

Bradley J. Stevens – 006723  
bstevens@jsslaw.com  
**JENNINGS, STROUSS & SALMON, P.L.C.**  
A Professional Limited Liability Company  
One East Washington Street, Suite 1900  
Phoenix, Arizona 85004-2554  
Telephone: (602) 262-5911  
Facsimile: (602) 495-2654

*Attorneys for Debtors*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:

PHOENIX MANUFACTURING  
PARTNERS, LLC, et al.,

Debtors.

Chapter 11 Proceedings

Case No. 2:16-bk-04898-EPB

Case No. 2:16-bk-06107-EPB

Case No. 2:16-bk-06109-EPB

This filing applies to:

- ☒ ALL DEBTORS  
☐ PHOENIX MANUFACTURING  
PARTNERS, LLC  
☐ JOINED ALLOYS, LLC  
☐ DLS PRECISION FAB, LLC, dba  
DI-MATRIX PRECISION  
MANUFACTURING

Jointly Administered Under  
Case No. 2:16-bk-04898-EPB

**DISCLOSURE STATEMENT  
RELATING TO DEBTORS' JOINT  
PLAN OF REORGANIZATION  
DATED NOVEMBER 30, 2016**

Phoenix Manufacturing Partners, LLC, Joined Alloys, LLC and DLS Precisions Fab, LLC, dba Di-Matrix Precision Manufacturing, the debtors and debtors-in-possession (the "Debtors") herein, by and through undersigned counsel, hereby submits to the Court and creditors of the Debtors' estate the following "Disclosure Statement Relating to Debtors' Joint Plan of Reorganization Dated November 30, 2016" ("Disclosure Statement"). This Disclosure Statement is submitted pursuant to 11 U.S.C. § 1125.

11 U.S.C. § 1125(b) prohibits the solicitation of acceptances or rejections of a plan

1 of reorganization unless such plan is accompanied by a copy of a disclosure statement which  
2 has been approved by the Bankruptcy Court. The purpose of this Disclosure Statement is to  
3 provide creditors and interested parties in this bankruptcy proceeding with such information as  
4 may reasonably be deemed sufficient to allow creditors and interested parties to make an  
5 informed decision regarding the Debtors' "Joint Plan of Reorganization Dated November 30,  
6 2016" ("Plan"). Unless otherwise noted, those portions of the Plan and this Disclosure  
7 Statement providing factual information concerning the Debtors, their assets and liabilities,  
8 have been prepared from information submitted by the Debtor and its retained professionals.

9 This Disclosure Statement contains information that may influence your decision to  
10 accept or reject the Debtors' proposed Plan. Please read this document with care.

11 The financial information contained in this Disclosure Statement has not been  
12 subjected to an audit by an independent certified public accountant. For that reason, the Debtors  
13 are not able to warrant or represent that the information contained in this Disclosure Statement  
14 is without any inaccuracy. To the extent practicable, the information has been prepared from  
15 the Debtors' financial books and records and great effort has been made to ensure that all such  
16 information is fairly represented.

17 This Disclosure Statement and the Plan will classify all creditors into Classes. The  
18 treatment of each Class of creditors will be set forth in this Disclosure Statement and in the  
19 Plan. You should carefully examine the treatment of the Class to which your Claim will be  
20 assigned.

21 This Disclosure Statement requires approval by the Bankruptcy Court after notice  
22 and a hearing pursuant to 11 U.S.C. §1125(b). Once approved, the Disclosure Statement will be  
23 distributed with the Debtors' proposed Plan for voting. Approval of the Disclosure Statement  
24 by the Bankruptcy Court does not constitute either certification or approval of the Debtors'  
25 Plan by the Bankruptcy Court or that the Disclosure Statement is without any inaccuracy.

26 The Bankruptcy Court will confirm the Plan if the requirements of §1129 of the  
Bankruptcy Code are satisfied. The Bankruptcy Court must determine whether the Plan has

1 been accepted by each impaired Class entitled to vote on the Plan. Impaired Classes entitled to  
2 vote on the Plan are those Classes of claims whose legal, equitable, or contractual rights are  
3 altered, as defined under §1124 of the Bankruptcy Code. An impaired Class of claims is  
4 deemed to have accepted the Plan if at least two-thirds (2/3) in amount of those claims who vote  
5 and more than one-half (1/2) in number of those claims who vote have accepted the Plan. An  
6 impaired Class of interests is deemed to have accepted the Plan if the Plan has been accepted by  
7 at least two-thirds (2/3) in amount of the allowed interests who vote on the Plan.

8 Even if each Class of creditors does not accept the Plan, the Plan can be confirmed  
9 under §1129(b) of the Bankruptcy Code, so long as one impaired Class of creditors accepts the  
10 Plan. This is referred to as the “cram down” provision of the Bankruptcy Code. The failure of  
11 each Class to accept the Plan could very well result in a conversion of this case to Chapter 7 or  
12 dismissal of the Chapter 11.

13 Only the votes of those creditors or interested parties whose ballots are timely  
14 received will be counted in determining whether a Class has accepted the Plan.

## 15 **I. DEFINITIONS**

16 The definitions set forth in Article I of the Plan apply in this Disclosure Statement  
17 except to the extent other definitions are set forth in this Disclosure Statement.

## 18 **II. THE DEBTOR, BACKGROUND, AND EVENTS PRECIPITATING THE 19 CHAPTER 11**

### 20 **A. The Debtors.**

21 Phoenix Manufacturing Partners, LLC (“PMP”), formerly known as GeoMerch,  
22 LLC, is a limited liability company, organized in 2003, under the laws of the state of  
23 Delaware. PMP is taxed as a partnership. The members of PMP are JJPS, LLC and BizDev,  
24 LLC. PMP is the sole member of DLS Precision Fab, LLC and Joined Alloys, LLC. PMP also  
25 owned 51% of OVAC, LLC, until that interest was sold, post-petition. (See Section III (F),  
26 *infra*.)

DLS Precision Fab, LLC dba Di- Matrix Precision Manufacturing (“DM”) is a

1 limited liability company which was organized in 1997 under the laws of the state of Arizona.

2       Joined Alloys, LLC (“JA”) is a limited liability company which was organized in  
3 2003 under the laws of the state of Arizona.

4       7881 E. Gray Rd., LLC (“Gray Road”) is a limited liability company which was  
5 organized in December 2011 under the laws of the state of Arizona. Gray Rd. purchased land  
6 and a building in January 2012 which it leased to DM. Gray Road is dissolved and no longer  
7 conducts any business.

8       OVAC, LLC (“OVAC”) is a limited liability company which was organized in  
9 January 2013, under the laws of the state of Arizona. OVAC is a metal distributor focused on  
10 aluminum, stainless steel and specialty metals. In January 2013, OVAC acquired Hi Temp  
11 Management Consulting, Inc. (“HiTemp”)

12       DM and JA are engaged in manufacturing. DM is a full-service contract  
13 manufacturer of fabricated sheet metal, Computer Numerical Controlled (“CNC”) machined  
14 components, and welded and painted components and assemblies. The Debtors serve a variety  
15 of industries, including military, aerospace, medical, energy, electronic, automotive and  
16 general commercial. JA is a AS9100 and ISO 9001 certified manufacturer of Computer  
17 Numerical Controlled (“CNC”) machining components as well as a special processes provider  
18 of brazing, heat-treating, welding, and many other processes, mainly servicing the aerospace  
19 industry.

20       JA was founded by Joseph W. Yockey (“Yockey”) and James Z. Bowen in 2003.  
21 JA’s primary customer at the time was Honeywell and JA provided manufacturing of various  
22 parts for use in their turbines. JA also provided brazing, heat treating and general machining  
23 for other aerospace and commercial clients as a job shop.

24       JA’s business in aerospace manufacturing expanded and led to increasing sales.  
25 Revenues grew from \$400,000 in 2003 to \$8.1 million in 2010 and JA operated profitably each  
26 year for those seven years.

1 In May 2007, JA acquired American Precision Machining (APM) and integrated  
2 those operations seamlessly into JA's business. In September 2008, JA acquired Space  
3 Manufacturing Inc. (SM) and also integrated those operations into JA's business. In January  
4 2011, JA allowed its assets to be acquired by PMP through formation of a partnership with  
5 DM. In exchange, JA was given 25% interest in PMP.

6 The logic of this partnership was based on perceived synergies between the two  
7 manufacturing companies in both aerospace and defense with a hope of significant new  
8 business generated from the combination. The percentage of ownership between the  
9 companies in the new venture was based upon representations from Jordan Geotas ("Geotas"),  
10 principal of DM. In particular, Geotas provided documents showing EBITDA earnings for  
11 DM of four times the EBITDA of JA and assurances that the programs DM provided product  
12 for would remain strong. The members of JA expressed concern about DM sales based on the  
13 potential wind down of the Iraq war effort but were reassured by Geotas' financial  
14 information. Geotas, who is an attorney, suggested that in order to save costs in closing the  
15 transaction, that JA should not get its own attorney and instead have one law firm represent all  
16 the members.

17 Geotas presented the Operating Agreement at closing instructing each member to  
18 sign. The agreement stated that each member had been advised to consult separate counsel  
19 with regards to their interest in PMP. In fact, he knew this to be untrue as he had advocated for  
20 the use of a single law firm and undertook drafting the agreement without input from any of  
21 the other members or their attorneys. When questioned why this statement was in the  
22 agreement his stated reason was explicit; it was required to protect him as an attorney, not to  
23 protect the other members or their interests.

24 A post-closing audit of 2010 financials revealed that while DM's gross revenues  
25 were double the revenues of JA, cash earnings, both on a gross and percentage basis were  
26 actually less than JA's. On a gross margin basis, DM had 14% gross profit margins while JA

1 had 41% gross profit margins. Net profit for DM was 2% while JA was 4%. This pattern of  
2 misrepresentation by Geotas is a major cause of PMP's current financial crisis.

3 Although PMP is comprised of two partner members, only one of those partner  
4 members, JA, has been shouldering the financial burdens of the enterprise since the merger of  
5 the members. JA has continued to perform at its pre-merger levels and has even grown its  
6 revenues whereas DM has declined precipitously since the merger. This decline has  
7 jeopardized the entire enterprise. (See comparative chart of the Debtors' Operating Activities,  
8 attached hereto as **Exhibit A**).

9 **B. Ownership of the Debtors**

10 PMP began with an Operating Agreement that provided for the following member  
11 interests for voting in 2011:

12	For Biz Dev LLC	Thomas Tierney	18.65625%
		James J. Farley	17.53125%
		Thomas Kenrick	17.53125%
		Jordan Geotas	17.53125%
		Keith Hastings	3.75%
17	For JJPS LLC	Joe Yockey	10.5%
		Jim Bowen	10.5%
		Plamen Ivanov	3.25%
		Scott Omelianowich	.75%

21 A second amended and restated operating agreement for PMP was executed in April  
22 of 2014. Execution of this new agreement was completed over the objections of Yockey and  
23 with reservations from other members of JJPS. The voting interests in the amended agreement  
24 were as follows:

For Biz Dev LLC

James J. Farley 21.90028 %

Thomas Kenrick 21.90028%

Jordan Geotas 21.90028%

For JJPS LLC

Joe Yockey 14.59509 %

Jim Bowen 14.59509%

Plamen Ivanov 4.15105%

Scott Omelianowich .95794%

### **C. PMP Financial Information**

In 2011 upon merger, the duties of running the business were split between the four major interest holders that were active in the business. Since JA was in the middle of a large development project with Honeywell, Yockey's main duties were to oversee the successful development efforts at JA and mentor the operations and management personnel at DM in implementing a lean enterprise system similar to that at JA. Geotas was responsible for business development, sales and finance. Thomas Kenrick ("Kenrick") was responsible for operations at DM and Jim Bowen ("Bowen") was responsible for special processing. In 2011, PMP had gross revenues of \$36,635,851. Revenues from JA were \$8,155,426 and revenues from DM were \$28,480,425. Combined expenses were \$35,768,271 for an EBITDA of \$867,580.

In 2012, Debtors had gross revenues of \$23,165,381 made up of \$10,600,527 from JA and \$12,564,854 from DM. JA revenues were up approximately \$2 million from the previous year and revenues were down approximately \$16 million for DM. Combined cost of goods and expenses were \$18,476,001 and \$2,825,494 respectively for an EBITDA of \$1,863,886.

A significant amount of DM's revenue came from defense contracts for armored

1 vehicles used in the war effort. In 2012, the US Government went through a shut down that  
2 caused sequestration of spending which drastically reduced revenues. During this time of  
3 shrinking revenues, Geotas pushed to purchase the property on Gray Road and move the  
4 operations from the south Phoenix plant to Scottsdale Airpark. The members of JJPS  
5 questioned the logic of this transaction, suggesting it would be more prudent to reduce the  
6 existing space from 60,000 square feet to 30,000 square feet and avoid the cost of moving. The  
7 recommendations were rejected by Geotas and the company spent approximately \$600,000.00  
8 in move-related expenses.

9 In 2013, Debtors had gross revenues of \$14,979,861 made up of \$9,732,091 from  
10 JA and \$5,009,625 from DM. JA revenues were down approximately \$1 million from the  
11 previous year and revenues were down approximately \$7 million for DM. Combined cost of  
12 goods and expenses were \$13,155,032 and \$1,618,261, respectively, for an EBITDA of  
13 \$33,353.

14 In 2013, contracts associated with Armor Works and Shock Ride were canceled  
15 resulting in permanent loss of significant revenues for DM. Even with the slight reduction in  
16 sales from the JA side, Yockey was able to deliver \$1,816,087 in operating income for the  
17 company. Unfortunately, the income was offset by a (\$1,847,663) loss on the DM side.

