June 17, 2016 and the Court entered the  
14 *Corrected Order Approving Auction and Assumption and Assignment of Commercial Real*  
15 *Property Leases*. [Docket #283]. An auction of the leases was held on June 30, 2016 and no  
16 bids were received for the Leases. [See Notice of No Sale, Docket #307].

17 On June 22, 2016, Debtor filed its *Emergency Motion to Authorize Auction of*  
18 *Remaining Assets* requesting authority to sell certain of its assets through an auction sale.  
19 [Docket #293]. The Court granted the Debtor’s Motion in its June 27, 2016 Order. [Docket  
20 #300]. Through its auctioneer, Cunningham & Associates, the Debtor has sold a number of  
21 assets and is conducting a rolling auction of the assets remaining after termination of the Sale  
22 Event.

23 **4.7. Deadline to Assume or Reject Real Property Leases**

24 On March 15, 2016, the Debtor filed a motion to extend the deadline to assume or  
25 reject real property leases pursuant to Bankruptcy Code § 365 [Docket #177]. On April 13,  
26

2016, the Bankruptcy Court granted the Extension Motion [Docket #213], extending the deadline to assume or reject the real property leases to the earlier of July 15, 2016 or the date of the entry of an order confirming a plan. Upon termination of the Sale Event and a determination that assumption of the leases was not in the best interests of the estate, in early July, the Debtor filed motions to reject its real property leases. All real property leases have been rejected.

**4.8. Rejected Commercial Property Leases**

On the Petition Date, Debtor was the lessee of twelve commercial properties, eleven of which were operated as furniture showrooms and one as a warehouse and office space. During the Sale Event, Debtor rejected certain non-residential real property leases as Consultant terminated the Sale at each location. Upon completion of the Sale Event, Debtor rejected all remaining leases as follows:

Store Number – Address	Landlord	Motion to Reject Filed	Date Rejected
01 - 13637 North Tatum Blvd, Suite 10, Phoenix, AZ	Phoenix/Paradise Valley Festival 04 A, LLC	April 8, 2015, [Docket # 205]	April 27, 2016 [Docket # 232]
02 - 16880 North 59 <sup>th</sup> Avenue, Glendale, AZ	BPT, LLC	July 5, 2016 [Docket # 313]	July 15, 2016 [Docket # 371]
03 - 3539 West Northern Avenue, Phoenix, AZ	5818 California Street Partners	July 1, 2016 [Docket # 308]	July 8, 2016 [Docket # 348]
06 – 6315 East Southern Avenue, Mesa, AZ	SBMC Mesa, LLC	July 7, 2016 [Docket # 325]	July 8, 2016 [Docket # 374]
07- 4633 E. Ray Rd., Phoenix, AZ	DDRA Ahwatukee Foothills, LLC	July 5, 2016 [Docket # 317]	July 15, 2016 [Docket # 375]
08 - 1661 South Alma School Road, Mesa, AZ	PV Alma School Road, LLC	March 16, 2016, [Docket # 179]	March 29, 2016 [Docket # 204]
09 - 15826 North Scottsdale Road, Scottsdale, AZ	DJD Property Holdings, LLC and Dobson IV Silos-Scottsdale, LLC	July 5, 2016 [Docket # 311]	July 15, 2016 [Docket # 372]
11 - 555 North Litchfield Road, Goodyear, AZ 12 - 3090 Gateway Blvd, Prescott, AZ	Store Master Funding III, LLC	July 5, 2016 [Docket # 319]	July 15, 2016 [Docket # 370]
14 - Tri-Valley Plaza, 1325 E. Florence Blvd., Casa Grande, AZ	Tri Valley Associates LLC	May 3, 2016, [Docket # 234]	May 20, 2016 [Docket # 256]

Store Number – Address	Landlord	Motion to Reject Filed	Date Rejected
15 - 2501 West Happy Valley Road, Suite 28, Phoenix, AZ	HVTC, LLC	July 5, 2016 [Docket # 321]	July 15, 2016 [Docket #373]
Warehouse - 3011 E. Broadway Road Phoenix, AZ 85040	LIT PC, L.P.	July 6, 2016 [Docket # 323]	Deemed Rejected as of July 15, 2016

LIT PC, L.P. (“LIT”) is the landlord for the Debtor’s warehouse property (the “Warehouse”). During the term of the LIT lease, Debtor installed a mezzanine at the Warehouse, with the consent of LIT. As part of the liquidation of its assets, Debtor sought to sell the mezzanine. Debtor and LIT negotiated an agreement which would allow for a sale of the mezzanine (the “Mezzanine Stipulation”). On July 21, 2016, the Debtor filed a motion requesting approval of the Mezzanine Stipulation. Doc. No. 344. Pursuant to the Mezzanine Stipulation, the parties agreed, among other things, to split the proceeds from the sale of the mezzanine. Pursuant to the Mezzanine Stipulation, the buyer of the mezzanine was required to remove the mezzanine and repair the Warehouse to LIT’s reasonable satisfaction.

On July 6, 2016, the Debtor filed its motion to reject the LIT lease of the Warehouse as of July 7, 2016. [Docket #323]. On July 26, 2016, LIT filed its objection to the Debtor’s motion to reject. [Docket #368]. LIT argued that the Debtor continued to occupy the interior of the Warehouse until July 15, 2016 and that the Debtor stored trailer trucks at the Warehouse through the date of the objection. LIT also asserted that removal of the mezzanine caused damage to a fire line and the floor of the Warehouse and asserted that the Debtor was liable for additional damage to the Warehouse. LIT and the Debtor resolved the rejection motion and the objection thereto through a stipulation agreeing that LIT Lease was rejected as of July 15, 2016. [Docket #407].

On August 30, 2016, LIT filed an *Application for an Order Allowing and Directing Payment of an Administrative Expense Claim* (“LIT Application”) seeking an administrative

1 expense claim in the amount of \$683,668.70 consisting of: 1) \$507,263.65 in alleged damage  
2 to the Warehouse; 2) additional rent for the month of July in the amount of \$140,219.40;  
3 and, 3) rent through August 8, 2016 in the amount of \$36,185.65. [Docket #426]. The Court  
4 held an initial hearing on the LIT Application on September 19, 2016. After the initial  
5 hearing, Debtor and LIT stipulated to allow a claim for July rent in the amount of  
6 \$140,219.40. At a continued hearing held on October 18, 2016, the Court ordered that the  
7 Debtor pay the July rent amount in full no later than October 31, 2016. Debtor disputes that  
8 the damage to the Warehouse is anything other than ordinary wear and tear. LIT has filed an  
9 adversary proceeding to recover the administrative claim. At the October 18, 2016 hearing  
10 the Court also directed the Debtor to file its plan and disclosure statement no later than  
11 November 23, 2016. Debtor has timely filed this Disclosure Statement and the  
12 accompanying Plan.

#### 13 **4.9. Other Rejected Leases and Contracts**

14 On December 31, 2014, the Debtor and Arizona Cardinals Football Club LLC and the  
15 New Cardinals Stadium, LLC filed the *Stipulation to Reject Advertising and Promotion*  
16 *Agreement with the Arizona Cardinals* [Docket #70]. The Court approved the stipulation on  
17 January 21, 2016 [Docket #133]. On February 17, 2016, the Debtor and Phoenix Arena  
18 Development Limited Partnership, Suns Legacy Partners, L.L.C. dba Phoenix Suns filed the  
19 *Stipulation to Reject Marketing Partnership Agreement* [Docket #157]. The Court approved  
20 the stipulation on March 23, 2016 [Docket #191]. On March 28, 2016, the Debtor filed a  
21 motion to reject its lease for commercial trucks with Penske Truck Leasing Co., L.P. [Docket  
22 #193] which was granted by the Court on April 21, 2016 [Docket #221].

