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10 IN THE UNITED STATES BANKRUPTCY COURT

11 FOR THE DISTRICT OF ARIZONA

13 In re:

Chapter 11

14 PALMER FARMS, INCORPORATED
(ITIN xx-xxx3842)

No. 4:16-bk-10202-BMW

No. 4:16-bk-10203-BMW

15 PALMER CATTLE, LLC
(ITIN xx-xxx4592)

No. 4:16-bk-10206-BMW

17 MARCO DUANE PALMER
(xxx-xx-6074) and
18 ELENA PAVLOVNA PALMER
(xxx-xx-3257),

19 Debtors.

20 Address: PO Box 736, Thatcher, AZ 85552

21 This Filing Applies to:

22 All Debtors

23 Specified Debtor(s)

24 **DEBTORS' DISCLOSURE STATEMENT**
25 **IN SUPPORT OF JOINT**
26 **PLAN OF REORGANIZATION**
DATED JANUARY 2017

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1 **I. INTRODUCTION AND REPRESENTATIONS**

2 ***A. Introduction***

3 The Debtors propose this Disclosure Statement in Support of the Joint Plan of
4 Reorganization Dated January 2017 (the “Disclosure Statement”). The Debtors are:

- 5 • Palmer Farms, Incorporated (“Palmer Farms”), an Arizona corporation,
6 the Debtor in possession in Chapter 11 case number 4:16-bk- 10202-
7 BMW;
- 8 • Palmer Cattle (“Palmer Cattle”), an Arizona limited liability company,
9 the Debtor in possession in Chapter 11 case number 4:16-bk- 10203-
BMW; and
- 10 • Marco and Elena Palmer (“Marco and Elena”), individuals residing in
11 Graham County, Arizona and Debtors in possession in Chapter 11 case
12 number 4:16-bk- 10206-BMW.

13 The two entities and the individuals are referred to as the “Debtors.” The Debtors are
14 disseminating this Disclosure Statement to their creditors for the purpose of soliciting
15 acceptance of the Plan.

16 The Debtors believe this Disclosure Statement contains information that is material,
17 important, and necessary for creditors to arrive at an informed decision in exercising their
18 right to vote for acceptance of the Plan. This Disclosure Statement is being disseminated in
19 conjunction with the Joint Plan of Reorganization dated January 2017 (the “Plan”) proposed
20 by the Debtors.

21 The United States Bankruptcy Court for the District of Arizona (“the Bankruptcy
22 Court” or the “Court”) has set a hearing on confirmation of the Plan in the U.S. Bankruptcy
23 Court, Courtroom 446, 38 S. Scott Ave., Tucson, Arizona. The time and date of the hearing
24 is set forth in the Order accompanying this Disclosure Statement. Creditors may vote on the
25 Plan by filling out and mailing the accompanying ballot in accordance with the procedure
26 provided on the ballot and the Order Approving Disclosure Statement and Fixing Time for

1 Filing Acceptance or Rejection of Plan, Combined with Notice Thereof, so that it is received
2 by the deadline set forth in the Court's Order. As a creditor, your vote is important. For a
3 class of creditors' claims to accept the Plan, acceptances must be filed by at least 2/3 in
4 amount, and more than 1/2 in number of the allowed claims of each class that actually vote
5 on the Plan. Failure to vote on the Plan does not constitute either an acceptance or rejection
6 of the Plan.

7 The Debtors believe that this Disclosure Statement provides sufficient and adequate
8 information for interested parties to make an informed decision as to whether to vote in
9 favor or reject the Plan.

10 ***B. Ballot Procedures***

11 Creditors will receive an electronic or paper copy of this Disclosure Statement, the
12 Plan, an Order setting the hearing on confirmation of the Plan, and a Ballot. The Debtors
13 reserve the right to designate the correct Class if any creditor submits a Ballot that fails to
14 either identify a Class number or votes a Ballot in an incorrect class. The Debtors also
15 reserve the right to designate the treatment options afforded any creditor who submits a
16 Ballot and fails to designate any treatment option afforded that Class, but only if reasonable
17 attempts to contact the creditor to discern its intent have failed.