18 By the end of 2013, it was apparent that the existing DM business could not support  
19 the operation. Yockey recommended to Geotas that PMP shutter the Gray Road facility and  
20 combine what DM business was left into the company's other operating facilities. This  
21 recommendation was also rejected by Geotas. Instead, Geotas orchestrated the recruitment and  
22 subsequent hiring of managers to replace Yockey's roles as CEO and COO of the company.  
23 Yockey opposed this decision based on the Company's ability to operate profitably with the  
24 increased overhead.

25 In 2014, Debtors had gross revenues of \$16,753,338 made up of \$12,255,861 from  
26 JA and \$4,497,477 from DM. JA revenues were up approximately \$2 million from the



1 previous year and revenues were down approximately \$500,000 for DM. Combined cost of  
2 goods and expenses were \$13,731,410 and \$2,425,714, respectively, for an EBITDA of  
3 \$596,215.

4 In 2014, it became clear that the decisions being made by the new managers were  
5 having an adverse effect on the company's profitability, cash flow and customer relations. At  
6 JA, cost of goods sold increased by 41%, overhead expenses increased by 83% and operating  
7 profits decreased 37%. On time delivery of the products to the company's main customer,  
8 Honeywell, decreased from 95% to 70% and the failure to adequately allocate resources to a  
9 new customer, Vericor Power Systems, resulted in a sustained shutdown of their engine  
10 assembly line and the subsequent loss of business.

11 In September 2014, the COO Bill Pesch was removed and Yockey was asked to  
12 assume the operational duties at JA. Soon after, it became apparent that without a drastic  
13 change in the direction and structure of the company, the operation was not sustainable. In  
14 October 2014, the remaining managers called a meeting with the owners and demanded a  
15 salary increase and bonuses based on representations provided them by Geotas. Based on the  
16 compensation plan provided to ownership by Geotas and the financial situation of the  
17 company, Yockey voted to reject the demand but was out-voted by majority.

18 As a result of Yockey's objections to the decisions being made, and the failure to  
19 act, primarily by Geotas, with regard to taking on additional debt, increasing overhead costs  
20 and hiring highly paid executives to replace him, in February, 2015, Yockey ceased active  
21 involvement in the operational and financial affairs of the Debtors.

22 In 2015, Debtors had gross revenues of \$18,134,251 made up of \$13,484,916 from  
23 JA and \$4,649,335 from DM. Combined cost of goods and expenses were \$16,421,589 and  
24 \$2,510,029, respectively, for an EBITDA of (\$797,366).

25 In early 2015, the members of JJPS became aware that Rich McManus the CEO had  
26 entered into a multi-million dollar long term lease agreement for a new facility in north

1 Phoenix. PMP's operating agreement restricted the CEO from committing the company to  
2 liabilities over one million dollars without majority interest approval. Upon discovering that  
3 an agreement had been signed, the members of JJPS called an owners meeting to discuss this  
4 and other concerns related to the performance of the business.

5 On April 25, 2015, an owners meeting was held in which Yockey provided the other  
6 owners with data showing the drastic decline in business performance at the JA facility since  
7 the new managers were hired. (See **Exhibit B**). Also discussed was how the CEO was able to  
8 obligate the company to a long term lease without approval from the owners. Geotas  
9 disregarded the data and stated that the approval to enter into the lease was an implied  
10 approval. Subsequently discovered and unknown to the members of JJPS, Geotas had  
11 previously executed an agreement with Kenrick and Farley on April 15, 2015, to purchase  
12 their interest in BizDev giving him majority control. (See **Exhibits C and D**). This violated  
13 the covenants with the bank and was a clear failure to perform his fiduciary duty to protect his  
14 minority partners. It also provided Geotas a justification to act unilaterally on major decisions.

15 PMP began its first year of operation in the midst of a government shut-down. The  
16 two events which coincided to create a major loss of revenue for Debtors were sequestration of  
17 federal spending caused by congressional dysfunction. On top of the sequestration, the  
18 conclusion of the war efforts in Iraq and Afghanistan created massive deficits which required a  
19 reduction in military spending as those efforts were reduced. Together, those events led to a  
20 loss of the majority of DM revenue contribution to PMP (over \$20 million loss of revenue  
21 from 2011 to 2013).

22 In the midst of this downturn in revenue from DM, the majority owner  
23 representative of PMP, Geotas, believed that the way out of the crisis in revenue was to acquire  
24 other companies as a way to avoid paying bills. Over JJPS's objections, PMP acquired an  
25 interest in a supplier (OVAC, LLC and Hi Temp) and created more debt as a result.

26 The original operating agreement of PMP, because it had two different groups of

1 minority voting members with separate shared histories, created a provision that required a  
2 super majority of 65% of voting interests to acquire companies or bring in new members.  
3 Geotas, who drafted the agreement, advocated to the JJPS group that the operating agreement  
4 should be amended in order to allow PMP to hire officers. When asked directly if any other  
5 provisions of the agreement had changed except to allow the hiring of officers, Geotas  
6 represented that that was the only change made. In reality, he had also changed the  
7 requirement for super majority which gave his voting group control over those decisions. This  
8 act created mistrust among the members and created a split in the voting factions of the  
9 owners, leading to lack of consensus on company direction.

10 As noted above, Geotas advocated hiring high paid professional managers as a way  
11 to bring revenues back to the company. Specifically, he wanted to hire a CEO and a COO to  
12 replace Yockey's role as CEO/COO. Yockey believed that this was a bad idea in the midst of  
13 declining revenue. Salary and benefits for the two officers amounted to over \$250,000 in 2014  
14 and over \$500,000 in 2015. As noted above, EBITDA for the previous year was only  
15 \$596,215 and was \$(797,366) in 2015.

16 The new CEO, Richard McManus, rather than consolidating assets in facilities  
17 appropriate to the scale of operations, decided to enter into a lease agreement with  
18 M-Pinnacle7thAZ that was above market price and beyond the needs of the company. Such a  
19 move also created serious logistical issues at a time that PMP was already having trouble  
20 meeting customer deadlines for product.

21 With cash extremely constrained as a result of all these factors, Geotas entered into  
22 additional loans that pulled even more cash away from company operations with hard money  
23 lenders Merchant Cash/Biz Fi and Can Capital/New Logic. Those loans required daily  
24 withdrawals from PMP's bank accounts. These loans were entered into without the  
25 knowledge or consent of any other owners or of UMB. The loans violated the restrictive  
26 covenants previously in place with UMB and Geotas' ultra vires actions severely damaged the

1 Debtors.

2 **D. Efforts to Avoid Chapter 11**

3 After the hiring of the highly paid executives and having Yockey's concerns for the  
4 financial state of the business ignored, Yockey quit in August of 2015 and went to work for  
5 CAD Enterprises. In November of 2015, the bottom finally fell out. The CFO Keith Kranzow  
6 resigned and the CEO Richard McManus was terminated. Yockey was asked to rejoin the  
7 Debtors in January of 2016 as the crisis reached its peak. Yockey voluntarily took a  
8 \$50,000.00/yr. pay reduction from his previous employment at CAD in order to address the  
9 crisis.

10 The company had an employee furlough the first week of January 2016. On January  
11 15th a 8% reduction in force was performed. Bowen and Ivanov voluntarily reduced their  
12 salaries by approximately \$35,000/yr.

13 PMP hired John Trotter of Brockson, an investment banking group, to explore  
14 financing options related to a transaction or sale of the company.

15 As a result of the hiring of Trotter, a corporate resolution was drafted and executed  
16 giving Yockey control of all operations of the Debtors including the ability to enter into  
17 bankruptcy if necessary.

18 Trotter and Yockey had extensive negotiations with Honeywell that included loans,  
19 cash infusions, long term purchase orders, payment reduction terms and revenue support  
20 proposals. Unfortunately, after several months of good faith efforts, Honeywell ultimately  
21 rejected the financial accommodation options which left the Debtors with no choice but to  
22 seek protection under Chapter 11.

23 **E. Jordan Geotas Misconduct.**

24 Exacerbating these difficult circumstances was a pattern of misrepresentation, fraud  
25 and self-dealing by the principal architect of the merger, Geotas, and his associated poor  
26 business decisions. He obscured the actual financial situation of DM from merger partners and

1 the bank, which omissions were not discovered until it was too late. Even during the crisis  
2 when some of these misrepresentations were made know, intentional obfuscation and  
3 ill-conceived majority voting interests, delayed crucial intervention that could have avoided a  
4 Chapter 11 filing. This pattern of misconduct is briefly described below:

5         1. Two key documents were provided by Geotas to JA before the merger. One  
6 was a financial Statement of Operations report of historical and year-to-date income. The  
7 second provided an Income Statement and Balance Sheet for JA. (**See Exhibit E and F**).

8         Both of these documents had serious misstatements that came to light in a  
9 post-merger audit. With respect to the Statement of Operations both the Operating Income,  
10 Gross Margin and Net Margin were falsely represented. The document shows Operating  
11 Income as of September 2010 of over \$1 million but audited numbers show less than half that  
12 by the end of the year. Similarly, the gross margin shown in the Statement of Operations was  
13 at 23% based on sales of \$10 million showing a gross profit of \$2.4 million. But the audited  
14 gross margin was only 10% based on sales of \$17 million and the same \$2.4 million gross  
15 profit. In other words, approximately \$7 million in sales went out of DM at 0% margin from  
16 September to December 2010, if the original numbers were to be believed.

17         The Balance Sheet was even more misrepresented as it was a comparison, prepared  
18 by Geotas, between the accurate numbers provided by JA, with inaccurate numbers provided  
19 by DM. The inventory number listed as an asset and used to provide justification for BizDev's  
20 member interests was grossly misrepresented. Whereas \$7,499,113 was listed as the asset  
21 value in the represented balance sheet, the actual value was reduced dramatically as it became  
22 obvious that this inventory was worthless. As a result, PMP wrote off the entire value of DM's  
23 inventory within three years. Importantly, this asset number was used to justify the member  
24 interests assigned in the agreement as it inflated the net worth and equity of DM. Had these  
25 numbers been represented accurately it is unlikely the merger would have taken place. And  
26 even if it had gone forward with accurate information, the member interests would have been

1 assigned in proportion to net worth. JA relied on these misrepresentations due to Geotas'  
2 standing as an attorney with professional responsibilities and industry credentials.

3       2. Both JA and DM had partners that were part of their pre-merger structures.  
4 Numerous discussions ensured that these partners were bought out in anticipation of a new  
5 company structure formed through the merger. In the case of JA, these partners were bought  
6 out and their equity was acquired properly. However, the BizDev liabilities did not appear on  
7 any documents provided to the merger partners nor did they appear on the compliance  
8 certificate signed by Geotas and provided to the bank. Geotas cleverly hid BizDev's  
9 obligations as CFO of the new venture and made these obligations a part of the debt structure  
10 of the new company. Randy Chamerski and Gary Ekebrecht, both previous partners of  
11 Geotas prior to the merger with JA, received cash payouts in total of \$814,215.00 including  
12 legal fees post-merger from January 2011 through August 2015. This is a clear case of  
13 self-dealing, as Geotas made PMP responsible for a debt that was clearly a legacy debt of  
14 BizDev. With the precipitous decline of revenues from DM, the actual payment of this  
15 partner's previous debt was shouldered by JA which was the only member company  
16 generating income. So not only was the debt responsibility shifted to the new company, the  
17 actual payments were not even split evenly between the companies but rather they were  
18 covered by the member that should not have had any responsibility for the debt in the first  
19 place. (See Exhibits G and H).

20       3. The original operating agreement of PMP, because it had two different  
21 groups of minority voting members with separate shared histories, created a provision that  
22 required a super majority of 65% of voting interests for important decisions. Geotas, who  
23 drafted the agreement, advocated to the JJPS group that the original operating agreement  
24 should be amended in order to allow PMP to hire officers. When asked directly if any other  
25 provisions of the agreement had changed except to allow the hiring of officers, Geotas  
26 represented that that was the only change made. In reality, he had also changed the

1 requirement for super majority, which gave his voting group control over all decisions. This  
2 act created mistrust among the members, allowed Geotas to avoid Board meetings and created  
3 a split in the voting factions of the owners, leading to lack of consensus on company direction.

4         **4.** As noted above, two hard money loans were entered into by Geotas that  
5 obligated the company and were secured by accounts receivable. These loans from BizFi and  
6 Can Capital were at above market interest rates and required daily withdrawals from PMP's  
7 bank accounts to service the debts. These loans were entered into, ultra vires, and without the  
8 knowledge or consent of any of the other owners or the primary lending institution in violation  
9 of the UMB Bank restrictive covenants previously in place.

10         **5.** Geotas also used the elimination of the super majority to avoid board  
11 meetings and made unilateral decisions to increase debt in violation of bank covenants. A  
12 CEO, CFO and COO were hired and were paid significant salaries at a time when revenues  
13 were declining. These hires were strenuously objected to by Yockey but these objections were  
14 ignored. In addition and despite clear criteria associated with providing raises and bonuses that  
15 were not met, Geotas approved raises and bonuses to these officers again over objections of  
16 Yockey. Salary and benefits for the two officers amounted to over \$250,000 in 2014 and over  
17 \$500,000 in 2015. EBITDA for 2014 was \$596,215 and \$(797,366) in 2015.

18         **6.** During the short tenure of these officers, Geotas, rather than consolidating  
19 assets in facilities appropriate to the scale of operations, allowed the new CEO to enter into a  
20 lease agreement with M-Pinnacle 7thaz, LLC that was above market price and beyond the  
21 needs of the company. This decision created another financial burden that exceeded the  
22 financial resources of the company.