#### 23 **4.10. Claims Bar Date**

24 On April 20, 2016, the Debtor filed a Motion to Set Claims Bar Date which was  
25 granted in the Order setting May 20, 2016 as the last day to file proofs of claim. [Docket  
26



1 ##217 and 222]. On April 22, 2016, the notice of the claims bar date was mailed to all  
2 creditors and parties in interest on the Debtor's Master Mailing Matrix. The mailed notice to  
3 creditors and parties in interest was sufficient to reach known creditors, however, Debtor  
4 took additional steps to provide notice of the claims bar date to all customers that might hold  
5 deposit claims, warranty claims or have unredeemed gift cards and were not listed or  
6 incorrectly listed in the Debtor's records. In an effort to reach all potential claimants Debtor  
7 published a notice in the Arizona Republic which ran on May 8<sup>th</sup> and 15<sup>th</sup>, 2016 and provided  
8 information on filing a proof of claim. Debtor also published a link to the Notice of Claims  
9 Bar Date on its website. Debtor set a hearing for the Court to consider claims filed pursuant  
10 to 11 U.S.C. § 503(b)(9) on June 14, 2016 at 10:00 a.m. (the "503(b)(9) Hearing"). [Docket  
11 #233]. Notice of the 503(b)(9) Hearing was mailed or emailed to all Debtor's trade creditors  
12 on May 3, 2016. [Docket #238]. The 503(b)(9) Hearing was continued to July 19, 2016 and  
13 again to August 16, 2016.

#### 14 **4.11. Stipulations Resolving Claims / Claim Objections**

15 On February 2, 2016, the Debtor and Michigan Retailers Services, Inc. filed a  
16 *Stipulation Resolving Michigan Retailers Services, Inc.'s Motion for Relief from the*  
17 *Automatic Stay* ("MR Stip") which allowed Michigan Retailers to setoff against its pre-  
18 petition deposit. [Docket #146]. Pursuant to the MR Stip, on July 1, 2016, Michigan  
19 Retailers provided Debtor with a reconciliation of the setoffs. Debtor has reviewed the  
20 reconciliation and has no objection thereto. Michigan Retailers has not yet amended its  
21 claim to reflect the setoff.

22 Paradise Valley Festival 04 A, LLC ("PV Festival") holds a post-petition claim for  
23 unpaid lease-related expenses in the amount of \$8,032.83. On May 20, 2016, Debtor and  
24 Paradise Valley Festival 04 A, LLC filed the *Stipulated Motion for Allowance of*  
25 *Administrative Expense Claim by Paradise Valley Festival 04 A, LLC* [Docket #250].  
26

1 Four creditors filed proofs of claim pursuant to 11 U.S.C. § 503(b)(9) Man Wah  
2 Furniture Manufacturing (Huizhou) Co., Ltd; Magnussen Home (“Magnussen”); Progressive  
3 Furniture, Inc., and Argo Partners as Assignee of H & M Distributing. Debtor and these  
4 claimants have resolved all of these claims and stipulations have been approved by the  
5 Court. On the Petition Date, Magnussen claims it had goods in transit to the Debtor which  
6 had been ordered pre-petition and were received by the Debtor post-petition. Magnussen has  
7 not filed an application for an administrative claim but has filed a third proof of claim  
8 requesting approval of the expense as an administrative claim. Debtor will work with  
9 Magnussen to resolve this claim. In the event the parties cannot agree, Magnussen may have  
10 to file an application for approval of an administrative expense claim pursuant to 11 U.S.C. §  
11 503.

12 On July 26, 2016, the Debtor filed a motion to approve the *Stipulation Acknowledging*  
13 *Termination of Retailer Program Agreement with Synchrony Bank*. The stipulation provided  
14 for the termination of the Debtor’s retail agreement with Synchrony Bank (“Synchrony”), for  
15 the offset of certain incentive amounts owed under the agreement, for the surrender of a  
16 letter of credit held by Synchrony, and for the return to the Debtor of the balance of funds in  
17 a reserve account. The Stipulation was approved by the Court on September 14, 2016. [Doc.  
18 No. 446].

19 Debtor has reviewed all filed and scheduled claims and has brought sixteen omnibus  
20 objections. Through the Debtor’s First Omnibus Objection the resolved a number of  
21 duplicate and amended claims and claims that do not comply with the applicable rules.  
22 [Docket #378]. The Debtor’s Second Omnibus Objection provided for disallowance of  
23 claims filed after the May 20, 2016 claims bar date. [Docket #379]. The remaining fourteen  
24 objections focused on deposit claims of individuals. A number of individuals were either  
25 listed on the Debtor’s schedules or filed proofs of claim for deposits placed with the Debtor  
26 for the purchase of household goods and furnishings. After the Petition Date, a number of

1 the deposit claimants received a refund of the charge from their credit card companies or  
2 received delivery of the furniture ordered in full or partial satisfaction of the claim. A  
3 number of responses were filed to the omnibus objections and the Debtor worked with the  
4 creditors to resolve the claims. Orders have been entered resolving each of the omnibus  
5 objections and the Debtor has stipulated with several deposit creditors in resolution of their  
6 claims. Debtor anticipates priority deposit claims in the aggregate amount of \$527,340.07.

7 Furniture Brands International Wind Down, Inc. ("FBI") filed an unsecured proof of  
8 claim in the amount of \$415,777.34. [POC #186]. FBI claims to have retained certain  
9 accounts payables in the Furniture Brands bankruptcy despite the transfer of the security  
10 agreements and debt to HHG. Debtor believes it resolved this claim and disputes FBI's  
11 Claim.

12 In addition to the claim of FBI, Debtor has discovered approximately ten additional  
13 claims that it disputes. Debtor has begun negotiating with several creditors in order to  
14 resolve the disputed claims. In the event Debtor is unable to resolve the claim disputes it will  
15 file objections to the claims. The Liquidating Trustee will reserve for these disputed claims  
16 and will pursue the Debtor's objection after the Plan is confirmed.

#### 17 **4.12. Recovery of Preferences and Fraudulent Transfers**

18 Debtor has identified potential preference and fraudulent transfer claims against a  
19 number of individuals. On April 20, 2016, Debtor brought an adversary complaint against  
20 Diamond Head, a Nevada corporation, to recover a preferential payment in the amount of  
21 \$44,838.00. Shortly before entry of the default judgment, Diamond Head remitted  
22 \$44,838.00 to Debtor and the adversary proceeding was dismissed. All preference and  
23 fraudulent transfer claims that have not been resolved by the Debtor as of the Effective Date  
24 may or may not be pursued by the Liquidating Trustee.  
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**ARTICLE V**  
**SUMMARY OF THE PLAN**

5.1. **The Liquidating Plan**

The Plan proposes a liquidation of the Debtor through the creation of a Liquidating Trust to which all of Debtor's Estate's assets will be transferred on the Effective Date of the Plan. A Liquidating Trustee will be appointed to evaluate and liquidate the assets for the benefit of creditors, to pursue Causes of Action and claim objections, and to ultimately distribute all proceeds to Creditors and Interest Holders. The Liquidating Trustees's duties are more thoroughly described in the Roomstores Liquidating Trust Agreement attached hereto as **Exhibit C**.