18 ***C. Representations***

19 NO REPRESENTATIONS CONCERNING ANY OF THESE DEBTORS OR THE
20 PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE
21 STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS TO OBTAIN YOUR
22 ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD
23 NOT BE RELIED UPON. THE INFORMATION CONTAINED HEREIN HAS NOT
24 BEEN AUDITED. THE DEBTORS ARE UNABLE TO REPRESENT THAT THE
25 INFORMATION HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH THE
26

1 INFORMATION DISCLOSED IS ACCURATE TO THE BEST OF THE DEBTORS'
2 KNOWLEDGE, INFORMATION, AND BELIEF.

3 THE BANKRUPTCY COURT HAS NOT VERIFIED THE ACCURACY OF THE
4 INFORMATION CONTAINED HEREIN, AND THE COURT'S APPROVAL OF THIS
5 DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE COURT ENDORSES OR
6 APPROVES THE PLAN, BUT ONLY THAT IF THE INFORMATION IS ACCURATE,
7 IT IS SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS TO
8 MAKE AN INFORMED DECISION WHETHER TO ACCEPT OR REJECT THE PLAN.

9 This Disclosure Statement has been prepared by the Debtors, their employees, and
10 their professionals. Please be advised that the statements made in this Disclosure Statement
11 represent the positions of the Debtors and not their creditors.

12 ***D. Defined Terms***

13 Most words or phrases in this Disclosure Statement have their usual and customary
14 meanings. Certain capitalized terms have the same meaning as defined herein, or as defined
15 in the Plan. If not otherwise defined, certain terms in this Disclosure Statement have the
16 meaning provided in the Bankruptcy Code or Bankruptcy Rules.

17 ***E. Source of Information for the Disclosure Statement***

18 This Disclosure Statement was prepared with information provided by
19 representatives of each of the Debtors and the Debtors' court appointed Bankruptcy
20 Accountant and Attorneys.

21 **II. HISTORICAL PERSPECTIVE**

22 ***A. Palmer Farms***

23 Marco and Elena Palmer are married individuals who live in Pima, Arizona. Marco
24 Palmer began farming in 1971 when he was thirteen years old.

25 Palmer Farms was established in 1992. Marco and Elena are the members of Palmer
26

1 Farms. Palmer Farms has historically farmed 1200 acres in Pima. Four hundred and ninety
2 acres are owned by Marco and Elena Palmer – 200 acres are farmable, and has multiple
3 leasehold interests in another 1000 acres surrounding this farmed land, 500 acres of which
4 has been subleased to Daniel Curley. Palmer Farms grows primarily durum wheat and
5 cotton.

6 Palmer Farms has planted 165 acres of durum wheat to be harvested and plans to
7 plant 800 acres of cotton beginning in March of 2017.

8 Palmer Farms seasonally employs 5-7 people.

9 Palmer Farms has been a successful organization since its inception, but filed
10 bankruptcy when it became cross-collateralized with Palmer Cattle and began servicing debt
11 to Palmer Cattle.

12 ***B. Palmer Cattle***

13 Palmer Cattle is an Arizona limited liability company. Marco and Elena are the only
14 members of Palmer Cattle.

15 Palmer Cattle operates a feed yard in Pima, Arizona, with a facility capacity to feed
16 up to 2,500 cattle. Due to lack of financing, Palmer Cattle has sold off and not replaced its
17 livestock. . Palmer Cattle is actively engaged with multiple parties regarding custom feeding
18 of cattle, but all negotiations contain financing contingencies.

19 The cattle facility was built in 2009 and expanded in 2013. In July 2014, Great
20 Western Bank ceased financing the Debtors purchase of cattle in part due to low commodity
21 prices. Great Western Bank swept accounts to pay financing and did not re-lend funds on
22 the open credit line. Palmer Cattle owns certain feed that is in a state of deterioration and
23 must be used to preserve any value.
24
25
26

1 **III. DEBTORS' HISTORY WITH GREAT WESTERN BANK AND EVENTS**
2 **LEADING TO CHAPTER 11 FILING**

3 The Debtors have a banking relationship with Great Western Bank that began in
4 approximately 2009.

5 That relationship deteriorated for reasons that Debtors and Great Western Bank
6 dispute. Great Western Bank obtained a Receiver over the Debtors' property, and a
7 foreclosure sale was scheduled to occur on September 6, 2016

8 The Debtors believe that they hold claims against Great Western Bank. These claims
9 arise out of the Banks financing the build-out of cattle operations, and then failing to
10 provide the operating financing that had been committed to. While commodity prices have
11 made the cattle industry difficult, the only prospect for repayment of Great Western Bank
12 for financing, and the fact upon which the Bank underwrote its loans was a continuing cattle
13 operation. Great Western Bank has refused to provide the promised cattle financing..