23         This pattern of misrepresentation, self-dealing and lack of fiduciary responsibility  
24 are at the heart of the current difficulties of PMP. By falsifying information, manipulating  
25 agreements, obligating the company beyond its means, all during a challenging business  
26 environment in which key government contracts were being eliminated, Geotas put an

1 extraordinary burden on the one member company that maintained a measure of adequate  
2 revenues and profits -- JA. However even for that member company, burden was  
3 unsustainable and resulted in the decision to file Chapter 11.

4 Yockey came back to work in January of 2016 as acting President when the crisis  
5 was at its peak, and voluntarily took a \$50,000.00/year salary reduction from his previous  
6 employment. The company had an employee furlough the first week of January 2016. On  
7 January 15<sup>th</sup> an 8% reduction in force was performed. Bowen and Ivanov voluntarily reduced  
8 their salaries by approximately \$35,000/yr.

9 Since the Petition Dates debtors have created and enforced a strict Budget approved  
10 by UMB Bank and in conjunction with the Cash Collateral Order. Debtor has reduced staffing  
11 to a very lean level from 103 to 83, has implemented weekly cash flow spreadsheet reviews,  
12 and has tightly followed a break-even analysis, which is constantly monitored. As a result, JA  
13 is timely fulfilling its orders and operating with adequate margins to maintain operations. DM  
14 is still struggling to provide any substantive revenues.

15 **F. Prepetition Secured Debt Structure.**

16 *The UMB Facility.* The Debtors are indebted and obligated to UMB under the  
17 Loan, which is currently in default, as set forth below:

18 a. *The Loan.* On July 31, 2015, UMB extended to the Debtors ("Borrowers"),  
19 jointly and severally, a consolidated non-revolving line of credit in the principal amount of  
20 \$8,650,000.00 (the "Loan") that replaced 1) a revolving line of credit in the original principal  
21 amount of \$5,600,000.00 (the "A-Loan"), and 2) a term loan in the original principal amount  
22 of \$4,968,641.00 (the "Term Loan").

23 b. *The Note.* The Loan is evidenced by that certain consolidated and  
24 replacement Promissory Note dated July 31, 2015 in the principal amount of \$8,650,000.00  
25 (the "Note"), which replaced and consolidated that (i) Promissory Note dated January 31, 2014  
26 in the principal amount of \$5,600,000.00, which replaced a Promissory Note dated February



21, 2013 in the principal amount of \$6,500,000.00, which replaced an earlier Promissory Note dated May 31, 2012 in the same principal amount, which replaced the original Promissory Note dated April 7, 2011 in the same principal amount and which was reduced to \$5,000,000.00 pursuant to the Third Modification Agreement (defined below) and that (ii) Promissory Note dated January 31, 2014 in the principal amount of \$4,968,641.00, which replaced that certain Consolidated Replacement Promissory Note dated February 21, 2013 in the principal amount of \$4,388.859.64, which consolidated and replaced that Promissory Note dated May 16, 2012 in the principal amount of \$4,556,000.00, and that Promissory Note dated January 8, 2013 in the principal amount of \$625,000.00.

c. *The Loan Agreement.* The Loan was advanced to the Borrowers pursuant to a Business Loan Agreement by and between Borrowers and Lender dated January 31, 2014, which replaced a Business Loan Agreement dated February 21, 2013, which replaced a Business Loan Agreement dated May 31, 2012, which replaced the original Business Loan Agreement dated April 7, 2011 (collectively, the "Loan Agreement").

d. *The Security Documents.* The Loan is secured by, among other things: (i) three separate Commercial Security Agreements dated April 7, 2011 executed for the benefit of UMB by the Joined Alloys and DiMatrix; (ii) together with a separate Commercial Security Agreement dated February 25, 2013 granted and executed for the benefit of UMB by OVAC, LLC and Debtors for UMB's benefit (collectively, the "Security Agreements"), pursuant to which Borrowers pledged and granted a first priority security interest and lien to Lender against all of Borrower's business assets including without limitation all inventory, accounts, equipment, and general intangibles, now owned or later acquired, all accessions, additions, replacements, and substitutions, and all proceeds relating to any of the foregoing (collectively, the "Collateral"), and (iii) three Collection Account Collateral Agreements executed by the Subsidiaries (collectively, the "Collection Agreement"), which established a non-interest bearing demand deposit account in the name of, and owned by, UMB on its books and records

1 and denominated as follows: “UMB Bank, n.a.; Collateral Security for Obligations of Phoenix  
2 Manufacturing Partners, LLC and its Subsidiaries” (the “Control Account”), which is subject  
3 to UMB’s first priority perfected security interest and UMB’s sole control. Since the PMP  
4 Petition Date, no disbursement or debit activity has occurred from the Control Account. UMB  
5 holds its first priority perfected security interest in the Collateral pursuant to those UCC-1s (as  
6 amended) filed with the Delaware Secretary of State on or before April 12, 2011. The  
7 documents described in this paragraph 5(d) are collectively referred to as the “Security  
8 Documents”).

9 e. *Guarantees.* The Debtors’ performance is guaranteed pursuant to those  
10 certain separate Commercial Guaranty agreements (collectively, the “Guarantees”) executed  
11 by (i) Sun West Capital Holdings, L.L.C., an Arizona limited liability company; (ii) BizDev,  
12 LLC, an Arizona limited liability company; (iii) JJPS, LLC, an Arizona limited liability  
13 company; (iv) Thomas J. Kenrick; (v) Jordan K. Geotas and Christy Ann S. Geotas; (vi) James  
14 J. Farley and Lorraine M. Farley; (vii) Patricia Tierney; (viii) James Z. Bowen and Marie A.  
15 Bowen; (ix) Joseph W. Yockey and Sharlene M. Bosch; (x) Plamen Ivanov; (xi) Scott  
16 Omelianowich and Sue Omelianowich; (xii) Carlos N. Ruiz and Cindy J. Ruiz, jointly and  
17 severally (collectively, the “Guarantors”), pursuant to which the Guarantors, jointly and  
18 severally, guaranteed the full payment, collection and performance of all Debtors’ obligations  
19 to UMB, except for the specific Guarantees executed by Carlos N. Ruiz and Cindy L. Ruiz,  
20 which limited the guaranty obligations of Carlos N. Ruiz and Cindy L. Ruiz to a maximum  
21 sum of \$300,000.00.

22 On August 16, 2016, UMB timely filed Proofs of Claim in Debtors’ respective  
23 bankruptcy proceedings based on the Loan Documents. Per those Proofs of Claim, UMB’s  
24 secured debt is \$8,263,539.51.

25 **G. Business Plan and Projections.**

26 Debtors’ business, particularly that of JA, has a proven 12-year track record of

1 profitability in its own right. JA is an AS9100 and ISO 9001 certified manufacturer of  
2 Computer Numerical Controlled (“CNC”) machining components as well as a special  
3 processes provider of brazing, heat-treating, welding, and many other processes, mainly  
4 servicing the aerospace and defense industries. These specialty processes and highly skilled  
5 certified manufacturing capabilities will continue to be in demand by aerospace and defense  
6 companies in the US in general and in the Phoenix region in particular. JA is essentially an  
7 aerospace and defense job shop. The key to JA’s profitability is a proven lean cellular  
8 manufacturing process and proven operational excellence delivering quality products with  
9 precise specifications on time and within budget.

10 The Debtors’ business objectives are (a) to manufacture parts and assemblies for the  
11 aerospace, defense and commercial industries, providing customers with quality products,  
12 services and information; (b) to present the company in an honest and trustworthy manner in  
13 all transactions; (c) to empower employees to conduct the business; and (d) provide the  
14 company with a consistent and reasonable profit.

15 As noted above, JA’s ability to operate profitably has been impaired as a result of an  
16 unwarranted debt burden largely imposed through mismanagement of the operations by the  
17 previous officers and financial misrepresentation from an unscrupulous member. Freed of that  
18 burden, there is little doubt that the business would again achieve sustainable profitability.  
19 Debtor’s plan is to continue to be operationally lean, providing service and on time delivery of  
20 product to new and legacy customers. However to reduce its debt burden and come out of  
21 Chapter 11 proceedings, Debtors must execute on four main areas of their renewed business  
22 plan as follows:

23 1) **Consolidate the three companies’ operations and finance under a single ERP**  
24 **system.**

25 As noted above one of the major managerial mistakes of the hired officers and  
26 majority principals, was a failure to make the necessary adjustments to the operations and

1 locations when major contracts were cancelled. Reduced revenue and profitability are a clear  
2 signal to find operational efficiencies by downsizing a company. Instead, previous  
3 management expanded operations and made commitments to enter into uneconomic leases  
4 and purchases. Post-confirmation, high priority will be to consolidate operations between the  
5 two companies of DM and JA. The Debtors have already moved the DM operations into a  
6 facility appropriate to the scale of the business and within walking distance of the JA facility.  
7 The close proximity allows for a wireless connection that enables the Debtors to incorporate  
8 the operations into the existing JA ERP system. This will create efficiencies and provide  
9 greater control and transparency into the DM remaining business activities. Current plans for  
10 consolidation are being developed as this document is being drafted. Projections for  
11 cash-flows with this consolidation are detailed in **Exhibit J**.

12 **2) Increase sales with existing and new customers at appropriate margin.**

13 Since filing Chapter 11, Debtors have been able to maintain a business  
14 relationship with all of its previous customers. Debtors have been able to turn around the  
15 operations and begin to earn back the trust of these customers by manufacturing quality  
16 product and delivering them on time. Parker Hannifin, Honeywell and Ventana Medical  
17 Systems have all recently remarked about the positive turnaround they have seen over the last  
18 several months. Parker's business has increased and is up 25% over last year mainly with new  
19 orders received in September and October.

20 Honeywell, PWC and Ventana orders although down from last year, are stable and  
21 consistent enough to allow for continued profitability. Several new customers have been added  
22 to the orders backlog including Marvin Land Systems and PAS Technologies and  
23 opportunities to quote new business has increased from Vericor Power Systems, Armor  
24 Works, ACME and Arnprior Aerospace. Significant effort will be expended to get this new  
25 business and convert it to long-term business relationships and revenue.

26 **3) Negotiate and convert short and long-term liabilities to manageable level.**

1 This effort is explained in detail under the debt treatment plan. (See Section VI,  
2 below.)

3 **4) Enter into Strategic partnership for joint venture or acquisition.**

4 The original plan of PMP was to capture enough business to achieve gross sales of  
5 \$50M-\$70M and EBITDA of 15-20% in order to become attractive to a potential acquisition  
6 or strategic partner. There is nothing wrong with that plan except the strategic partner that JA  
7 chose. Debtor's acknowledge their culpability in lack of due diligence by relying on  
8 information and statements of fact with respect to the counterparties involved in their merger.  
9 Therefore a concerted effort to identify several potential strategic partners and perform high  
10 level due diligence in the process of forming a partnership is the fourth key area of Debtors'  
11 business plan. JA has already been approached by several possible strategic partners but would  
12 prefer to get through the Chapter 11 proceeding prior to entering into additional discussions.

13 **H. Post-Reorganization Management.**

14 The Reorganized Debtor will continue to be managed post-petition by Joseph  
15 Yockey, President and Managing Member. The compensation for Mr. Yockey is set out in the  
16 projections. The remaining management team is set out on the attached organization chart.  
17 (See Exhibit I, attached hereto).

18 Attached to this Disclosure Statement are Debtors' projections for future  
19 operations, revenues and expenses which reflect that the Reorganized Debtor will be able to  
20 satisfy the financial obligations described herein and in the Plan. (See Exhibit J, attached  
21 hereto.)

22 **I. Preferences and Fraudulent Conveyances.**

23 To the extent that a preference or fraudulent conveyance occurred before the  
24 bankruptcy filing, such transfer may be recoverable by the bankruptcy estate for the benefit of  
25 the estate under §§ 544, 547, or 548 of the Bankruptcy Code. To date, no complaints have been  
26 filed under any of these theories. However, the Debtor is currently analyzing any such claims

1 for the recovery of preferences or fraudulent conveyances. These potential claims are  
2 specifically preserved for the benefit of the bankruptcy estate. Any recovery that is obtained  
3 will be obtained for the benefit of the estate.

### 4 **III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

#### 5 **A. Administrative Proceedings.**

6 The Debtors filed their Petitions for Relief under Chapter 11 on May 3, 2016  
7 (Phoenix Manufacturing Partners, LLC) and May 27, 2016 (Joined Alloys, LLC and DLS  
8 Precision Fab, LLC, dba Di-Matrix Precision Manufacturing). The First Meetings of  
9 Creditors were held on June 7, 2016 and June 28, 2016, respectively.

#### 10 **B. Retention of Professionals and Interim Compensation Order.**

11 On May 9, 2016 and June 2, 106, respectively, Debtors filed their Applications to  
12 Debtors filed their Applications to Employ Jennings, Strouss & Salmon, P.L.C. ("JSS") to act  
13 as its bankruptcy counsel. The Court signed Orders approving the retention of JSS on May 13,  
14 2016 and June 6, 2016, respectively.

15 On June 15, 2016, the Court signed an Order granting Debtors' Motion for  
16 Administrative Order to Establishing Procedures for Interim Compensation for Professionals.

17 On August 12, 2016, Debtor Phoenix Manufacturing Partners, LLC filed their  
18 Application to Employ Eide Bailly, LLP as Debtor's accountants. On August 17, 2016 the  
19 Court signed an Order approving the retention of Eide Bailly.