5.2. **Summary of the Plan's Treatment of Creditors and Interest Holders**

A summary of the treatment of Creditors and Interest Holders under the Plan and an estimation of their Claims is outlined in **Exhibit D** attached to this Disclosure Statement.

**[NOTE:** Any description of the Plan in this Disclosure Statement is for informational purposes only and does not purport to change or supersede any of the language of the Plan. Each holder of a Claim or Interest is urged to read the Plan carefully with respect to the proposed treatment of their respective Claim or Interest, and, is encouraged to consult with such person's legal counsel. If the Plan is confirmed, it will be binding upon the Debtor, its Creditors, and Interest Holders. **IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN WILL CONTROL.]**

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**ARTICLE VI**  
**CLASSIFICATION OF CLAIMS AND INTERESTS**

Creditors and Interest Holders are grouped in Classes depending on the type of Claim or Interest they have. The following section describes how they will be treated in the Plan. Payments and distributions will be made by the Liquidating Trustee.

1 **6.1. No Classification of Administrative Claims and Priority Tax Claims**

2 As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims  
3 and Priority Tax Claims shall not be classified for purposes of voting on or receiving  
4 distributions under the Plan. All those Claims shall be treated separately as unclassified  
5 Claims on the terms set forth herein.

6 **6.2. Administrative Expenses**

7  
8 Unless previously approved and paid, Allowed Administrative Claims will be paid, in  
9 full satisfaction of the Claim: (a) one cash payment in the Allowed amount of the Claim on  
10 the Effective Date or as soon thereafter as possible or after the claim is allowed if subject to  
11 Court approval; or, (b) in the ordinary course of business as the Claim matures; or, (c) upon  
12 other less favorable terms as may be agreed upon in writing by the holder of the Claim and  
13 the Liquidating Trustee (described below); or, (d) as ordered by the Bankruptcy Court.

14 On the Effective Date, the Debtor believes the Administrative Claims will consist of:  
15 1) the professional claims of Dickinson Wright PLLC and Michael W. Carmel Ltd. for their  
16 services in representing the Debtor; Committee counsel Platzer, Swetgold, Levine, Goldberg,  
17 Katz & Jaslow, LLP and local Committee counsel Jennings, Haug & Cunningham, L.L.P.  
18 and Debtor's financial advisor CKS Advisors, LLC, all in the aggregate amount of  
19 approximately \$550,000; 2) claims under Section 503(b)(9) of the Code for goods received  
20 in the twenty days prior to the Petition Date in the approximate amount of \$358,000; and, 3)  
21 landlord claims for post-petition rent in the approximate amount of \$150,000.<sup>1</sup> A contested  
22 Plan Confirmation could increase the amount of professional fees.

23 **6.3. Priority Tax Claims**

24  
25 <sup>1</sup> LIT has filed an administrative claim for more than \$680,000 for alleged damages on the Debtor's former  
26 warehouse and corporate offices. The Debtor has filed an Objection and will be vigorously opposing the claim. The  
debtor does not believe it is liable for any of the alleged damages. Additionally, to the extent the Debtor is liable for  
any damages, it may have a right to seek indemnification/contribution from third parties.

1 Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less  
2 favorable treatment or alternative treatment is ordered by the Bankruptcy Court, in full and  
3 final satisfaction, each holder shall be treated in accordance with the terms set forth in  
4 Bankruptcy Code section 1129(a)(9)(C). The Debtor estimates Priority Tax Claims in the  
5 aggregate amount of \$439,099. Allowed Priority Tax Claims will be paid in full on the  
6 Effective Date.

7 **6.4. Classification and Treatment of Claims and Interests That Are Classified**

8 For purposes of voting, distributions, and all confirmation matters, except as  
9 otherwise provided herein all Allowed Claims and Interests shall be classified and treated as  
10 follows.

11 **(1) Class 1 – Employee Wage Claims**

12 Class 1 consists of the Allowed Claims of individuals not exceeding \$12,475  
13 for each individual or corporation earned within 180 days of the Petition Date for wages,  
14 salaries or commissions, including vacation severance and sick leave pay. Only one  
15 claimant has filed a proof of claim in this Class and Debtor disputes that the claimant is  
16 owed any unpaid wages. To the extent there are any allowed claims, Class 1 Allowed  
17 Claims will be paid in full on the Effective Date or as soon thereafter as is reasonably  
18 possible. This Class is Unimpaired, is not entitled to vote on the Plan, and will not be  
19 solicited to vote on the Plan.

20 **(2) Class 2 – Individual Consumer Deposit Claims**

21 Class 2 consists of Allowed Claims of individuals arising from the deposit of money  
22 with the Debtor for the purchase of furniture for the personal, family or household use of  
23 such individuals that was not delivered. Each holder of a Class 2 Claim is considered to be in  
24 its own separate subclass within Class 2 and each such subclass is deemed to be a separate  
25 Class for purposes of the Plan. Debtor estimates total claims in this class of \$547,512.86.  
26

1           **(3) Class 2(a) – Consumer Deposit Claims Less than \$2,775**

2           Class 2(a) consists of Allowed Claims of individuals not exceeding \$2,775 per  
3 individual, arising from the deposit of money with the Debtor for the purchase of furniture  
4 for the personal, family or household use of such individuals that was not delivered. Class  
5 2(a) will be paid in full on the Effective Date or as soon thereafter as reasonably possible.  
6 This Class is Unimpaired, is not entitled to vote on the Plan and will not be solicited to vote  
7 on the Plan. Debtor estimates total claims in this class of \$527,340.07.

8           **(4) Class 2(b) – Consumer Deposit Claims in Excess of \$2,775**

9           Class 2(b) consists of Allowed Claims of individuals exceeding \$2,775 per  
10 individual, arising from the deposit of money with the Debtor for the purchase of furniture  
11 for the personal, family or household use of such individuals that was not delivered. The  
12 amount of \$2,775 will be paid for each Allowed Claim in full on the Effective Date or as  
13 soon thereafter as reasonably possible. This amount totals \$20,172.79. The remainder of  
14 about \$126,325 of such Allowed Claims will be treated in Class 4. This Class is Impaired  
15 and entitled to vote on the Plan.

16           **(5) Class 3 – Secured Claim of Sealy/Sterns & Foster**

17           Class 3 consists of the Allowed Secured Claim of Sealy/Sterns & Foster (“Sealy”)  
18 with respect to its Allowed Secured Claim secured by a purchase money security interest in  
19 certain goods purchased by the Debtor. Sealy and the Debtor have agreed to Sealy’s  
20 Allowed Secured Claim in the amount of \$637,034.14 and an Allowed Unsecured Claim in  
21 the amount of \$985,598.11. On the Effective Date or as soon thereafter as is reasonably  
22 possible, Sealy will be paid its Allowed Secured Claim in full. Sealy’s Allowed Unsecured  
23 Claim will be treated in Class 4. The Class 3 Claimant is Impaired and entitled to vote on  
24 the Plan.