14 **IV. OPERATIONS DURING CHAPTER 11 CASE**

15 The Debtors have continued their farming operation since the bankruptcy filing in
16 September of 2016.

17 Marco Palmer has continued to maintain the farming operations Palmer Farms
18 harvesting the 2016 cotton crop and planting the 2017 wheat crop. The cotton farming
19 operation is currently seeking additional financing. Palmer Farms has not been able service
20 the debt of both Palmer Farms and Palmer Cattle.

21 The Debtors have arranged financing from DMK Living Trust for the planting of the
22 durum wheat crop. The Debtors are currently negotiating regarding financing for the cotton
23 crop in 2017.

24 Palmer Cattle has not operated post-petition. Palmer Cattle is negotiating with
25 multiple parties regarding cattle feeding options subject to those parties receiving financing.
26

1 The Debtors are working with Great Western Bank to establish proper adequate
2 protection payments for equipment being used in the farming operations.

3 Marco Palmer has received compensation from Palmer Farms as part of the harvest
4 budget, and Elena Palmer has received a salary from the Arizona Department of
5 Corrections. They have remained current on all post-petition obligations.

6 **V. ASSET DESCRIPTION AND VALUE**

7 **A. *Palmer Farms' Assets***

8 Palmer Farms' assets consist of leasehold interest in 200 acres leased from Marco
9 and Elena Palmer and five contiguous leases on which the Palmers plant cotton and wheat.
10 These leases do not have an independent value. Additionally, Palmer Farms owns five
11 parcels of undeveloped real property in Safford, Arizona; collectively, these parcels are
12 valued at approximately \$25,000.00.

13 Palmer Farms has an interest in certain machinery and equipment valued at
14 \$500,000.00.

15 Palmer Farms also has an interest in durum wheat that is subject to a lien by DMK
16 Living Trust.

17 Palmer Farms also has an interest in proceeds from the 2016 cotton crop currently
18 held in the Debtors' Debtor-in-Possession account subject to a lien of Great Western Bank
19 in the amount of \$307,398.97 as of January 3, 2017 with an estimated receivable of
20 \$70,000.00 still to be received from the 2016 Cotton Harvest.

21 The Palmers each use a vehicle — a 2008 GMC Yukon and a 2011 GMC Truck these
22 vehicles are owned by Palmer Farms.

23 **B. *Palmer Cattle's Assets***

24 Palmer Cattle's assets contain a leasehold interest of improved feed yard facilities
25 with Marco and Elena Palmer. The improvements to the leasehold interest have a value of
26

1 \$40,000.00. Additionally, Palmer Cattle owns a certain amount of feed with a book value of
2 \$500,000.00; however, a limited amount of the feed can be transported or liquidated. The
3 cost of liquidation of certain milo and grain has a value of \$70,000.00 before deduction for
4 transportation costs. Additionally, Palmer Cattle has 6,000 tons of silage that cannot be
5 transported for liquidation and may only be used in a cattle feeding operation.

6 ***C. Marco and Elena Palmer's Assets***

7 Marco and Elena own their primary residence located at 13189 W. Palmer Farms
8 Road, Pima, Arizona. The Palmers own 500 acres of agricultural property surrounding their
9 residence that is leased to Palmer Farms and Palmer Cattle. The Palmers own a 14% interest
10 in Glenbar Investment Group, Inc. a cotton ginning co-op – these shares are not freely
11 traded. Marco and Elena also own approximately 180 acres of unimproved land in
12 Washington State.

13
14 **VI. SCHEDULED CLAIMS**

15 The Debtors' schedules describe in detail the creditors holding secured, priority, and
16 unsecured claims. Most of the scheduled vendor claims are not disputed or unliquidated.