20 On August 24, 2016, Debtor Di-Matrix filed its Application to Employ Gallagher &  
21 Kennedy as special counsel to represent Di-Matrix in a pending, pre-petition 9<sup>th</sup> Circuit appeal.  
22 On August 30, 2016, the Court signed an Order approving the retention of Gallagher &  
23 Kennedy.

#### 24 **C. First Day Motions and Orders.**

25 On June 2, 2016, Debtors filed their Motion for Joint Administration. The Court  
26 granted that Motion with its Order on June 10, 2016.

1 On June 28, 2016, Debtors filed their Motion to Pay Claims of Critical Vendors.  
2 The Court granted that Motion with its Order Granting on July 27, 2016.

3 On June 2, 2016, Debtors filed their Motion to Approve Maintenance of Existing  
4 Merchant Accounts. The Court granted that Motion with its Order on June 15, 2016.

5 On June 16, 2016, Debtors filed their Motion to Pay Adequate Assurance of  
6 Payment for Future Utility Services. The Court granted that Motion with its Order on June 15,  
7 2016.

8 **D. Motions for Use of Cash Collateral and Orders.**

9 On June 2, 2016, Debtors and UMB Bank filed their Notice of Lodging Proposed  
10 Stipulated Interim Order Authorizing Debtors Use of Motion to Approve Use of Cash  
11 Collateral. On June 10, 2016, the Court issued a Stipulated Interim Order Authorizing  
12 Debtors' Use of Cash Collateral, granting Post-Petition Liens, Modifying the Automatic Stay  
13 and Granting Related Relief. On July 27, 2016, the Court entered a Final Stipulated Order  
14 relating to the June 10, 2016 Cash Collateral Order.

15 On August 30, 2016, UMB filed its Notice of Modification of Final Stipulated  
16 Order regarding cash collateral. The Cash Collateral Order is currently in effect through  
17 January 21, 2017, per the October 7, 2016 Notice of Modification to Final Order Authorizing  
18 Debtors' Use of Cash Collateral.

19 **E. Motions to Assume and Reject Executory Contracts.**

20 On May 5, 2015 Phoenix Manufacturing Partners, LLC filed its Emergency Motion  
21 to Reject Commercial Real Property Lease with M-Pinnacle 7thaz, LLC. On May 17, 2016,  
22 the Court issued its Order granting that Motion.

23 On July 5, 2016 the Debtor PMP and landlord M-Pinnacle filed their Certification  
24 of Termination Date of the Lease, which date was June 30, 2016.

25 On September 14, 2016, Debtor JA filed its Motion for Order Authorizing  
26 Assumption of Unexpired Leases of Non Residential Real Property with landlord EastGroup

1 Properties, L.P. and landlord Shangri-la Commercial Holdings, LLC. On October 23, 2016,  
2 the court entered its Orders granting both Motions to Assume.

3 Debtors have identified leases of personal property or services that are to be  
4 assumed or rejected. (See **Exhibit K, attached hereto.**)

5 **F. Motion to Sell PMP's 51% Interest in OVAC and Critical Vendors Motion**

6 On June 28, 2016, Debtor PMP filed its (1) Motion to Sell Phoenix Manufacturing  
7 Partners, LLC's 51% member Interest in OVAC, LLC Free and Clear of Liens and Interests;  
8 and Debtors JA and DM filed their (2) Emergency Motion to Authorize Payment of  
9 Prepetition Claims of Critical Vendors. OVAC was a company which acquired a metal  
10 distributing company, Hi Temp. PMP was the 51% owner of OVAC and Hi Temp was the  
11 49% owner. This transaction was done during the period of Geotas' mismanagement of the  
12 Debtors. The transaction was not mutually beneficial for either PMP or OVAC/Hi Temp.  
13 Post-petition, the parties entered a Purchase Agreement whereby Hi Temp bought out PMP's  
14 51% interest for \$275,000. Those sale proceeds were paid over to UMB Bank and applied  
15 against the secured claim for which OVAC was also liable.

16 Part of the sale also involved an agreement to pay Hi Temp \$65,732.81 for a  
17 prepetition debt. This payment to Hi Temp was one of the critical vendors approved for  
18 post-petition payment under Debtors JA and DM's Emergency Motion for Order Authorizing  
19 Payment of Prepetition Claims of Critical Vendors.

20 After proper notice and hearing, the Motion to Sell was granted by the Court by  
21 Order dated July 26, 2016 and the Emergency Motion to pay critical vendor claims was also  
22 granted by the Court by Order dated July 27, 2016.

23 **G. Bar Dates for Consolidated Exclusivity Deadline and Proofs of Claims.**

24 On June 16, 2016, Debtors filed their Motion for Order Setting Consolidated  
25 Exclusivity Deadline for all Debtors and to Set Bar Date to File Proofs of Claim and Proofs of  
26 Interest in the jointly administered case. The Court granted that Motion on July 19, 2016 with



1 its Order setting the Bar Date for filing proofs of claim and proofs of interest for September 12,  
2 2016 and establishing the consolidated exclusivity deadline for September 26, 2016.  
3 Thereafter, by a subsequent motion, the exclusivity periods were extended, by Court order  
4 dated October 23, 2016, to November 30, 2016 to file the Plan and to February 1, 2017 to  
5 obtain acceptances of the Plan.

#### 6 **H. Operating Reports.**

7 The Debtors monthly operating reports are current and copies may be obtained from  
8 the Court's electronic calendar. The Debtors' most recent October 15, 2016 reports are  
9 attached hereto as **Group Exhibit L**.

#### 10 **I. Anticipated Litigation.**

11 Debtors anticipate that litigation in the form of adversary proceedings or contested  
12 matters will be initiated by or against Debtors including, but not limited to: (1) subordination  
13 of insider Jordan Geotas' claims and equity assertions due to his breach of fiduciary duties,  
14 fraud, self-dealing and misrepresentation, as noted above in Section II of this Disclosure  
15 Statement; (2) challenge by Debtor to Merchant Cash and Capital, LLC, dba BizFi's claim of  
16 ownership of accounts receivable which are UMB Bank's collateral securing its loan to  
17 Debtors; and (3) a possible adversary proceeding involving Debtors and Jordan Geotas, on his  
18 personal guaranty.

### 19 **IV. DESCRIPTION OF ASSETS AND LIABILITIES OF THE DEBTORS.**

#### 20 **A. Assets.**

21 **See Exhibit M—Liquidation Analysis**

#### 22 **B. Liabilities.**

23 **See Exhibit N—List of Claims**

### 24 **V. PLAN SUMMARY.**

25 Set out below are the major terms and provisions of the Joint Plan of Reorganization  
26 which the Debtors are proposing to satisfy and treat all claimants and interest holders in these

three jointly administrative chapter 11 bankruptcy cases.

## **VI. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS.**

**A. Summary of Classification.** Pursuant to this Plan and in accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors are placed in the Classes described below. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in other Classes only to the extent that any remainder of the Claim qualifies within the description of such other Classes. A Claim also is classified in a particular Class only to the extent that such Claim has not been paid, released, or otherwise satisfied prior to the Effective Date. As of the Confirmation Hearing, any Class of Claims which does not contain any Creditor's Claim will be deemed deleted automatically from the Plan; and any Class of Claims which does not contain an Allowed Claim (or a Claim temporarily or provisionally allowed by the Bankruptcy Court for voting purposes) will be deemed deleted automatically from the Plan with respect to the voting on confirmation of the Plan.

Class 1	Administrative Claims	Unimpaired No solicitation required
Class 2	Priority Claims	Impaired Entitled to vote
Class 3	UMB Secured Claim	Impaired Entitled to vote
Class 4	TCF Equipment Finance Secured Claim	Impaired Entitled to vote
Class 5.1	U.S. Bank Equipment Finance Claim (FANUC C600)	Impaired Entitled to vote
Class 5.2	U.S. Bank Equipment Finance Claim (CT 500)	Impaired Entitled to vote

1	Class 6	Hitachi Capital America Corp.	Impaired Entitled to vote
2	Class 7	Merchants Cash & Capital, dba	Impaired
3		Bizfi LLC Disputed Secured Claim	Entitled to vote
4	Class 8	CAN Capital Asset Servicing, Inc., dba	Impaired
5		New Logic Disputed Secured Claim	Entitled to vote
6	Class 9	General Unsecured Claims	Impaired
7			Entitled to vote
8	Class 10	Convenience Claims	Impaired
9			Entitled to vote
10	Class 11	Equity Interests	Impaired
11			Not entitled to vote

12       **B. Class 1—Administrative Claims.** Class 1 consists of all Administrative Claims, if  
13 any, other than Priority Tax Claims.

14               **1. Impairment and Voting.** Class 1 is unimpaired by the Plan. All holders of  
15 Allowed Priority Claims are not entitled to vote and will not be solicited to vote on the Plan.

16               **2. Treatment.** Each holder of an Allowed Administrative Claim, other than a  
17 Priority Tax Claim, will receive Cash in an amount equal to its Allowed Administrative Claim  
18 on the later of: (i) the Effective Date, or as soon after that date as feasible; and (ii) 30 days after  
19 the Priority Claim is Allowed; unless, before the later of those two dates, the holder of the  
20 Claim and the Debtors agree in writing to a different date.

21       **C. Class 2—Priority Claims.** Class 2 consists of the tax claims of the Internal  
22 Revenue Service and the Maricopa County Treasurer and employee claim Tony Wallenburg.

23               **1. Impairment and Voting.** Class 2 is impaired by the Plan. The holders of  
24 the Allowed Class 2 Claims are entitled to vote and will be solicited to vote on the Plan.

25               **2. Description of Claim.** The Internal Revenue Service claim is \$700.00. The  
26 Maricopa County Treasurer claim is \$130,843.47. Wallenburg's claim is \$7,052.00.

**3. Treatment.** Each holder of an Allowed Class 2 Tax Claim will receive

1 payment in full – within thirty days of the Effective Date for the IRS claim and over five years  
2 from the May 27, 2016 Petition Date with interest at 5% per annum for the Maricopa County  
3 claim. Wallenburg shall be paid in full within 60 days of the Effective Date.

4 **D. Class 3—UMB Secured Claim.** Class 3 consists of the UMB Secured Claim.

5 **1. Impairment and Voting.** Class 3 is impaired by the Plan. The holder of the  
6 UMB Secured Claim is entitled to vote and will be solicited to vote on the Plan.

7 **2. Description of Claim.** The UMB Secured Claim is \$7,746,998.75 as of  
8 February 2017.

9 **3. Treatment of Claim.** The UMB Secured Claim, once determined and  
10 allowed, will be paid through the Plan as follows:

11 Payment in full amount of the debt over 15 years amortized over 20 years (balloon  
12 payment at the end of year 15). Payments in the amount of \$35,000.00 per month during year  
13 1; payments in the amount of \$45,000.00 per month during years 2 through 5; payments in the  
14 amount of \$55,000.00 per month during years 6 through 10; payments in the amount of  
15 \$65,000.00 per months during years 11 through 15. Balloon payment at the end of the 15th  
16 year of the balance then owing.

17 **E. Class 4 –TCF Equipment Finance Secured Claim.** Class 4 consists of the  
18 Allowed Secured Claim of TCF Equipment Finance.

19 **1. Impairment and Voting.** Class 4 is impaired by the Plan. The holder of the  
20 TCF Equipment Finance Secured Claim is entitled to vote and will be solicited to vote on the  
21 Plan.

22 **2. Description of Claim.** The TCF Equipment Finance claim is \$112,803.00.

23 **3. Treatment.** The TCF Equipment Finance claim, once determined and  
24 allowed, will receive payments of the full amount of its allowed claim over five years with  
25 interest at 3.5% per annum.  
26

1           **F. Class 5.1—U.S. Bank Equipment Finance Secured Claim.**

2           **1. Impairment and Voting.** Class 5 is impaired by the Plan. The holder of the  
3 U.S. Bank Equipment Finance Secured Claim is entitled to vote and will be solicited to vote on  
4 the Plan.

5           **2. Description of Claim.** The U.S. Bank Equipment Finance claim is  
6 comprised of the stated Claim 5-1 on the Claims Register of \$223,235.00. Debtors believe this  
7 stated amount is erroneous and that U.S. Bank added its two claims (5-1 and 12-1) together.  
8 Debtor contends this claim should be \$87,235.00, which is the current balance owing.

9           **3. Treatment.** The U.S. Bank Equipment Finance claim, once determined and  
10 allowed, will receive payments in the amount equal to the value of its collateral of  
11 approximately \$87,000.00, over five years with interest at 3.5% per annum.

12           **G. Class 5.2—U.S. Bank Equipment Finance Secured Claim.**

13           **1. Impairment and Voting.** Class 5 is impaired by the Plan. The holder of the  
14 U.S. Bank Equipment Finance Secured Claim is entitled to vote and will be solicited to vote on  
15 the Plan.

16           **2. Description of Claim.** The U.S. Bank Equipment Finance claim is  
17 comprised of the stated Claim 12-1 on the Claims Register of \$223,234.00. Debtors believe  
18 this stated amount is erroneous and that U.S. Bank added its two claims (5-1 and 12-1)  
19 together. Debtor contends this claim should be \$94,971.00, which is the current balance  
20 owing.

21           **3. Treatment.** The U.S. Bank Equipment Finance claim, once determined and  
22 allowed, will receive payments of in the amount equal to the value of the collateral of  
23 \$85,250.00 over five years at 3.5% per annum.