25           **(6) Class 4 – General Unsecured Creditors**

26

1 Class 4 consists of the Allowed Claims of general unsecured creditors.  
2 Allowed Claims in this Class will be paid without interest on a Pro-Rata basis after all  
3 Allowed Administrative Claims, Allowed Priority Tax Claims, and Class 1, Class 2(a), Class  
4 2(b) deposit Claims, and Class 3 have been paid in full. The initial distributions to  
5 Unsecured Creditors will be made 180 days after the Effective Date. Subsequent  
6 distributions will be made in a timely fashion as prudent in the sole discretion of the  
7 Liquidating Trustee until all liquidation proceeds are distributed. This Class is Impaired and  
8 entitled to vote on the Plan. In the event sufficient funds are available to pay all Allowed  
9 Claims in this Class in full, the Liquidating Trustee will pay interest at a rate of 1.0 percent  
10 (1%) per annum. Debtor believes the Claims in this Class total approximately \$19,020,345.

11 **(7) Class 5 – Administrative Convenience Class**

12 Class 5 consists of the Allowed Claims of general unsecured creditors in an  
13 amount not exceeding \$2,000. The holders of Allowed Class 5 Claims shall be paid the  
14 lesser of their Allowed Class 5 Claim or the sum of \$500 in full satisfaction of the Allowed  
15 Claim. Payments to Allowed Class 5 Claimants shall be made 180 days after the Effective  
16 Date or, if the Claim is not an Allowed Class 5 Claim on the Effective Date, then within  
17 ninety days of its allowance. Class 5 Claims are impaired.

18 **(8) Class 6 – Equity Interests in Debtor**

19 Class 6 consists of the Allowed Interests of the estate of Phil Levitz, Alan  
20 Levitz and Daniel Selznick. Class 6 will receive distributions under the Plan after all  
21 Allowed Administrative Claims, Allowed Priority Tax Claims, and Class 1, Class 2(a), Class  
22 2(b), Class 3, Class 4, and Class 5 Claims have been paid in full with interest. This Class is  
23 Impaired and is entitled to vote on the Plan.

24 **ARTICLE VII**  
25 **MEANS FOR IMPLEMENTATION OF THE PLAN**

26 **7.1. Creation of Liquidating Trust and Appointment of Trustee**



1 On the Effective Date a Liquidating Trust will be created pursuant to the Roomstores  
2 Liquidating Trust Agreement (in a form substantially the same as Exhibit C the terms of  
3 which are incorporated by reference) to facilitate all distributions required by the Plan and  
4 other functions required to wind-down the Debtor's Estate. On the Effective Date, all assets  
5 of the Debtor's estate, including but not limited to cash or cash equivalents, accounts  
6 receivable, intellectual property and Causes of Action (the "Liquidating Trust Assets" or  
7 "Creditor Trust Assets") will be transferred to the Liquidating Trust and will be used to pay  
8 Allowed Claims and Interests after the payment or reservation for the expenses of  
9 administering the Liquidating Trust, including the winding down and closing of the  
10 bankruptcy case and all necessary administrative and professional fees and costs. As of  
11 September 30, 2016, the Debtor was holding approximately \$3,200,000 in unrestricted cash  
12 and immediate cash receivables of about \$400,000. Although it is difficult to predict how  
13 much cash will ultimate be available for distribution, the Debtor's best estimate is outlined in  
14 Exhibit E.

15 The Initial Liquidating Trustee will be David Gonzales. Mr. Gonzales is a  
16 principal with CKS Advisors which has served as the financial advisor for the Debtor and the  
17 Committee since the beginning of the case. Mr. Gonzales will be deemed appointed on the  
18 Effective Date, without further motion, application, notice, hearing or other order of the  
19 Court. Mr. Gonzales will be compensated as set forth in the Liquidating Trust Agreement.  
20 Mr. Gonzales' resume is attached as Exhibit F.

## 21 **7.2. Duties and Powers of Liquidating Trustee**

22 As more fully described in the Liquidating Trust Agreement, the Liquidating Trustee  
23 shall be appointed by the Court on the Effective Date and shall have the rights and powers of  
24 a debtor in possession under Bankruptcy Code section 1107, and such other rights, powers,  
25 and duties necessary, appropriate, prudent or advisable to effectuate the provisions of the  
26

1 Plan and the Liquidating Trust, including but not limited to objecting to claims and making  
2 distributions to creditors and interest holders. The Liquidating Trustee shall not be required  
3 to obtain any approvals from the Court, any court or governmental body and/or provide any  
4 notices under any applicable laws to implement the terms of the Plan in accordance with the  
5 Plan and the Liquidating Trust Agreement except as expressly set forth in the Plan and the  
6 Liquidating Trust Agreement.

7 The Liquidating Trustee may employ, without order of the Court such counsel (which  
8 may be the same counsel employed by the Debtor and the Committee), financial advisors  
9 (which may be CKS Advisors employed by the Debtor and the Committee) and other  
10 professionals selected by the Liquidating Trustee that are reasonably required to perform the  
11 Liquidating Trustee's responsibilities under the Plan. The Liquidating Trust's professionals  
12 shall be compensated at their respective standard hourly rates as agreed to by the Liquidating  
13 Trustee, without further motion, application notice, or other order of the Court. The fees and  
14 expenses of the Liquidating Trust's professionals shall be satisfied from the Liquidating  
15 Trust Assets. However, such professionals shall provide at least 10 days prior notice of  
16 requested fees and expenses to the Oversight Committee, as described below, prior to  
17 payment. In the event of an objection, the Liquidating Trustee shall submit the matter for  
18 determination by the Bankruptcy Court.

### 19 **7.3. The Oversight Committee**

20 On the Effective Date, the Court shall appoint an Oversight Committee comprised of  
21 three (3) members of the Committee as designated in the Confirmation Order. The Oversight  
22 Committee shall consult with and advise the Liquidating Trustee with respect to the  
23 administration of the Liquidating Trust pursuant to the Liquidating Trust Agreement. The  
24 Oversight Committee's primary responsibility will be (1) to identify litigation defendants  
25 with respect to all Causes of Action and to direct such litigation with the assistance of  
26

1 counsel; (2) to review and approve any settlements on objections to claims and Causes of  
2 Action for which recovery is sought in an amount in excess of \$50,000; (3) to receive and  
3 review distribution reports submitted to it by the Liquidating Trustee, and (4) to consider and  
4 consult with the Liquidating Trustee with respect to the Post Confirmation administration of  
5 the Debtor's estate and the Liquidating Trust. Settlements for which recovery is sought in an  
6 amount in excess of \$100,000 must be presented to the Bankruptcy Court for approval. The  
7 Liquidating Trustee shall provide to the Oversight Committee monthly reports of income and  
8 expenses of the Liquidating Trust. Thirty days prior to a proposed distribution to Liquidating  
9 Trust Beneficiaries, the Liquidating Trustee shall provide a report identifying the proposed  
10 distributions and any holdbacks (the "Proposed Distribution Report"). The Oversight  
11 Committee may object to the Proposed Distribution Report by providing written notice to the  
12 Liquidating Trustee within 14 calendar days after the Oversight Committee receives the  
13 Proposed Distribution Report. If the objection is not resolved, after the parties make good  
14 faith efforts to resolve the objection, the Oversight Committee may file an objection with the  
15 Court. The Oversight Committee shall have standing and may retain counsel for any  
16 disputes that arise with the Liquidating Trustee. Such counsel will be paid from the  
17 Liquidating Trust Assets. However, such counsel shall provide at least 10 business days prior  
18 notice of requested fees and expenses to the Oversight Committee and the Liquidating  
19 Trustee prior to payment. In the event of an objection to the payment of such requested legal  
20 fees and expenses, the Liquidating Trustee shall submit the matter for determination by the  
21 Court.