17 Any disputed or unliquidated claims must file a claim by the claims bar date set forth
18 in the Order Approving Disclosure Statement and setting Plan Confirmation hearing. The
19 Debtors dispute the claims of Great Western Bank, due to the Bank's refusal to provide
20 contemplated financing for operation of the cattle business.

21 As of the Petition Date, the Debtors did not owe any employees for wages outside of
22 the ordinary course of business.

23
24 ***A. Palmer Farms***

25 Palmer Farms has several secured creditors. These creditors can be divided into
26 different categories: equipment financing, property taxes, money borrowed from

1 individuals, and Great Western Bank's claim.

2 Palmer Farms has secured debt on numerous pieces of equipment that it uses in the
3 farming business.

- 4 • A tractor financed by AgDirect/Farm Credit Services for which Palmer
5 Farms still owes approximately \$11,520.72.
- 6 • Forage wagons and related equipment for silage financed by CNH
7 Capital for which Palmer Farms still owes approximately \$20,000.
- 8 • A baler and combine financed by John Deere and currently listed for
9 sale by John Deere.
- 10 • A shredder financed by NAEDA Financial for which Palmer Farms still
11 owes approximately \$9,800.
- 12 • Certain titled vehicles secured by a loan from Phil Willmeth of
13 \$150,000.00.
- 14 • Great Western Bank has a blanket lien on the equipment of Palmer
15 Farms.
- 16 • Palmer Farms also has secured debt for real property taxes. Palmer
17 Farms and the other debtors owe the Graham County Treasurer
18 approximately \$6,143.50.

19 The final category of secured debt is the claim made by Great Western Bank. Great
20 Western Bank claims a secured interest in all of Palmer Farms' assets.

21 Palmer Farms also owes some unsecured priority debt to regulatory agencies.

22 Palmer Farms also owes unsecured debt to trade vendors, service providers,
23 deficiency claims on foreclosed or returned collateral, and companies and individuals that
24 lent money.

25 ***B. Palmer Cattle***

26 Palmer Cattle's secured creditors are limited to:

- Great Western Bank on the assets of Palmer Cattle.

- 1 • A debt owed to Graham County Treasurer on property owned Palmer
2 Farms also has secured debt for real property taxes. Palmer Farms owes
3 the Graham County Treasurer approximately \$6,143.50.

4 Palmer Cattle also owes some unsecured priority debt for license fees to the Arizona
5 Department of Agriculture.

6 Palmer Cattle also owes unsecured debt to trade vendors, service providers, and
7 companies and individuals that lent money

8 ***C. Marco and Elena Palmer***

9 Marco and Elena have several secured creditors. These creditors can be divided into
10 different categories: real property loans, loans from individuals, property taxes, and Great
11 Western Bank's claim.

12 The Palmers' secured claims include:

- 13 • An \$8,000 claim on a 2011 GMC truck held by Ally Financial;
- 14 • A \$23,000 first mortgage on 13189 W. Palmer Farms Road, Pima, AZ 85543
15 held by Ditech Financial;
- 16 • A \$160,000 second mortgage on 13189 W. Palmer Farms Road, Pima, AZ
17 85543 held by Chase Bank;
- 18 • A \$150,000 third mortgage on 13189 W. Palmer Farms Road, Pima, AZ
19 85543 held by Phil Willmeth;
- 20 • Great Western Bank asserts a lien on the real property of the Palmers leased to
21 Palmer Farms and Palmer Cattle as well as two pieces of real property located
22 in Washington State.
- 23 • The real property of the Palmers leased to Palmer Farms and Palmer Cattle is
24 encumbered by \$6,143.50 owed to Graham County on which the Debtors are
25 jointly liable.

26 The Palmers have numerous debts related to the joint debtors as Marco Palmer was
27 primarily responsible for credit provided to trade creditors necessary in the maintenance of
28 operations of Palmer Cattle and Palmer Farms.