24           **H. Class 6 – Hitachi Capital America Corp. Secured Claim.**

25           **1. Impairment and Voting.** Class 6 is impaired by the Plan. The holder of the  
26 Hitachi Capital America Corp. Secured Claim is entitled to vote and will be solicited to vote

1 on the Plan.

2           **2.** The Hitachi Capital America Corp. claim is comprised of the stated Claim  
3 3-1 on the Claims Register of \$21,080.36. The current balance of the claim is \$18,640.00.  
4 The Claim is secured by a 2014 Chevrolet Express Cargo Van valued at approximately the  
5 amount of the debt owing.

6           **3.** The Hitachi Capital America Corp. claim, once determined and allowed, will  
7 continue to be paid pursuant to the terms of the agreement between the parties of \$546.47 per  
8 month.

9           **I. Class 7—Merchants Cash & Capital, LLC, dba Bizfi Disputed Secured**  
10 **Claim.**

11           **1. Impairment and Voting.** Class 7 is impaired by the Plan. The holder of the  
12 Merchants Cash & Capital Disputed Secured Claim is entitled to vote and will be solicited to  
13 vote on the Plan.

14           **2. Description of Claim.** The October 13, 2015 Merchant Agreement (“BizFi  
15 Agreement”) entered into between Merchant Cash & Capital and Debtors was signed by  
16 Debtors’ former CFO, Jordan Geotas, without the knowledge or consent of any other owners  
17 of the Debtors. Moreover, Mr. Geotas’ ultra vires act of signing the BizFi Agreement was in  
18 direct violation of the UMB Bank loan documents which forbade any act by the Debtors in  
19 impairing or compromising UMB’s first priority loan and security interests in all of Debtors’  
20 assets. The UMB loan documents and UCC financing statements were executed and perfected  
21 on or about April 7, 2011 – four and one-half years before the BizFi Agreement was signed  
22 and its alleged security interest purportedly perfected. The amount of the Merchants Cash &  
23 Capital claim is asserted to be \$288,385.01.

24           **3. Treatment of Claim.** The Merchants Cash & Capital Disputed Secured  
25 Claim, once determined and allowed, will be treated as a Class 9 General Unsecured Claim.

26           **J. Class 8—CAN Capital Asset Servicing, Inc., dba New Logic Disputed**  
**Secured Claim.**

1           **1. Impairment and Voting.** Class 8 is impaired by the Plan. The holder of the  
2 CAN Capital Asset Servicing, Disputed Secured Claim is entitled to vote and will be solicited  
3 to vote on the Plan.

4           **2. Description of Claim.** The October 7, 2015 CAN Capital Asset Servicing,  
5 Inc. Agreement (“New Logic Agreement”) entered into between CAN Capital Asset  
6 Servicing, Inc. and Debtor Di-Matrix was signed by Debtors’ former CFO, Jordan Geotas,  
7 without the knowledge or consent of any other owners of the Debtors. Moreover, Mr. Geotas’  
8 ultra vires act of signing the New Logic Agreement was in direct violation of the UMB Bank  
9 loan documents which forbade any act by the Debtors in impairing or compromising UMB’s  
10 first priority loan and security interests in all of Debtors’ assets. The UMB loan documents  
11 and UCC financing statements were executed and perfected on or about April 7, 2011 – four  
12 and one-half years before the Agreement was signed and its alleged security interest  
13 purportedly perfected. The amount of the CAB Capital claim is asserted to be \$161,749.33.

14           **3. Treatment of Claim.** The Merchants Cash & Capital Disputed Secured  
15 Claim, once determined and allowed, will be treated as a Class 9 General Unsecured Claim.

16           **K. Class 9—General Unsecured Claims.** Class 9 consists of all General Unsecured  
17 Claims, excluding the UMB’s Unsecured Claim.

18           **1. Impairment and Voting.** Class 9 is impaired by the Plan. All holders of  
19 Class 9 Claims are entitled to vote and will be solicited to vote on the Plan. Each General  
20 Unsecured Claimant is entitled to vote each of its Claims in Class 9 separately. The amount of  
21 the General Unsecured Creditors is approximately \$4,400,000.00.

22           **2. Treatment.** Each holder of an Allowed Class 9 Claim will be paid 5% of  
23 their claim with no interest, commencing the first day of the first full month after the Effective  
24 Date, over a period of ten years.

25           **L. Class 10—Convenience Class.** Class 10 consists of General Unsecured  
26 Creditors whose claims are individually less than or equal to \$1,000; or General Unsecured

Creditors who elect to reduce their Allowed Claims to \$1,000.

**1. Impairment and Voting.** Class 10 is impaired by the Plan. All holders of Class 10 claims are entitled to vote and will be solicited to vote on the Plan.

**2. Treatment.** Each holder of an Allowed Class 10 Claim will be paid the full amount of its claim, up to \$1,000, over 18 months after the Effective Date.

**M. Class 11—Equity Interests.** Class 11 consists of all Equity Interests. The Equity Interests consists solely of Equity Interests to be retained by Joseph and Shar Yockey, James and Marie Bowen, Plamen Ivanov and Scott and Sue Omelianowich, in recognition of their contributions made pursuant to subparagraph c below. Jim and Lorraine Farley will also retain an equity in position in the Reorganized Debtor to the extent that they contribute new value, in pari passu with the new contributions set out below in subparagraph 3. The equity interests previously held by Tom Kenrick and Jordan and Christy Geotas are extinguished under this Plan. The equity and ownership interests of BizDev, LLC together with any and all related entities or affiliated subsidiaries of BizDev, LLC are also extinguished under the Plan.

**1. Impairment and Voting.** Class 11 is impaired by the Plan. All holders of Equity Interests who will retain their interests under the Plan do so since § 1126(g) of the Bankruptcy Code does not apply as to them.

**2. Treatment.** All equity interests being retained as set out above in Debtors will be transferred to the Reorganized Debtor.

**3. Subsequent New Value.** The Equity Holders who are retaining their interests in the Debtors, and thereafter in the Reorganized Debtor by virtue of the subsequent new value provided by them, are as follows:

Yockeys	\$12,150
Bowens	\$12,150
Ivanov	\$10,000
Omelianowich	\$8,400



1 Farleys \$10,000

2 Yockeys/Bowens \$47,300 in rent/debt forgiveness under the assumed  
3 Shangri-la Lease

4 **VII. IMPLEMENTATION.**

5 **A. Plan Funding.** Funds to be used to make Cash payments under the Plan have been  
6 or will be generated from (i) the Reorganized Debtor's operations, and (ii) the net proceeds  
7 from any Avoidance Actions. The Reorganized Debtor shall make distributions under the Plan  
8 to holders of Allowed Claims and report on activity in this account in periodic reports to the  
9 Court. The projections of revenues from operations are set out in Exhibit J attached hereto.

10 Any sums recovered by Avoidance Actions brought by the Debtor or Reorganized  
11 Debtor, net of the attorneys' fees and costs associated with prosecuting the Avoidance Actions,  
12 shall be used to fund the Plan; unless all payments required by the Plan have been made, in  
13 which case, those sums shall accrue to the benefit of the Reorganized Debtor.

14 **B. Distributions on Account of Claims Allowed as of the Effective Date.** Except  
15 as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, initial  
16 Distributions under the Plan on account of Claims Allowed on or before the Effective Date  
17 shall be made on the Distribution Date; provided, however, that: (1) Allowed Administrative  
18 Claims with respect to liabilities incurred by the Debtor in the ordinary course of business  
19 during the Chapter 11 Cases or assumed by the Debtor prior to the Effective Date shall be paid  
20 or performed in the ordinary course of business in accordance with the terms and conditions of  
21 any controlling agreements, course of dealing, course of business, or industry practice; and (2)  
22 Allowed Priority Tax Claims, unless otherwise agreed, shall be paid in accordance with Article  
23 4.2 of this Plan.

24 **C. Distribution on Account of Claims Allowed after the Effective Date.**

25 **1. Payments and Distributions on Disputed Claims.**

26 Notwithstanding any provision otherwise in the Plan and except as otherwise agreed

1 by the relevant parties: (1) no partial payments and no partial Distributions shall be made with  
2 respect to a Disputed Claim until all such disputes in connection with such Disputed Claim  
3 have been resolved by settlement or Final Order and (2) any Person that holds both an Allowed  
4 Claim and a Disputed Claim shall not receive any distribution on the Allowed Claim unless and  
5 until all objections to the Disputed Claim have been resolved by settlement or Final Order and  
6 all Claims of such holder have been Allowed. In the event that there are Disputed Claims  
7 requiring adjudication and resolution, the Reorganized Debtor shall in its sole discretion  
8 establish appropriate reserves for potential payment of such Claims. All Distributions made  
9 pursuant to the Plan on account of a Disputed Claim shall be made together with any dividends,  
10 payments, or other Distributions made on account of, as well as any obligation arising from, the  
11 distributed property as if such Disputed Claim had been an Allowed Claim on the dates  
12 Distributions were previously made to holders of Allowed Claims included in the applicable  
13 Class.

14 **2. Reserve of Funds for Payment of Disputed Claims.** On the Effective Date,  
15 after calculating Distributions to holders of Allowed Claims and potential Distributions to  
16 holders of Disputed Claims under the Plan, the Reorganized Debtor shall retain and set aside in  
17 a reserve fund an amount in cash sufficient to make all payments and Distributions which may  
18 be subsequently required for payment to holders of Disputed Claims. As Disputed Claims are  
19 Allowed, the Reorganized Debtor shall distribute, in accordance with the terms of the Plan,  
20 Cash to holders of Allowed Claims, and the reserve fund shall be adjusted. The Reorganized  
21 Debtor may (but is not required to) request estimation for any Disputed Claim that is contingent  
22 or unliquidated

23 **3. Limits on Distributions.** Notwithstanding anything in the applicable holder's  
24 Proof of Claim or otherwise to the contrary, the holder of a Claim shall not be entitled to receive  
25 or recover a Distribution under the Plan on account of a Claim in excess of: (a) the amount  
26 stated in the holder's Proof of Claim, if any, as of the Distribution Record Date, plus interest

1 thereon to the extent provided for by the Plan; (b) if the Claim is denominated as contingent or  
2 unliquidated as of the Distribution Record Date, the amount identified on Debtors' Schedules  
3 for such Claim, or such other amount as may be estimated by the Bankruptcy Court prior to the  
4 Confirmation Hearing; or (c) if a Claim has been estimated, the amount reserved to satisfy such  
5 Claim after such estimation.

6 **4. Postpetition Management.** The postpetition management of the Reorganized  
7 Debtor as of the Effective Date shall be as set out in the organizational chart. (See Exhibit I,  
8 attached hereto).

9 **D. Administration Pending Effective Date.** Before the Effective Date, the Debtors  
10 will continue to operate their businesses, subject to all applicable requirements of the  
11 Bankruptcy Code and the Bankruptcy Rules. After the Effective Date, Reorganized Debtor  
12 may operate its business, and may use, acquire, and dispose of property free of any restrictions  
13 of the Bankruptcy Code or the Bankruptcy Rules, but subject to the continuing jurisdiction of  
14 the Bankruptcy Court as set forth in Article 12.

15 **E. Post-Confirmation Fees; Final Decree.** Reorganized Debtor is to be responsible  
16 for paying any post-confirmation fees under 28 U.S.C. § 1930(a)(6) and the filing of  
17 post-confirmation reports, until a final decree is entered. A final decree is to be entered as soon  
18 as practicable after distributions have commenced under the Plan.

19 **F. Payments Effective on Tender.** Whenever the Plan requires a payment to be  
20 made, such payment will be deemed made and effective upon tender thereof by the  
21 Reorganized Debtor to the Creditor to which payment is due. Such tender will be effective  
22 when and if made in Cash. If any Creditor refuses a tender, the amount tendered and refused  
23 will be held by the Reorganized Debtor for the benefit of that Creditor pending final  
24 adjudication of the dispute. However, when and if the dispute is finally adjudicated and the  
25 Creditor receives the funds previously tendered and refused, the Creditor will be obliged to  
26 apply the funds in accordance with the Plan as of the date of the tender; and while a dispute is

1 pending and after adjudication thereof, the Creditor will not have the right to claim interest or  
2 other charges or to exercise any other right which would be enforceable by the Creditor if the  
3 Debtor failed to pay the tendered payment.

4 **G. Effectuating Documents; Further Transactions; Timing.** The Debtors are  
5 authorized and directed to execute, deliver, file, or record such contracts, instruments,  
6 releases, and other agreements or documents, and to take such actions as may be necessary or  
7 appropriate to effectuate and further evidence the terms and conditions of the Plan, the Plan  
8 Supplement, and any securities issued in accordance with the Plan. All transactions required  
9 to occur on the Effective Date under the terms of the Plan will be deemed to have occurred  
10 simultaneously.

## 11 **VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

12 **A. Assumption or Rejection of Executory Contracts and Unexpired Leases.** All  
13 executory contracts and unexpired leases between Debtors and any Person are dealt with in the  
14 following manner:

15 **1. Assumption of Executory Contracts and Unexpired Leases.** All  
16 executory contracts and unexpired leases set forth on the schedule of assumed executory  
17 contracts and unexpired leases filed with the Bankruptcy Court as part of **Exhibit K** to the Plan  
18 will be deemed assumed as of the Effective Date. The Debtors reserve the right to amend the  
19 list of assumed or rejected contracts and to assume any executory contracts and unexpired  
20 leases of the Debtors by appending a schedule of assumed and rejected executory contracts  
21 and unexpired leases as part of **Exhibit K** to the Plan no later than ten (10) days before the  
22 deadline for voting on the Plan. Any such appended schedule shall include the cure amount as  
23 to each executory contract or unexpired lease to be assumed. The Debtor will, pursuant to the  
24 provisions of §§1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code, file with the  
25 Bankruptcy Court and serve by first class mail on each non-debtor party to such executory  
26 contract or unexpired lease, a notice (“Assumption Notice”), which will list the cure amount

1 as to each executory contract or unexpired lease to be assumed. The parties to such executory  
2 contracts or unexpired leases to be assumed or assumed and interested parties will have  
3 twenty (20) days from the date of the filing of the Assumption Notice to file and serve any  
4 objection to the assumption of any executory contract or unexpired lease or to the cure  
5 amount listed. Any such executory contracts or leases so appended to the Plan as assumed  
6 will be deemed assumed as of the Effective Date, except for any executory contract or  
7 unexpired lease: (i) that has been rejected in accordance with a Final Order entered before the  
8 Confirmation Date; or (ii) as to which a motion to reject has been filed with the Bankruptcy  
9 Court before the Confirmation Date.