22       The Liquidating Trustee will communicate with the Oversight Committee on all  
23 matters, as needed and at a minimum once every 30 days after the Effective Date until all  
24 litigation of the Causes of Action has been resolved.

25       Upon unanimous consent, and 30-day written notice to the Liquidating Trustee and  
26 the Court, the Oversight Committee may remove the Liquidating Trustee by a unanimous

1 vote of 100 percent (100%) of the Oversight Committee and appoint such other Liquidating  
2 Trustee, as it may deem necessary and appropriate under the circumstances. The Liquidating  
3 shall be exculpated and indemnified as set forth in the Liquidating Trust Agreement.

4 **7.4. Expenses of the Liquidating Trust**

5 The expenses of the Liquidating Trust will consist of attorneys' fees, accounting fees  
6 all fees and expenses related to the distribution of funds to creditors and the pursuit of claims  
7 objections and litigation. Projected expenses are estimated on **Exhibit E.**

8 **7.5. Records Retention**

9  
10 As is deemed prudent in the Liquidating Trustee's discretion, all records of the Debtor  
11 including financial records and customer lists, files and records shall be destroyed.

12 **ARTICLE VIII**

13 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

14 Subject to the approval of the Bankruptcy Court, the Debtor has the power to assume  
15 or reject an unexpired lease or a contract that is deemed executory by the fact that  
16 performance is due by both parties to the contract. That is to say, the lease or contract can be  
17 accepted as written and the parties continue as if the bankruptcy never occurred or, the lease  
18 or contract can be rejected, in which case the Debtor is deemed to be in breach of the  
19 agreement, and the parties' obligations cease. The counter party may have a claim for  
20 damages as a consequence of the rejection.

21 In this case, all executory contracts and leases not previously rejected shall be deemed  
22 rejected on the Confirmation Date. Unless required by a previous Court order to file a proof  
23 of claim for rejection damages, each counter party to a rejected lease or contract shall file on  
24 or before **thirty (30)** days after the Effective Date a proof of claim for any rejection  
25  
26

1 damages. Failure to timely file such proof of claim will result in the establishment of the  
2 claim at zero dollars (-0-).

## 3 ARTICLE IX

### 4 CLAIMS, DISTRIBUTIONS, AND CLAIMS OBJECTIONS

#### 5 **9.1. Deadline for Applications for Administrative Expenses**

6  
7 Applications for Administrative Claims shall be filed no later than **thirty (30)** days  
8 after the Effective Date. If an Administrative Claim is not timely filed, it will be forever  
9 barred and may not be asserted in any manner; provided, however, that no request for  
10 payment shall be required with respect to Administrative Claims that have been paid  
11 previously or with respect to Administrative Claims for expenses incurred in the ordinary  
12 course of business, unless a dispute exists as to those expenses, or unless the provisions of  
13 the Bankruptcy Code require approval or allowance by the Bankruptcy Court as a  
14 precondition to payments being made on that expense.

#### 15 **9.2. Filing of Objections and Causes of Action and Settlements**

16  
17 The Liquidating Trustee shall have the exclusive right to file objections to Claims and  
18 Causes of Action. The Liquidating Trustee shall have the exclusive right to settle an  
19 objection or Cause of Action for which recovery is sought in excess of \$50,000. Settlements  
20 for which recovery is sought in an amount in excess of \$100,000 must be presented to the  
21 Court for approval. All Claims objections must be filed within **ninety (90)** days after the  
22 Effective Date.

#### 23 **9.3. Plan Distributions and Disbursing Agent**

24  
25 Distributions to Creditors and Interest Holders will be made in accordance with the  
26 Plan and the Liquidating Trust Agreement. No distributions will be made to any claimant  
unless that claimant has an Allowed Claim or Allowed Interest. The Liquidating Trustee

1 will establish a Disputed Claims Reserve in an amount sufficient to pay any unresolved  
2 claims in full if and when they are allowed. No interest shall accrue or be paid for any claim  
3 amounts reserved and ultimately paid except in circumstances provided above for the  
4 treatment of Class 4. The Liquidating Trustee will serve as the disbursing agent for all  
5 Allowed Claims and Allowed Interests.

6 **9.4. Timing of Distributions**

7 Payments to creditors will be in accordance with the Plan and the Liquidating Trust.  
8 The initial distributions to Unsecured Creditors will be made 180 days after the Effective  
9 Date. Subsequent distributions will be made as prudent in the discretion of the Liquidating  
10 Trustee in consultation with the Oversight Committee. Estimated distributions are outlined  
11 in **Exhibit E.**

12 **9.5. Amendment of Claims**

13 A Claim may be amended prior to the Effective Date only as agreed upon by the  
14 Debtor and the holder of the Claim or as otherwise permitted by the Bankruptcy Court and  
15 Bankruptcy Rules. After the Effective Date, a Claim may be amended to decrease, but not to  
16 increase, the amount thereof.

17 **9.6. Full and Final Satisfaction**

18 All final distributions under the Plan shall be in full and final satisfaction, settlement,  
19 release, and discharge of all Claims and Interests.  
20

21 **ARTICLE X**

22 **RETENTION OF JURISDICTION**

23  
24 On and after the Effective Date, the Bankruptcy Court shall retain exclusive  
25 jurisdiction, to the fullest extent permissible under the law, over all matters arising out of and  
26 related to the Chapter 11 Case for, among other things, the following purposes:

1 (a) To hear and determine all matters with respect to the rejection of executory  
2 contracts or unexpired leases and Claims resulting therefrom;

3 (b) To hear and determine any motion, adversary proceeding, application,  
4 contested matter, or other litigated matter pending on or commenced after the Confirmation  
5 Date;

6 (c) To hear and determine all matters with respect to the allowance, disallowance,  
7 liquidation, classification, priority or estimation of any Claim;

8 (d) To ensure that distributions to holders of Allowed Claims or Allowed Interests  
9 are accomplished as provided in the Plan;

10 (e) To hear and determine all applications for compensation and reimbursement of  
11 professionals;

12 (f) To hear and determine any application to modify the Plan in accordance with  
13 Section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any  
14 inconsistency in the Plan, this Disclosure Statement or any order of the Bankruptcy Court,  
15 including the Confirmation Order, in such a manner as may be necessary to carry out the  
16 purposes and effects thereof;

17 (g) To hear and determine disputes arising in connection with the interpretation,  
18 implementation or enforcement of the Plan, the Confirmation Order, any transactions or  
19 payments contemplated by the Plan or any agreement, instrument or other document  
20 governing or relating to any of the foregoing;

21 (h) To issue injunctions, enter and implement other orders and take such other  
22 actions as may be necessary or appropriate to restrain interference by any Person with the  
23 consummation, implementation or enforcement of the Plan, the Confirmation Order or any  
24 other order of the Bankruptcy Court;

25 (i) To issue orders as may be necessary to construe, enforce, implement, execute,  
26 and consummate the Plan;

1 (j) To enter, implement, or enforce orders as may be appropriate in the event the  
2 Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

3 (k) To hear and determine matters concerning state, local and federal taxes in  
4 accordance with Sections 346, 505 and 1146 of the Bankruptcy Code (including the  
5 expedited determination of tax under Section 505(b) of the Bankruptcy Code);

6 (l) To hear and determine any other matters related to the Plan and not  
7 inconsistent with the Bankruptcy Code;

8 (m) To determine any other matters that may arise in connection with or are related  
9 to the Plan, this Disclosure Statement, the Confirmation Order, any of the documents or any  
10 other contract, instrument, release or other agreement or document related to the Plan or this  
11 Disclosure Statement.