1 **VII. EVENTS SINCE THE FILING OF CHAPTER 11**

2 ***A. Case Administration***

3 The voluntary petitions for relief under Chapter 11 of the Bankruptcy Code were
4 filed on September 2, 2016. After obtaining an extension from the Bankruptcy Court, the
5 Debtors' required schedules and statement of financial affairs were filed on September 26,
6 2016. Schedule amendments were filed on November 16, 2016 in Palmer Cattle and Palmer
7 Farms. Schedule amendments were filed on October 6, 2016 and November 15, 2016 in the
8 Palmers' case.

9 The Debtors compiled extensive information for and attended an initial interview
10 with the Office of the U.S. Trustee. The Debtors then appeared at the first meeting of
11 creditors. Each month, the Debtors file monthly operating reports as required by the U.S.
12 Trustee. The Debtors pay quarterly fees to the U.S. Trustee based on those reports.

13 The Debtors filed first day matters with the Court on September 2, 2016, which
14 covered topics including: joint administration of estates, authorization to pay prepetition
15 wages, salaries, and employee benefits, and authorization to use cash collateral.

16 The Court held expedited hearings on these matters on September 13, 2016, and
17 entered orders generally approving the relief requested.

18 The Debtors obtained approval for the employment of Mesch, Clark & Rothschild,
19 P.C. to represent them in their Chapter 11 cases.

20 The Debtors obtained approval for the employment of Wayne Layton, CPA as
21 accountants for the Debtors.

22 On December 9, 2016 the Debtors filed a Motion for Post-Petition Financing related
23 to the 2017 durum wheat crop. DMK Living Trust agreed to provide financing for operating
24 expenses up to \$140,000 to Palmer Farms for its 2017 durum wheat crop at 8.0% per
25 annum, payable upon maturity and the earlier of: (a) a date that is one year after the
26

1 commencement of the Palmer Farms' bankruptcy case, (b) the termination of the Debtor in
2 Possession loan in accordance with the Debtor in Possession loan documents, (c) entry of an
3 order under 11 U.S.C. § 1104 appointing a trustee in the reorganization case; (d) entry of an
4 order under 11 U.S.C. § 1112 converting or dismissing the reorganization case, or (e) entry
5 of an order under 11 U.S.C. § 362 granting relief from the automatic stay to any of Palmer
6 Farms' landlords. In exchange, Palmer Farms agreed to (a) grant DMK Living Trust a first-
7 position security interest in its durum wheat crop and its proceeds and (b) assign to DMK
8 Living Trust crop insurance proceeds for the 2017 durum wheat crop.

9 Consistent with the Order approving this Disclosure Statement, the Court has set a
10 claims bar date for all creditors to file claims in these bankruptcies.

11 ***B. Asset Disposition***

12 The Debtors filed a Motion to sell certain milo and grain. GWB objected to the sale.
13 This property remains in storage. The Debtors continue to have discussions regarding
14 custom feeding operations to maximize the use of this property.

15 ***C. Stay Relief, Adequate Protection, and Cash Collateral***

16 The Debtors stipulated with Deere & Company for relief from the automatic stay,
17 allowing the creditor to sell equipment that the Debtors had proposed to sell pre-petition.
18 Great Western Bank also received stay relief on this personal property.

19 Great Western Bank has filed Motions for Relief from Stay on the following of the
20 Debtors' property:

- 21
- 22 • John Deere Model S660 Combine, Serial No. 1HOS660SCC0745842;
 - 23 • John Deere Model 625 Combine, Serial No. 1H00625RLC0745258;
 - 24 • John Deere Model 348 Square Baler, Serial No. 1E00348WKDD391466
 - 25 • Approximately 20 acres of vacant land located on Linda Vista Lane, Sequim,
26 Washington;

- 1 • Approximately 20 acres of vacant land located on Himlen Road, Sequim,
2 Washington;
- 3 • Approximately 139 acres of vacant land located at 314 Wildwood Road, Quilcene,
4 Washington;
- 5 • Personal property of Palmer Cattle, LLC:
- 6 ○ Approximately 270 tons of milo;
- 7 ○ Approximately 400 tons of barley;
- 8 ○ Approximately 6,000 tons of silage;
- 9 ○ One bull;
- 10 ○ 6 Feed and Forage Wagons; and
- 11 ○ Miscellaneous corral equipment;
- 12 • Approximately 454.48 acres of agricultural land located at approximately 8502 W.
13 Hwy. 70, Pima, Arizona 85543;
- 14 • Substantially all of the personal property of Palmer Farms, Incorporated including,
15 among other things: approximately 500 acres of cotton crops and miscellaneous
16 equipment.