10 **2. Rejection of Executory Contracts and Unexpired Leases.** All executory  
11 contracts and unexpired leases either (i) set forth on any appended schedule of rejected  
12 executory contracts and unexpired leases filed with the Bankruptcy Court as part of **Exhibit**  
13 **K** to the Plan or (ii) existing but not listed on **Exhibit K** to the Plan will be deemed rejected as  
14 of the Effective Date, except for any executory contract or unexpired lease that has been  
15 assumed or rejected in accordance with a Final Order entered on or before the Confirmation  
16 Date.

17 **B. Approval of Assumption or Rejection.** Entry of the Confirmation Order  
18 constitutes: (a) the approval under Bankruptcy Code § 365 of the assumption and assignment  
19 of the executory contracts and unexpired leases assumed and assigned under the Plan; and  
20 (b) the approval under Bankruptcy Code § 365 of the assumption and rejection of the  
21 executory contracts and unexpired leases rejected under the Plan. Notwithstanding anything  
22 contained in Article VIII(A) to the contrary, the Debtors retain the right to change the  
23 treatment (assumed or rejected) of any executory contract or unexpired lease on Exhibit K to  
24 the Plan, thus changing the treatment of the contract or lease under the Plan, at any time  
25 before the Confirmation Hearing.

26 **C. Cure of Defaults.** On the Effective Date, or as soon after that date as feasible, or

1 on another date on which the counterparty to the assumed executory contract or unexpired  
2 lease agrees, the Debtors will Cure any defaults under any executory contract or unexpired  
3 lease assumed under the Plan. Subject to the occurrence of the Effective Date, any cure  
4 amount shall be treated as an Allowed Administrative Claim under the Plan, and, upon  
5 payment of such Allowed Administrative Claim, all defaults existing as of the Confirmation  
6 Date with respect to such executory contract or unexpired lease shall be deemed cured.

7 **D. Rejection Claims Bar Date.** Any Rejection Claims must be filed with the  
8 Bankruptcy Court by the later of (a) 30 days after the Confirmation Date and (b) 30 days after  
9 the applicable executory contract or unexpired lease is rejected under the Plan. Any  
10 Rejection Claim not filed within that time will be forever barred. All Rejection Claims are  
11 Class 9 Claims under the Plan. With respect to any executory contract or unexpired lease  
12 rejected before the Confirmation Date, the deadline for filing a Rejection Claim remains the  
13 deadline set forth in the order of the Bankruptcy Court authorizing that rejection. If such an  
14 order did not contain such a deadline, the deadline for filing a Rejection Claim is 30 days after  
15 the Confirmation Date.

16 **IX. DETERMINATION OF CLAIMS.**

17 **A. Objections to Claims.** Notwithstanding the occurrence of the Effective Date, and  
18 except as to any Claim that has been Allowed before the Effective Date, the Debtors may  
19 object to the allowance of any Claim against the Debtor or seek estimation of any Claim on  
20 any grounds permitted by the Bankruptcy Code, including initiation of an Avoidance Action  
21 or Litigation Claim. All objections to Claims must be brought by filing the appropriate  
22 pleading in the Bankruptcy Court before the first Business Day that is 180 days after the  
23 Effective Date, but the Bankruptcy Court may approve a later date on the Reorganized  
24 Debtor's motion filed (but not necessarily heard) before the first Business Day that is 180  
25 days after the Effective Date.

26 **B. Contingent Claims.** Until a Contingent Claim becomes an Allowed Claim or

1 is Disallowed, the Claim will be treated as a Disputed Claim for all purposes under the Plan.  
2 The holder of a Contingent Claim will be entitled to a distribution under the Plan only when  
3 the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for  
4 reimbursement or contribution held by a Person that may be liable with the Debtor on a  
5 Claim of a Creditor is Disallowed as of the Effective Date if: (a) that Creditor's Claim is  
6 Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective  
7 Date; or (c) that Person asserts a right of subrogation to the rights of the Creditor under  
8 Bankruptcy Code § 509.

9 **C. Resolution of Administrative Claims and other Claims.** After the Effective  
10 Date, the Reorganized Debtor shall have the authority to compromise, settle, otherwise resolve,  
11 or withdraw any objection to Administrative Claims and any other Claims and to compromise,  
12 settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court,  
13 other than with respect to Administrative Claims relating to Professional Fee Claims.

14 **X. CONFIRMATION WITHOUT ACCEPTANCE BY ALL IMPAIRED CLASSES**

15 If any impaired Class is determined to have rejected the Plan in accordance with  
16 Section 1126 of the Bankruptcy Code, the Debtor may use the provisions of Section 1129(b) of  
17 the Bankruptcy Code to satisfy the requirements for Confirmation of the Plan.

18 **XI. CONDITIONS PRECEDENT**

19 **A. Conditions to Confirmation.** The following are conditions precedent to  
20 confirmation of the Plan:

21 **1. Approval of Disclosure Statement.** The Bankruptcy Court enters a  
22 Final Order approving the Disclosure Statement.

23 **2. Form of Confirmation Order.** The Bankruptcy Court enters the  
24 Confirmation Order in form and substance reasonably acceptable to the Debtors. If the  
25 Debtors are unable to reach an agreement with any party regarding the form and substance  
26 of the Confirmation Order, the Bankruptcy Court will resolve all such disputes.

1           **3. Substance of Confirmation Order.** The Confirmation Order contains the  
2 following:

3           a. The provisions of the Confirmation Order are non-severable and  
4 mutually dependent;

5           b. Approval of the Plan's assumption or rejection of all executory  
6 contracts and unexpired leases;

7           c. The Debtors are released and discharged from all obligations arising  
8 under all executory contracts and unexpired leases rejected during the Chapter 11 Cases or  
9 under the Plan; and

10           d. The Bankruptcy Court retains jurisdiction to the fullest extent  
11 permissible by applicable law and at least to the extent contemplated by Article 10 of the Plan.

12           **B. Conditions to Effectiveness.** The following are conditions precedent to the  
13 Effective Date:

14           1. The Confirmation Date occurs;

15           2. No request for revocation of the Confirmation Order under Bankruptcy Code  
16 § 1144 is pending;

17           3. All instruments and agreements to be issued, entered into, delivered, or filed  
18 under the Plan are issued, entered into, delivered, or filed and are effective.

19           **C. Waiver of Conditions.** The Debtors may waive any condition to  
20 confirmation or the Effective Date, in whole or in part, at any time without notice, an order of  
21 the Bankruptcy Court, or any further action other than proceeding to confirmation and  
22 consummation of the Plan.

23 **XII. PRESERVATION OF AVOIDANCE ACTIONS**

24           **A. Preservation of Avoidance Actions.** In accordance with Section 1123(b)(3) of  
25 the Bankruptcy Code, and except as otherwise expressly provided in the Plan, all Avoidance  
26 Actions are retained and reserved for the benefit of the Reorganized Debtor.



1       **B. Prosecution of Avoidance Actions.** The Reorganized Debtor will prosecute all  
2 preserved Avoidance Actions not otherwise expressly compromised in the Plan in accordance  
3 with Section 1123(b)(3)(B) of the Bankruptcy Code. The fees and costs to litigate such  
4 preserved Avoidance Actions will come from the Reorganized Debtor. Reorganized Debtor  
5 will have sole discretion to determine in its business judgment what Avoidance Actions to  
6 pursue, which to settle, and the terms and conditions of those settlements.

7       **C. Distribution of Avoidance Action Proceeds.** All monetary judgments and  
8 awards resulting from the settlement or prosecution of the preserved Avoidance Actions will  
9 be deposited into the Reorganized Debtor general operating account(s) after deduction of the  
10 reasonable and necessary fees and costs incurred by Reorganized Debtor in the prosecution  
11 and/or settlement of the preserved Avoidance Actions.

12       **D. Preservation of Insurance.** Debtors' discharge and release from Claims as  
13 provided in the Plan, except as necessary to be consistent with this Plan, do not diminish or  
14 impair the enforceability of any insurance policy that may cover Claims against the Debtors or  
15 any other Person.

16 **XIII. TITLE TO PROPERTY; INJUNCTION; THIRD PARTY RIGHTS AND**  
17 **RELEASES**

18       **A. Vesting of Assets.** Except as specifically provided in the Plan or the  
19 Confirmation Order, all property of the Estate will vest in the Reorganized Debtor on the  
20 Effective Date and, except as expressly provided for in this Plan, will be free and clear of all  
21 Liens and Claims existing before the Effective Date. From and after the Effective Date, the  
22 Reorganized Debtor may use and dispose of property free of any restrictions of the Bankruptcy  
23 Code, including the employment of, and payment to, Professionals except as otherwise  
24 provided in the Plan or the Confirmation Order. The Reorganized Debtor shall be the sole  
25 entity responsible for all Distributions to be made under the Plan.

26       **B. Injunction.** Except as provided in the Plan or the Confirmation Order, as

1 of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim that  
2 is unclassified by the Plan or that is classified by Article VI of the Plan or that is subject to a  
3 distribution under the Plan, are permanently enjoined from taking any of the following  
4 actions on account of any such Claims or rights: (a) commencing or continuing in any  
5 manner any action or other proceeding against any property to be distributed under the  
6 Plan; (b) enforcing, attaching, collecting, or recovering in any manner any judgment,  
7 award, decree, or order against any property to be distributed under the Plan; (c) creating,  
8 perfecting, or enforcing any Lien or encumbrance against any property to be distributed  
9 under the Plan; and (d) commencing or continuing any action, in any manner, in any place,  
10 that does not comply with or is inconsistent with the provisions of the Plan or the  
11 Bankruptcy Code. Nothing in this Article XIII or elsewhere in the Plan is to be construed  
12 or is to have the effect of extinguishing, prohibiting, or otherwise limiting, the right of any  
13 holder of a Claim to assert a right to setoff or recoupment arising in connection with that  
14 Claim as part of the resolution and treatment of that Claim under the Plan. Nothing in this  
15 Article XIII or elsewhere in the Plan is to be construed or is to have the effect of  
16 extinguishing, prohibiting, or otherwise limiting, the right of the Debtors to assert and  
17 prevail on any Avoidance Action or Litigation Claim. Nothing in this Article XIII or elsewhere  
18 in the Plan enjoins or otherwise precludes (or may be construed to enjoin or otherwise  
19 preclude) any party in interest from enforcing the terms of the Plan and the Confirmation  
20 Order.

21 **C. Exculpation.** The Debtors, or any of their respective directors, managers,  
22 officers, employees, partners, members, agents, representatives, accountants, financial  
23 advisors, investment bankers, or attorneys (but solely in their capacity as such) shall have or  
24 incur no liability for any claim, cause of action or other assertion of liability for any act taken  
25 or omitted to be taken since the Petition Date in connection with, or arising out of, the  
26 Chapter 11 Cases, the formulation, dissemination, confirmation, consummation, or

1 administration of this Plan, property to be distributed under this Plan, or any other act or  
2 omission in connection with the Chapter 11 Cases, this Plan, the Disclosure Statement, or  
3 any contract, instrument, document or other agreement related thereto; provided, however,  
4 that the foregoing shall not affect the liability of any person that would otherwise result from  
5 any such act or omission to the extent such act or omission is determined by a Final Order to  
6 have constituted willful misconduct, gross negligence, actual fraud, or criminal conduct, or  
7 intentional unauthorized misuse of confidential information that causes damages.

8 **D. Releases by Holders of Claims and Equity Interests.** Effective as of the  
9 Confirmation Date, but subject to the occurrence of the Effective Date, and in consideration of  
10 the services provided to the Debtors by the present and former directors, managers, officers,  
11 employees, affiliates, agents, financial advisors, attorneys, and representatives of the Debtors  
12 who acted in such capacities after the Petition Date, (1) each holder of a Claim or Equity  
13 Interest that votes to accept the Plan (or is deemed to accept the Plan) and (2) to the fullest  
14 extent possible under applicable law, as such law may be extended or integrated after the  
15 Effective Date, each holder of a Claim or Equity Interest that does not vote to accept the Plan,  
16 (collectively, the “Releasing Parties” and each a “Releasing Party”) shall release,  
17 unconditionally and forever, the Debtors and each of their respective present and former  
18 members, officers, directors, managers, agents, financial advisors, attorneys, employees,  
19 equity holders, parent corporations, subsidiaries, partners, affiliates, and representatives from  
20 any and all claims or causes of action that exist as of the Effective Date and arise from or relate  
21 to, in any manner, in whole or in part, the operation of the business of the Debtors, the subject  
22 matter of, or the transaction or event giving rise to, the Claim or Equity Interest of such holder,  
23 the business or contractual arrangements between any Debtors or such holder, any  
24 restructuring of such claim or equity prior to the Commencement Date, or any act, omission,  
25 occurrence, or event in any manner related to such subject matter, transaction or obligation, or  
26 occurring or existing on property owned by the Debtor, or arising out of the Chapter 11 Cases,

1 including, but not limited to, the pursuit of confirmation of the Plan, the consummation  
2 thereof, the administration thereof, or the property to be distributed thereunder; provided, that  
3 the foregoing shall not operate as a waiver or release from any causes of action arising out of  
4 the willful misconduct, gross negligence, actual fraud, criminal conduct, or intentional  
5 unauthorized misuse of confidential information that causes damages of any such Person or  
6 Entity.