12 (n) To recover all Property of the Debtor's Estate, wherever located;

13 (o) To hear and determine all disputes involving the existence, nature or scope of  
14 the Debtor's discharge, including any dispute relating to any liability arising out of the  
15 termination of employment or the termination of any employee or retiree benefit program,  
16 regardless of whether such termination occurred prior to or after the Effective Date;

17 (p) To hear and determine any rights, Claims or Causes of Action held by or  
18 accruing to the Debtor and transferred to the Liquidating Trust pursuant to the Bankruptcy  
19 Code or pursuant to any federal or state statute or legal theory;

20 (q) To enforce all orders, judgments, injunctions, releases, exculpations,  
21 indemnifications and rulings entered in connection with the Debtor's Chapter 11 Case with  
22 respect to any Person;

23 (r) To hear and determine any disputes arising in connection with the  
24 interpretation, implementation or enforcement of any post-petition agreements;

25 (s) To hear any other matter not inconsistent with the Bankruptcy Code; and

26 (t) To enter a final decree closing the Chapter 11 Case.



1 **ARTICLE XI**

2 **CONFIRMATION OF PLAN**

3  
4 Once the Disclosure Statement is approved and any required ballots are sent to any  
5 holders of Allowed Claims and Interests that may be entitled to vote on the Plan, the  
6 Bankruptcy Court will hold a Confirmation Hearing to determine whether the Plan may be  
7 confirmed. Any party in interest may object to Confirmation of the Plan.

8 The Bankruptcy Court has scheduled the Confirmation Hearing for \_\_\_\_\_,  
9 **2016** at \_\_\_\_\_ Phoenix time before the Honorable Daniel P. Collins, United States  
10 Bankruptcy Judge, in the United States Bankruptcy Court for the District of Arizona, located  
11 at 230 N. First Ave, Phoenix, AZ 85003. The Confirmation Hearing may be adjourned from  
12 time to time by the Bankruptcy Court without further notice except for an announcement  
13 made at the Confirmation Hearing or any adjourned hearing.

14 **11.1. Overview of Confirmation Standards**

15 At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan  
16 meets the requirements of Section 1129 of the Bankruptcy Code. The Debtor believes the  
17 Plan meets these requirements because:

- 18 1. The Plan complies with the applicable provisions of the Bankruptcy Code;  
19 2. The Debtor has complied with the applicable provisions of the Bankruptcy  
20 Code;  
21 3. The Plan has been proposed in good faith and not by any means forbidden by  
22 law;  
23 4. Any payment made or promised under the Plan for services or for costs and  
24 expenses in, or in connection with, this Chapter 11 Case, or in connection with the Plan and  
25 incident to this Chapter 11 Case, has been approved by, or is subject to the approval of the  
26 Bankruptcy Court;

1           5.       The Debtor has or will disclose the identity and affiliations of any individuals  
2 proposed to serve, after confirmation of the Plan, as a director or officer along with his or her  
3 compensation; that the appointment to, or continuance in, such office of such individual is  
4 consistent with the interests of Creditors and equity holders and with public policy;

5           6.       With respect to each Class of Impaired Claims or Interests, each holder of a  
6 Claim or Interest in that Class has accepted the Plan or will receive as of the Effective Date  
7 an amount that is not less than the holder would receive or retain if the Debtor was liquidated  
8 on that date under Chapter 7 of the Bankruptcy Code. (*See* the “Best Interests Test”);

9           7.       Each Class of Claims or Interests has either accepted the Plan or is not  
10 Impaired under the Plan, or the Plan can be confirmed without the approval of that Class;

11           8.       Except to the extent that the holder of a particular Claim has agreed or will  
12 agree to a different treatment of his or her Claim, the Plan provides that Allowed  
13 Administrative Claims and Priority Claims will be paid in full on the Effective Date or  
14 within 30 days or as soon as reasonably practical and that Priority Tax Claims will be either  
15 paid in full on the Effective Date or will receive deferred Cash payments, over a period not  
16 exceeding five years after the Petition Date, of a value, as of the Effective Date, equal to the  
17 Allowed amount of those Claims;

18           9.       If a Class of Claims is Impaired under the Plan, at least one Class of Impaired  
19 Claims has accepted the Plan, determined without including any acceptance of the Plan by  
20 any insider holding a Claim in that Class;

21 **11.2. Acceptance of the Plan**

22           The Bankruptcy Code generally requires that each Impaired Class accept the Plan. A  
23 Class is Impaired unless the plan: (a) leaves unaltered the legal, equitable, and contractual  
24 rights to which the Claim or equity interest entitles the holder of the Claim or equity interest;  
25 (b) cures any default and reinstates the original terms of the obligation; or (c) provides that,  
26

1 on the consummation date, the holder of the Claim or equity interest receives Cash equal to  
2 the Allowed amount of that Claim, or with respect to any equity interest, any fixed  
3 liquidation preference to which the holder of the equity interest is entitled to any fixed price  
4 at which the Debtor may redeem the security.

5 Bankruptcy Code § 1126(c) provides that a class of claims has accepted a chapter 11  
6 plan if the plan has been accepted by creditors, other than an entity designated under  
7 Bankruptcy Code § 1126(e), that hold at least two-thirds in amount and more than one-half  
8 in number of the allowed claims of such class of creditors. Classes 2(b) through 7 are  
9 impaired and entitled to vote on the Plan.

### 10 **11.3. Objections to Confirmation**

11 Any objection to the Plan must:

- 12 • Be made in writing;
- 13 • Conform to the Bankruptcy Rules and the Local Rules;
- 14 • Set forth the name of the objector; the nature and amount of the Claims or  
15 Interests the objector holds against the Debtor; and the specific basis for the  
16 objection;
- 17 • Be electronically filed with the Bankruptcy Court; and
- 18 • Be served upon the following parties:

19  
20  
21  
22 Carolyn J. Johnsen  
23 Katherine A. Sanchez  
24 **Dickinson Wright PLLC**  
25 1850 N. Central Avenue, Suite 1400  
26 Phoenix, Arizona 85004  
[cjohnsen@dickinsonwright.com](mailto:cjohnsen@dickinsonwright.com)  
[ksanchez@dickinsonwright.com](mailto:ksanchez@dickinsonwright.com)

1 Clifford A. Katz  
2 Teresa Sadutto  
3 **Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP**  
4 475 Park Avenue, South  
5 New York, New York 10016  
6 [ckatz@platzerlaw.com](mailto:ckatz@platzerlaw.com)  
7 [tsadutto@platzerlaw.com](mailto:tsadutto@platzerlaw.com)

8 All objections to the Plan must be actually received no later than **5:00 p.m. Phoenix**  
9 **time on \_\_\_\_\_, 2016.** All objections to the Plan are governed by Bankruptcy Rule 9014.  
10 **THE BANKRUPTCY COURT WILL NOT CONSIDER A PLAN OBJECTION**  
11 **UNLESS IT IS TIMELY FILED AND SERVED IN COMPLIANCE WITH THIS**  
12 **DISCLOSURE STATEMENT.**

13 **ARTICLE XII**  
14 **EFFECT OF CONFIRMATION**

15 **12.1. Vesting of Assets**

16 Upon the Effective Date, pursuant to Sections 1141(b) and (c) of the Bankruptcy  
17 Code, all Property of the Debtor and of the Estate shall vest in the Liquidating Trust, free and  
18 clear of all Claims, Liens, encumbrances, charges, and other interests, except as otherwise  
19 expressly provided in the Plan. All Liens, Claims, encumbrances, charges, and other interests  
20 shall be deemed fully released and discharged as of the Effective Date, except as otherwise  
21 provided in the Plan.

22 **12.2. Preservation of Causes of Action**

23 All Causes of Action shall vest in the Liquidating Trust and are specifically preserved.  
24 The Liquidating Trust through its Liquidating Trustee shall have standing to bring any and  
25 all Causes of Action including Avoidance Actions. Investigations of the Causes of Action are  
26 ongoing. Accordingly, no Person may rely on the fact that the Plan and Disclosure  
Statement do not identify a particular Person or Cause of Action.

1 More specifically, any Cause of Action for which a lawsuit has been filed and is  
2 pending on the Effective Date, including but not limited to the probate matter pending in the  
3 Circuit Court for Miami-Dade County, Florida, #2016-0874, div. CP-04 are preserved.

4 At the present time, the Debtor has identified the recipients of transfers from the  
5 Debtor which may be the subject of an Avoidance Action. Those recipients are identified on  
6 **Exhibit G** as potential defendants. This list is not meant to be exclusive and additional  
7 defendants may be added. In addition, after consultation with the Oversight Committee, the  
8 Liquidating Trustee may determine not to pursue cases against all of the recipients.

9 Nothing contained in the Plan or the Confirmation Order shall be deemed to be a  
10 waiver or relinquishment of any rights or Causes of Action that the Liquidating Trust may  
11 have or choose to assert under any provision of the Bankruptcy Code or any applicable non-  
12 bankruptcy law.

### 13 **12.3. Exculpation**

14 Pursuant to the Plan, the Debtor, the Committee, the Oversight Committee and all of  
15 their respective present and former partners, members, officers, directors, employees,  
16 advisors, attorneys and agents (collectively, the “Exculpated Parties”) shall not have or incur  
17 any liability to any holder of a Claim or an Interest, or any other party in interest, or any of  
18 their respective agents, employees, representatives, financial advisors, attorneys or Affiliates,  
19 or any of their successors or assigns for any act or omission in connection with, relating to or  
20 arising out of this Chapter 11 Case, the preparation of and filing of the Case, any settlement  
21 related to this Chapter 11 Case, the negotiation and execution of a proposed Plan, the  
22 solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the  
23 consummation of the Plan, or the administration of the Estate or of the Plan, or the Property  
24 to be distributed under the Plan, except only to the extent that liability is based on gross  
25 negligence or willful misconduct. The Exculpated Parties shall be entitled to reasonably rely  
26

1 on the advice of counsel with respect to their duties and responsibilities under the Plan, or in  
2 the context of the Chapter 11 Case. Notwithstanding the foregoing, nothing in the Plan shall  
3 be deemed to release the Exculpated Parties or exculpate the Exculpated Parties with respect  
4 to their respective obligation or covenants arising pursuant to the Plan or with respect to  
5 Causes of Action for pre-petition conduct.

6 **12.4. Discharge and Injunction.**

7  
8 Except as otherwise specifically provided in the Plan or in the Confirmation Order,  
9 the rights afforded in the Plan and the payments and distributions to be made under the Plan  
10 shall discharge all existing debts and Claims, and shall terminate all interests of any kind,  
11 nature, or description whatsoever against the Debtor or the Liquidating Trust or any of their  
12 assets or properties to the fullest extent permitted by Section 1141 of the Bankruptcy Code.

13 Except as otherwise specifically provided in the Plan or in the Confirmation Order, upon the  
14 Effective Date, all existing Claims against the Debtor shall be precluded and enjoined from  
15 asserting against the Debtor, the Liquidating Trust, the Liquidating Trustee, the Oversight  
16 Committee, their respective successors or assignees, or any of their assets or properties, any  
17 other or further Claim or Interest based on any act or omission, transaction, or other activity  
18 of any kind or nature that occurred before the Effective Date, whether or not the holder has  
19 filed a Proof of Claim and whether or not the facts or legal bases therefor were known or  
20 existed before the Effective Date.

21 Upon the Effective Date and in consideration of the distributions to be made under the  
22 Plan, except as otherwise provided in the Plan, each holder (as well as any representatives,  
23 trustees, or agents on behalf of each holder) of a Claim or Interest and any Affiliate of the  
24 holder shall be deemed to have forever waived, released, and discharged the Debtor, to the  
25 fullest extent permitted by Section 1141 of the Bankruptcy Code, of and from any and all  
26 Claims, Interests, rights, and liabilities that arose before the Effective Date. Upon the

1 Effective Date, all those Persons shall be forever precluded and enjoined, pursuant to  
2 Section 524 of the Bankruptcy Code, from prosecuting or asserting any discharged Claim  
3 against or terminated Interest in the Debtor.

4 Except as otherwise expressly provided in the Plan, all persons or entities who have  
5 held, hold, or may hold Claims or Interests and all other parties in interest, along with their  
6 respective present or former employees, agents, officers, directors, principals,  
7 representatives, and Affiliates, are permanently enjoined, from and after the Effective Date,  
8 from: (i) commencing or continuing in any manner any action or other proceeding of any  
9 kind with respect to any such Claim or Interest; (ii) the enforcement, attachment, collection,  
10 or recovery by any manner or means of any judgment, award, decree, or order against the  
11 Debtor, the Liquidating Trust or Trustee or Property of the Debtor; (iii) creating, perfecting,  
12 or enforcing any Lien or encumbrance of any kind against the Debtor, the Liquidating Trust  
13 or Trustee, or against the Property or interests in Property of the Debtor; or (iv) asserting any  
14 right of setoff, subrogation, or recoupment of any kind against any obligation due from the  
15 Debtor the Liquidating Trust or Trustee, or against the Property or interests in Property of the  
16 Debtor, with respect to any such Claim or Interest. This injunction shall extend to any  
17 successors or assignees of the Debtor, the Liquidating Trust or Trustee, or the Oversight  
18 Committee, and their respective Properties and interests in Properties.

19 **12.5. Dissolution of Committee.**

20 On the Effective Date, (a) the Committee shall dissolve and its members shall be  
21 released of their respective duties, responsibilities and obligations in connection with the  
22 Chapter 11 Case or the Plan; and (b) the retention or employment of the Committee's  
23 respective professionals and agents shall be terminated, other than with respect to filing the  
24 Committee's final fee application.  
25  
26

1 **12.6. Setoff and Recoupment.**

2 The Liquidating Trust may, but shall not be required to, set off or recoup against any  
3 Claim and any distribution to be made on account of that Claim, any and all claims, rights,  
4 and Causes of Action of any nature that the Liquidating Trust may have against the holder of  
5 that Claim pursuant to the Bankruptcy Code or applicable non-bankruptcy law; provided,  
6 however, that neither the failure to effect a set off or recoupment nor the allowance of any  
7 Claim under the Plan shall constitute a waiver, abandonment, or release by the Liquidating  
8 Trust of any of those claims, rights, and Causes of Action that the Liquidating Trust may  
9 have against the holder of the Claim. To the extent the Liquidating Trust fails to setoff or  
10 recoup against a holder and seek to collect a claim from that holder after a distribution to the  
11 holder pursuant to the Plan, the Liquidating Trust shall be entitled to full recovery on its  
12 claim against that holder of a Claim.