7 **E. Reservation of Rights.** Nothing contained in the Plan or the Confirmation Order  
8 shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff,  
9 or other legal or equitable defense that the Debtors had immediately prior to the  
10 Commencement Date, against or with respect to any Claim. The Reorganized Debtor shall  
11 have, retained, reserved, and be entitled to assert all such claims, causes of action, rights of  
12 setoff, and other legal or equitable defenses that the Debtors had immediately prior to the  
13 Commencement Date as fully as if the Chapter 11 Cases had not been commenced, and all of  
14 the Debtors' legal and equitable rights respecting any Claim may be asserted after the  
15 Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

16 **XIV. RETENTION OF JURISDICTION**

17 **A. Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the  
18 occurrence of the Effective Date, the Bankruptcy Court will retain as much jurisdiction over  
19 the Chapter 11 Case after the Effective Date as legally permissible, including jurisdiction to:

20 1. Allow, disallow, determine, liquidate, classify, estimate, or establish the  
21 amount, priority, or secured or unsecured status of any Claim, and resolve any request for  
22 payment of any Administrative Claim and any objection to the Allowance or priority of any  
23 Claim;

24 2. Grant or deny any applications for allowance of compensation or  
25 reimbursement of expenses authorized under the Bankruptcy Code or the Plan;

1           3.    Resolve any matters related to the assumption or rejection of any executory  
2 contract or unexpired lease to which the Debtors are a party and to hear, determine and, if  
3 necessary, liquidate any Claims arising from such rejection;

4           4.    Ensure that distributions required under the Plan are accomplished in  
5 accordance with the Plan;

6           5.    Decide or resolve any motions, adversary proceedings, contested matters,  
7 and any other matters and grant or deny any applications or motions involving the Debtors  
8 that may be pending on the Effective Date;

9           6.    Enter any necessary or appropriate orders to implement or consummate  
10 the Plan's provisions and all contracts, instruments, releases, and other agreements or  
11 documents created in connection with the Plan or the Disclosure Statement;

12           7.    Resolve any cases, controversies, suits, or disputes that may arise in  
13 connection with the consummation, interpretation, or enforcement of the Plan, or any  
14 Person's obligations incurred in connection with the Plan;

15           8.    Hear and determine any motion or application to modify the Plan before or  
16 after the Effective Date under Bankruptcy Code § 1127 or modify the Disclosure Statement  
17 or any contract, instrument, release, or other agreement or document issued, entered into,  
18 filed, or delivered in connection with the Plan or the Disclosure Statement; or hear or  
19 determine any motion or application to remedy any defect or omission or reconcile any  
20 inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, or any  
21 contract, instrument, release, or other agreement or document issued, entered into, filed or  
22 delivered in connection with the Plan or the Disclosure Statement, in such manner as may be  
23 necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy  
24 Code;

1           9. Issue injunctions, enter and implement other orders, or take any other  
2 necessary or appropriate actions to restrain any entity's interference with consummation or  
3 enforcement of the Plan;

4           10. Enter and implement any necessary or appropriate orders if the  
5 Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

6           11. Determine any other matters that may arise in connection with or related to  
7 the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument,  
8 release, or other agreement or document issued, entered into, filed, or delivered in connection  
9 with the Plan, the Disclosure Statement or the Confirmation Order;

10           12. Issue a final decree and enter an order closing the Chapter 11 Case; and

11           13. Adjudicate the Disputed Claims, and Avoidance Actions and Litigation  
12 Claims and any other cause of action or claims of the Estate, if any.

13 **XV. AMENDMENT AND WITHDRAWAL OF PLAN**

14           **A. Amendment of Plan.** At any time before the Confirmation Date, the Debtors  
15 may alter, amend, or modify the Plan, or any of its attached Exhibits, under Bankruptcy Code  
16 § 1127(a) as long as doing so does not materially and adversely affect the treatment and  
17 rights of the holders of Claims and Equity Interests under the Plan. After the Confirmation  
18 Date but before substantial consummation of the Plan as defined in Bankruptcy Code §  
19 1101(2), the Reorganized Debtor may, under Bankruptcy Code § 1127(b), institute  
20 proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any  
21 inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and any  
22 matters necessary to carry out the purposes and effects of the Plan as long as such  
23 proceedings do not materially and adversely affect the treatment of holders of Claims or  
24 Equity Interests under the Plan. The Reorganized Debtor must serve prior notice of such  
25 proceedings in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy  
26 Court.

1       **B. Revocation or Withdrawal of Plan.** The Debtors may revoke or withdraw the  
2 Plan at any time before the Confirmation Date. If withdrawn or revoked, the Plan is void and  
3 nothing contained in the Plan may be deemed a waiver of any Claims by or against the  
4 Debtors or any other Person in any further proceedings involving the Debtor or an admission  
5 of any sort, and the Plan and any transaction contemplated by the Plan may not be admitted  
6 into evidence in any proceeding.

7       **XVI. EFFECTS OF CONFIRMATION**

8       Except as otherwise provided in the Plan or the Confirmation Order, Confirmation  
9 acts as a Discharge, effective as of Confirmation, of any and all debts of the Debtor that arose  
10 any time before the entry of the Confirmation Order including, but not limited to, all principal  
11 and all interest accrued thereon, pursuant to §1141(d)(1) of the Bankruptcy Code. The  
12 Discharge shall be effective as to each Claim, regardless of whether a Proof of Claim thereon  
13 was filed, whether the Claim is an Allowed Claim, or whether the Holder thereof votes to  
14 accept the Plan.

15       **XVII. LIQUIDATION ANALYSIS**

16       See attached Exhibit M.

17       **XVIII. TAX CONSEQUENCES**

18       Pursuant to §1125(a)(1) of the Bankruptcy Code, the Debtors are to provide a  
19 discussion of the potential material tax consequences of the Plan to the Debtors, any successor  
20 to the Debtors, and a hypothetical investor typical of the holders of claims or interests in the  
21 case, that would enable such a hypothetical investor of the relevant Class to make an informed  
22 judgment about the Plan. However, the Debtors need not include such information about any  
23 other possible or proposed plan. In determining whether the Disclosure Statement provides  
24 adequate information, the Court shall consider the complexity of the case, the benefit of  
25 additional information to creditors and other parties in interest, and the cost of providing  
26 additional information.

1 The following discussion summarizes certain considerations that may affect the  
2 anticipated federal income tax consequences of the Plan's implementation to Creditors and to  
3 the Debtors. It does not address all federal income tax consequences of the Plan nor does it  
4 address the state or local income tax or other state or local tax consequences of the Plan's  
5 implementation to Creditors or to the Debtors.

6 This description of the federal income tax consequences of implementing the Plan is  
7 based on Debtors' interpretation of the applicable provisions of the Internal Revenue Code of  
8 1986, as amended (the "IRC"), the regulations promulgated thereunder, and other relevant  
9 authority. Debtors' interpretation, however, is not binding on the IRS or any court. The  
10 Debtors have not obtained, nor does it intend to obtain, a private letter ruling from the IRS, nor  
11 have the Debtors obtained an opinion of counsel with respect to any of these matters. The  
12 discussion below is general in nature and is not directed to the specific tax situation of any  
13 particular interested taxpayer. **For these reasons, all Creditors and Interest Holders**  
14 **should consult with their own tax advisors as to the tax consequences of implementation**  
15 **of the Plan to them under applicable federal, state, and local tax laws.**

16 **A. Tax Consequences to the Debtors.**

17 In general, the amount of any debt of a business entity that is partially or totally  
18 discharged pursuant to a Title 11 bankruptcy case is excluded from gross income. Generally,  
19 the amount of debt discharge income ("DDI") that is excluded from gross income must be  
20 applied to reduce the tax attributes of the Debtors. The Debtors' tax attributes are reduced in  
21 the following order: (1) net operating losses ("NOLs"); (2) general business credits; (3)  
22 minimum tax credit; (4) capital loss carryovers; (5) reduction in tax basis of the Debtors'  
23 property; (6) passive/activity loss and credit carryovers; and (7) foreign tax credit carryovers.  
24 The Debtors may elect to apply the debt discharge exclusion first to depreciable property and  
25 thereafter to the tax attributes in the above prescribed order.

26 **B. Tax Consequences to the Secured and Unsecured Creditors.**



Both the Secured Claimants and/or the Unsecured Claimants may be required to report income or be entitled to a deduction as a result of implementation of the Plan. The exact tax treatment depends on, among other things, each Claimant's method of accounting, the nature of each Claimant's claim, and whether and to what extent such Claimant has taken a bad debt deduction in prior taxable years with respect to the particular debt owed to it by the Debtors. **Each Holder of a secured claim or an unsecured claim is urged to consult with his, her, or its own tax advisor regarding the particular tax consequences of the treatment of his, her, or its claim under the Plan.**

**C. Tax Consequences to the Interest Holders.**

Each Interest Holder of the Debtors is urged to consult with his, her, or its own tax advisor regarding the particular tax consequences of the treatment of his, her, or its interest under the Plan.

**XIX. OBJECTIONS TO AND ESTIMATIONS OF CLAIMS**

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

As soon as practicable, but in no event later than 60 days after the Effective Date, objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each of the Claims to which objections are made pursuant to the Bankruptcy Code and the Bankruptcy Rules. Objections filed after such date will be barred.

**B. Settlement of Claims.**

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

**C. Estimation of Claims.**

1 For purposes of making distributions provided for under the Plan, all Claims  
2 objected to shall be estimated by the Reorganized Debtor at an amount equal to (i) the amount,  
3 if any, determined by the Court pursuant to §502(c) of the Bankruptcy Code as an estimate for  
4 distribution purposes (ii) an amount agreed to between the Debtor and the Claimant; or, (iii)  
5 that amount set forth as an estimate in the Plan or Disclosure Statement. Notwithstanding  
6 anything herein to the contrary, no distributions shall be made on account of any Claim until  
7 such Claim is an Allowed Claim.

8 **D. Unclaimed Funds and Interest.**

9 Distribution to Claimants shall be mailed by the Reorganized Debtor to the  
10 Claimants at the address appearing on the master mailing matrix unless the Claimant provides  
11 the Reorganized Debtor with an alternative address. After a period of one year from the date  
12 that a distribution was made by the disbursing agent but has gone uncollected by the Claimant,  
13 the disbursing agent shall retain any distributions otherwise distributable hereunder which  
14 remain unclaimed or as to which the disbursing agent has not received documents required  
15 pursuant to the Plan. Thereafter, the unclaimed funds shall revert in the Reorganized Debtor.

16 **XX. NON-ALLOWANCE OF PENALTIES AND FINES**

17 No distribution shall be made under the Plan on account of, and no Allowed Claim,  
18 whether Secured, Unsecured, Administrative, or Priority, shall include any fine, penalty,  
19 exemplary or punitive damages, late charges, default interest or other monetary charges  
20 relating to or arising from any default or breach by the Reorganized Debtor, and any Claim on  
21 account thereof shall be deemed Disallowed, whether or not an objection was filed to it.

22 **XXI. CLOSING OF CASE**

23 If the Court does not close these cases on its own motion, the Reorganized Debtor  
24 will move the Court to close the case once the Plan is deemed substantially consummated.  
25 Until substantial consummation, the Reorganized Debtor will be responsible for filing pre- and  
26 postconfirmation reports required by the United States Trustee and paying the quarterly

1 postconfirmation fees of the United States Trustee, in cash, pursuant to 28 U.S.C. §1930, as  
2 amended. Pursuant to 11 U.S.C. §1129(a)(12), all fees payable under Section 1930 of Title 28,  
3 as determined by the Court at the hearing on confirmation of the Plan, will be paid, in cash, on  
4 the Effective Date.

5 **XXII. MODIFICATION OF THE PLAN**

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

14 **XXIII. JURISDICTION OF THE COURT**

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

17 1. The classification of the Claims of any Creditors and the re-examination of  
18 any Claims which have been allowed for the purposes of voting, and for the determination of  
19 such objections as may be filed to the Creditor's Claims. The failure by the Reorganized  
20 Debtor to object to or examine any Claim for the purpose of voting shall not be deemed to be a  
21 waiver of the Reorganized Debtor's rights to object to or to re-examine the Claim in whole or  
22 in part.

23 2. To determine any Claims which are disputed by the Reorganized Debtor,  
24 whether such objections are filed before or after Confirmation, to estimate any Unliquidated or  
25 Contingent Claims pursuant to 11 U.S.C. § 502(c)(1) upon request of the Debtors or  
26 Reorganized Debtor any holder of a Contingent or Un-liquidated Claim, and to make

determination on any objection to such Claim.

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

4. The correction of any defect, the curing of any omission or any reconciliation of any inconsistencies in the Plan, or the Confirmation Order, as may be necessary to carry out the purposes and intent of the Plan.

5. The modification of the Plan after Confirmation, pursuant to the Bankruptcy Rules and the Bankruptcy Code.

6. To enforce and interpret the terms and conditions of the Plan.

7. The entry of an order, including injunctions, necessary to enforce the title, rights and powers of the Reorganized Debtor, and to impose such limitations, restrictions, terms and conditions of such title, right and power that this Court may deem necessary.