13 **ARTICLE XIII**  
14 **LIQUIDATION ANALYSIS AND BEST INTEREST OF CREDITORS TEST**

15 As a condition to confirmation, Bankruptcy Code § 1129(a)(7) requires that each  
16 creditor either accept the Plan or receive from the Debtor's estate as much under the Plan as  
17 each creditor would receive in a Chapter 7 liquidation of the Debtor. Because the Plan is a  
18 liquidating plan, the "liquidation value" in the hypothetical chapter 7 is substantially similar  
19 to the chapter 11 liquidation contemplated by the Plan. Debtor believes that the orderly  
20 liquidation proposed under the Plan is likely to generate greater distributions to creditors  
21 than would occur in a Chapter 7 liquidation. Here, the Liquidating Trustee is familiar with  
22 the structure of the debt and has already prepared a comprehensive claims analysis and list of  
23 potential avoidance actions. This will save cost in having a new trustee and new counsel  
24 enter into the case and virtually start from scratch. In addition the Plan provides for an  
25 Oversight Committee with specific powers to monitor the litigation recommended by the  
26 Liquidating Trustee. Clearly, claimants will receive Distributions under the Plan of at least



1 as much as they would receive in a Chapter 7 liquidation, and they are likely to receive  
2 Distributions under the Plan that are greater than what they would receive in a Chapter 7  
3 liquidation.

4 **ARTICLE XIV**  
5 **FEASIBILITY**

6 The Bankruptcy Code requires that to confirm the Plan, the Bankruptcy Court must  
7 find that confirmation of the Plan is not likely to be followed by a further liquidation or need  
8 for further financial reorganization of the Debtor (the "Feasibility Test"). For the Plan to  
9 meet the Feasibility Test, the Bankruptcy Court must find that the Reorganized Debtor will  
10 possess the resources necessary to meet its obligations under the Plan. The Debtor believes  
11 that the structure set forth in the Plan is a feasible framework to maximize the recovery for  
12 Creditors.

13 **ARTICLE XV**  
14 **ALTERNATIVES AND RISK FACTORS**

15 There are certain risks factors to take into consideration. One risk is that the  
16 Bankruptcy Court will conclude that the Debtor has not satisfied the Bankruptcy Code  
17 requirements for Confirmation as described above. Another is that the Liquidating Trustee  
18 will not be able to recover on the Causes of Action and will incur substantial administrative  
19 expenses. In the event the Plan fails, this case will be converted to a Chapter 7 where a  
20 trustee would be appointed to immediately liquidate all assets of the Debtor. As with  
21 litigation, the Debtor has no ability to predict or guarantee any outcome. However, in the  
22 Debtor's reasoned business judgment, and the concurrence by the Committee, the Plan as  
23 proposed provides the best alternative for creditors.

24 **ARTICLE XVI**  
25 **TAX CONSEQUENCES**

26 The tax consequences of the Plan are described in **Exhibit H**.

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**ARTICLE XVII**  
**MISCELLANEOUS PROVISIONS**

**17.1. Binding Effect of the Plan**

The provisions of this Plan shall bind the Debtor, Creditors, and Interest Holders, and shall bind any Person asserting a Claim against the Debtor or an Interest in the Debtor, whether or not the Claim or Interest arose before or after the Petition Date or the Effective Date, whether or not the Claim or Interest is impaired, and whether or not the Person has accepted the Plan.

**17.2. Appeals**

In the event of an appeal of the Confirmation Order or any other kind of review or challenge to the Confirmation Order, and provided that no stay of the effectiveness of the Confirmation Order has been entered, the Bankruptcy Court will retain jurisdiction to implement and enforce the Confirmation Order and the Plan according to their terms, including, but not limited to, jurisdiction to enter such orders regarding the Plan or the performance thereof to implement the Plan.

**17.3. Modification and Amendment of Exhibits, Schedules, and Appendices**

The Debtor with the consent of the Committee may modify or amend the terms of any document or agreement that is an Exhibit, schedule or appendix to the Plan without the need for re-solicitation of votes with respect to the Plan; provided, however, that the modification or amendment does not materially adversely affect the rights of any Person provided in the Plan, and provided further however, that prior notice of the modification or amendment shall be served in accordance with the Bankruptcy rules or any order of the Bankruptcy Court.

**17.4. Governing Law**

Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, the

1 rights and obligations arising under the Plan shall be governed by and construed and  
2 enforced in accordance with the laws of the State of Arizona.

3 **17.5. Headings**

4 The headings of the Articles, Sections and Subsections of the Plan are inserted for  
5 convenience only and shall not limit the interpretation of the Plan.

6 **17.6. Amendment**

7  
8 The Debtor, in consultation with the Committee may propose amendments to or  
9 modifications of the Plan at any time prior to confirmation of the Plan without the leave of  
10 the Bankruptcy Court or as permitted by the Bankruptcy Code or Bankruptcy Rules. After  
11 confirmation of the Plan, the Debtor may amend or modify the Plan, with the approval of the  
12 Bankruptcy Court, so long as it does not materially or adversely affect the interests of  
13 Creditors or other parties in interest as set forth herein, to remedy any defect or omission or  
14 to reconcile any inconsistencies in the Plan or in the Confirmation Order, in a manner as may  
15 be necessary to carry out the purposes and intent of the Plan.

16 **17.7. Withdrawal of Plan**

17 The Plan may be withdrawn prior to the entry of the Confirmation Order at the sole  
18 discretion of the Debtor with the consent of the Committee.

19 **17.8. Effect of Confirmation Order**

20  
21 The Confirmation Order will include a provision that the Confirmation Order shall be  
22 immediately effective and enforceable upon its entry and shall not be subject to any stay  
23 under Bankruptcy Rule 3020(e) or otherwise.

24 **17.9. Quarterly Fees**

25 The quarterly fees required by 28 U.S.C. § 1930(a)(6) will be paid by the Liquidating  
26

1 Trust to, and reports will be filed with, the Office of the United States Trustee until  
2 application is made for entry of a final decree. Application for a final decree can be made  
3 when the Plan has been fully administered, which for purposes of the Plan shall mean when  
4 the Plan has been substantially consummated, as that term is defined in § 1101(2) of the  
5 Bankruptcy Code.

6 **ARTICLE XVIII**  
7 **CONCLUSION**

8 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS HAS ENDORSED  
9 THE PLAN.

10 THE DEBTOR AND THE COMMITTEE STRONGLY URGE SUPPORT FOR THE  
11 DEBTOR'S PLAN OF LIQUIDATION.

12 DATED: November 14, 2016.

13 **THE ROOMSTORES OF PHOENIX,**  
14 **L.L.C., D/B/A THE ROOMSTORE**

15 By: /s/ Alan Levitz  
16 Alan Levitz, Managing Member

17 **OFFICIAL COMMITTEE OF**  
18 **UNSECURED CREDITORS**

19 By: /s/ Tracy Skipp  
20 Tracy Skipp for Magnussen Furniture  
21 Home Furnishings  
22 Committee Chair

23 PHOENIX 53406-11 317468v1  
24  
25  
26