8. The entry of an order concluding and terminating this case.

#### **XXIV. RETENTION AND ENFORCEMENT OF CLAIMS**

Pursuant to §1123(b)(3) of the Bankruptcy Code, the Reorganized Debtor shall retain and may enforce any and all claims of the Debtors, except those claims specifically waived herein. Any retained causes of action include, but are not limited to, all avoidance actions, fraudulent conveyance actions, preference actions, and other claims and causes of action of every kind and nature whatsoever, arising before the Effective Date which have not been resolved or disposed of prior to the Effective Date, whether or not such claims or causes of action are specifically identified in the Disclosure Statement.

Any recovery obtained from retained causes of action shall become an additional asset of the Reorganized Debtor, unless otherwise ordered by the Court, and shall be available

1 for distribution in accordance with the terms of the Plan.

2 **XXV. EXECUTORY CONTRACTS**

3 The treatment of Debtors' executory contracts is set out, *infra*, in Exhibit K.  
4 Debtors incorporate herein by this reference that treatment and the procedure as set out in  
5 Article VIII, above.

6 **XXVI. REVESTING**

7 Except as provided for in the Plan or in the Confirmation Order, on the Effective  
8 Date the Reorganized Debtor shall be vested with all the property of the Estate free and clear  
9 of all claims, liens, charges, and other interests of Creditors, arising prior to the Effective Date.  
10 Upon the Effective Date, the Reorganized Debtor shall operate its business free of any  
11 restrictions.

12 **XXVII. DISCLAIMER**

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

17 **XXVIII. RISKS**

18 The risk of the Plan depends on the Reorganized Debtor successfully continuing in  
19 its business operations at levels and at rates sufficient to generate revenues to satisfy the Plan  
20 payments required and as described in Article VI of this Disclosure Statement. Based on  
21 Debtors' thorough and careful review and analysis of their operations and projected future  
22 performance, Debtors submit that the long term prospects of this Plan, however, are favorable.  
23 Debtors contend that the Plan represents the best means for Creditors to recover on their  
24 Claims.

25 **XXIX. MISCELLANEOUS.**

26 **A. Effecting Documents; Further Transactions; Timing.**

1 The Reorganized Debtor is authorized and directed as of the Effective Date, without  
2 further order of the Bankruptcy Court, to execute, deliver, file, or record all contracts,  
3 instruments, releases, and other agreements or documents, and to take all actions necessary  
4 or appropriate to effect and further evidence the terms of the Plan. All transactions required  
5 to occur on the Effective Date under the terms of the Plan are deemed to have occurred  
6 simultaneously.

7 **B. Exemption From Transfer Taxes.**

8 Under Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and  
9 exchange of assets or property of the Estate; (b) the execution, assignment, modification,  
10 or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or  
11 other instrument of transfer under, in furtherance of, or in connection with, the Plan, the  
12 Confirmation Order, or any transaction contemplated above, or any transactions arising  
13 out of, contemplated by, or in any way related to, the foregoing are not subject to any  
14 document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax,  
15 or real estate transfer tax, or other similar tax or governmental assessment and the appropriate  
16 state or local government officials or agents are directed to forego the collection of any such  
17 tax or assessment and to accept for filing or recordation any of the foregoing instruments  
18 or other documents without the payment of any such tax or assessment.

19 **C. Binding Effect.**

20 The Plan is binding on, and inures to the benefit of, the Debtors and the holders of all  
21 Claims and Equity Interests and their respective successors and assigns.

22 **D. Substantial Consummation.**

23 On the Effective Date, this Plan shall be deemed substantially consummated under  
24 §§ 1101 and 1127(b) of the Bankruptcy Code on the Effective Date.

25 **E. Governing Law.**

26 Except to the extent that the Bankruptcy Code or other federal law is applicable or as

1 provided in any document entered into in connection with the Plan, the rights, duties and  
2 obligations of any Person arising under the Plan are governed by, and construed and enforced  
3 in accordance with, the internal laws of the State of Arizona, without giving effect to Arizona's  
4 choice of law provisions.

5 **F. Compromises and Settlements of Claims after Confirmation.**

6 After Confirmation, but prior to the Effective Date, pursuant to Rule 9019, the Debtors  
7 may compromise and settle various Claims against it and/or claims that it may have against  
8 others. Following the occurrence of the Effective Date, the Reorganized Debtor, in its sole  
9 discretion, may compromise and settle Claims against the Estate, as well as any claims that the  
10 Estate may have against others, without Bankruptcy Court approval.

11 **G. Modification of Treatment of Claims.**

12 The Reorganized Debtor reserves the right to modify the treatment of any Allowed  
13 Claim in any manner adverse only to the holder of that Claim at any time after the Effective  
14 Date on that holder's prior written consent.

15 **H. Setoffs and Recoupment.**

16 The Reorganized Debtor may, but is not required to, set off or recoup against any  
17 Claim and the payments or other distributions to be made under the Plan in respect of such  
18 Claim, Claims of any nature that arose before the Petition Date that the Estate may have  
19 against the holder of such Claim to the extent such Claims may be set off or recouped under  
20 applicable law, but neither the failure to do so nor the fact of any Claim under the Plan  
21 becoming Allowed constitutes a waiver or release by the Estate of any such claim that it may  
22 have against such holder.

23 **I. Notices.**

24 Any notice required or permitted to be provided under the Plan must be in writing  
25 and served by certified return-receipt-requested U.S. mail, hand delivery, overnight courier, or  
26 read-receipt-enabled e-mail to:

1 To the Debtors: Phoenix Manufacturing Partners, LLC  
2 2350 W. Shangri La Road  
Phoenix, AZ 85029

3 To the Reorganized Debtor: JJPS, LLC, dba Joined Alloys  
4 2350 W. Shangri La Road  
Phoenix, AZ 85029

5 To the Attorneys for the Debtors/  
6 Reorganized Debtor: Bradley J. Stevens  
Jennings Strouss & Salmon  
7 One East Washington Street  
Suite 1900  
8 Phoenix, AZ 85004-2554

9 To UMB Bank, N.A.: UMB Bank, N.A.  
10 Post Office Box 419226  
Kansas City, MO 64141-6226

11 To Attorneys for UMB Bank, N.A. Hilary L. Barnes, Esq.  
12 Allen Barnes & Jones, PLC  
13 1850 North Central Avenue, Suite 1150  
Phoenix, AZ 85004

14 **J. Delivery of Notices.**

15 If personally delivered, notice is deemed delivered on actual receipt; if e-mailed  
16 in accordance with the Plan, notice is deemed delivered noon of the first Business Day  
17 following transmission; if sent by overnight courier in accordance with the Plan, notice is  
18 deemed delivered noon of the first Business Day following deposit with such courier; and if  
19 sent by U.S. mail in accordance with the Plan, notice is deemed delivered as of the date of  
20 delivery indicated on the receipt issued by the relevant postal service; or, if the addressee fails  
21 or refuses to accept delivery, as of the date of that failure or refusal. Any party to the Plan may  
22 change its address for the purposes of the Plan by giving notice of the change.

23 **K. Severability.**

24 If the Bankruptcy Court finds the Plan or any provision of the Plan to be invalid,  
25 illegal or unenforceable, or if the Bankruptcy Court cannot confirm the Plan under  
26 Bankruptcy Code § 1129, the Bankruptcy Court, at the Debtors' request, may retain the



1 power to alter and interpret the Plan or any such provision to make it valid or enforceable to  
2 the maximum extent feasible, consistent with the original purpose of the provision held to be  
3 invalid or unenforceable, and such provision will then become applicable as altered or  
4 interpreted. The Confirmation Order constitutes a judicial determination and provides that  
5 each term and provision of the Plan, as it may have been altered or interpreted in accordance  
6 with the foregoing, is valid and enforceable.

7 **L. Plan Documents.**

8 Notwithstanding anything to the contrary contained in the Plan, including  
9 any reference in the Plan to documents in the forms annexed to the Plan as exhibits, the  
10 Debtors may revise any such document by filing the revised document with the Bankruptcy  
11 Court at least five days before the deadline for voting on the Plan, or with the written consent  
12 of all parties in interest that are entitled to vote on the Plan and are materially and adversely  
13 affected by the revision.

14 **M. Inconsistency.**

15 If any inconsistency between the Plan and the Disclosure Statement exists, the  
16 Plan governs. If any inconsistency between the Plan and any document promulgated under  
17 the Plan exists, the document governs.

18 **N. Subordination.**

19 The distributions under the Plan take into account the relative priority of each  
20 Claim in connection with any contractual subordination provisions relating to such Claim.  
21 Accordingly, distributions under the Plan are not and may not be subject to levy,  
22 garnishment, attachment, or other legal process by any holder of a Claim or Equity Interest  
23 purporting to be entitled to the benefits of such contractual subordination, and all such holders  
24 are deemed to have waived all contractual subordination rights they otherwise may have had.

25 **O. Withholding and Reporting Requirements.**

26 In connection with the Plan and all instruments issued in connection with the

1 Plan, the Debtors must comply with all withholding and reporting requirements imposed by  
2 any federal, state, local, or foreign taxing authority, and all distributions under the Plan remain  
3 subject to any such withholding and reporting requirements. The Debtors may take all  
4 actions necessary to comply with such withholding and reporting requirements.  
5 Notwithstanding any other provision of the Plan, each holder of an Allowed Claim that has  
6 received a distribution under the Plan has sole and exclusive responsibility for the  
7 satisfaction or payment of any tax obligation imposed by any governmental unit,  
8 including income, withholding, and other tax obligation on account of such distribution.

9 **P. Post-Effective Date Fees; Final Decree.**

10 The Reorganized Debtor will be responsible for paying any post-Effective Date  
11 fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy  
12 Court enters a final decree, which will be as soon as feasible after distributions under the Plan  
13 have commenced. Notice of application for a final decree need be given only to those  
14 holders of Claims and Equity Interests and other parties that, after the Effective Date,  
15 specifically request such notice.

16 **Q. De Minimis Distributions.**

17 No distributions of less than \$10 will be made on account of any Claim. An  
18 Allowed Claim remains eligible for distributions on the first date set for distributions when  
19 such distribution exceeds \$10.

20 **R. Delivery of Distributions; Undeliverable Distributions.**

21 Distributions to a holder of an Allowed Claim will be made: (a) to the address  
22 set forth on the holder's proof of claim, the Schedules, or, if no proof of claim is filed and the  
23 holder does not appear on the Schedules, the holder's last known address; or (b) to the  
24 address set forth in any written notice of address change delivered to the Reorganized  
25 Debtor. If any holder's distribution is returned as undeliverable, no further distributions to  
26 that holder will be made unless and until the Reorganized Debtor is notified of the

holder's then-current address. Claims held by a holder whose distributions are returned as undeliverable and who fails to notify the Reorganized Debtor of its correct address within 90 days after the distributions are returned to the Reorganized Debtor as undeliverable will be expunged, after which all unclaimed property will revert to the Reorganized Debtor free of any restrictions. Claims in respect of void checks and the underlying distributions are forever barred against the Reorganized Debtor, or their respective property, notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan requires the Reorganized Debtor to attempt to locate any holder of an Allowed Claim.

**S. Failure to Negotiate Checks.**

Checks issued in respect of distributions under the Plan are void if not negotiated within 120 days after issuance. Any amounts returned to the Reorganized Debtor in respect of a non-negotiated check will be held by the Reorganized Debtor. Requests for reissuance of any such check must be made directly to the Reorganized Debtor by the holder of the Allowed Claim with respect to which such check originally was issued. All amounts represented by any voided check will be held until the later of six months after the Effective Date and six months after the voided check was issued, and all requests for reissuance by the holder of the Allowed Claim in respect of the voided check must be made before that date. Thereafter, all such amounts revert in the Reorganized Debtor free of any restriction. All Claims in respect of void checks and the underlying distributions are forever barred against the Reorganized Debtor, or their respective property, notwithstanding any federal or state escheat laws to the contrary.

**XXX. PROPONENT'S RECOMMENDATION/ALTERNATIVES TO THE PLAN.**

The Debtors recommend that all creditors entitled to vote for the Plan do so and that they vote in favor of the Plan. The alternatives to confirmation of the Plan would be either conversion of this case to a case under Chapter 7 of the Bankruptcy Code or its dismissal, which would result in the demise of the Debtors' businesses and creditors receiving nothing on

1 account of their claims.

2 If the case were converted, the result would be the appointment of a Chapter 7  
3 trustee and, most likely, the hiring of an attorney by the trustee. Expenses incurred in  
4 administering the Chapter 7 case would take priority in the right to payment over allowed,  
5 administrative expenses incurred in the Chapter 11 case. Both Chapter 7 and Chapter 11  
6 administrative expenses take priority over the payment of unsecured claims without priority.  
7 In other words, conversion would likely decrease the net amount available to pay currently  
8 existing Creditors. The most likely effect of conversion of the case to a Chapter 7 would be a  
9 termination of all of Debtors' business operations and, as a result, Creditors would receive  
10 nothing.

11 For all these reasons, the Debtors urge all creditors to vote to accept the Plan and to  
12 return ballots promptly for timely processing and computation.

13 RESPECTFULLY SUBMITTED this 30th day of November, 2016.

14 JENNINGS, STROUSS & SALMON, P.L.C.

15  
16  
17 By: /s/ Bradley J. Stevens  
18 Bradley J. Stevens  
19 *Attorneys for Debtor*  
20  
21  
22  
23  
24  
25  
26