17 The Debtors have objected to all of Great Western Bank's Motion.

18 As part of their first day motions, the Debtors filed a motion requesting that the Court
19 authorize the Debtors' use of the Great Western Bank cash on an interim basis for the
20 payment of ordinary and necessary expenses. On September 14, 2016, the Court entered an
21 interim order for emergency use of cash and for adequate protection and set the matter for a
22 final hearing.

23 The Debtor and Great Western Bank have also stipulated to monthly cash collateral
24 budgets.

25 Palmer Farms anticipates minimal use of Great Western Bank's cash collateral going
26 forward as it relies primarily on new crop financing.

 Loan and proceeds from new crop financing will be separated from the Debtor in
 Possession's Cash Collateral account.

1 ***D. Financing***

2 After an expedited hearing and Great Western Bank’s limited objection, the Debtors
3 obtained the Court’s interim approval of emergency and post-petition financing in the
4 approximate amount of \$50,000 from lender DMK Living Trust for the 2017 wheat crop. A
5 continued financing hearing is scheduled for January 10, 2017, the Debtors are seeking
6 financing for the wheat crop in the total amount up to \$140,000.00.

7 ***E. Administrative Claims***

8 Collateral Control has filed an administrative claim for \$55,654. The Debtors have
9 objected to his claim as not reasonable.

10 Mesch Clark Rothschild, the Estates’ approved bankruptcy counsel, has filed or will
11 file an application for an administrative claim in the amount of \$50,000.00.

12 Raven, Clancy & McDonagh, P.C. as attorneys for Marco D. and Elena P. Palmer,
13 has filed or will file an application for an administrative claim in the amount of \$3,600 for
14 services provided post-petition.

15 Wayne Layton, CPA, the Estate’s approved accountant, has filed or will file an
16 application for an administrative claim in the approximate amount of \$5,000.00 for work
17 performed for the Debtors.

18
19 **VIII. DEBTORS’ CURRENT MANAGEMENT AND OPERATIONS**

20 The Debtors’ are managed by Marco and Elena Palmer, and it is anticipated that
21 Marco and Elena Palmer will manage and operate the Debtors’ businesses post-
22 confirmation.

23 **IX. EXISTENCE/NON-EXISTENCE OF AVOIDABLE TRANSFERS**

24 Bankruptcy law provides that certain preferential payments or payments made
25 without fair consideration can be recovered from the payee by the Estates. The Debtors have
26

1 listed certain payments made in the look-back period in their Statement of Financial Affairs
2 at SOFA 3(b) and 3(c). The Schedules include a list of creditors paid, the dates of payment,
3 and the amounts paid. The Debtors have done a preliminary review of payments made in the
4 90 days before bankruptcy and currently do not believe any preference or avoidance actions
5 exist.

6 The Debtors also retain their right to avoid (a) payments or distributions to any other
7 recipients made within the preference period and (b) any liens that a creditor may have
8 attempted to perfect in the ninety (90) days before the bankruptcy.

9 **X. SUMMARY OF THE PLAN OF REORGANIZATION**

10 The goal of the proposed Plan is to continue the operation of the Debtors' business
11 and for Marco Palmer to continue to farm as he has for 45 years. The continuing business
12 will allow the Debtors to repay creditors and to conduct business with trade vendors.

13 All claims and interests are placed into classes as set forth below. A claim or interest
14 is placed in a particular class, only to the extent that the claim or interest falls within the
15 description of that class, and is classified in all other classes to the extent that any portion of
16 the claim or interest falls within the description of such other class.

17 A claim or interest is placed in a particular class for all purposes, including voting on
18 the Plan, confirmation and receiving distributions pursuant to the Plan, only to the extent
19 that such claim or interest is an Allowed Claim in that class, and such claim has not been
20 paid, released, or otherwise settled prior to the Effective Date.

21 Monetary funding of the Plan will come from exit financing and the current assets of
22 the Debtors. Allowed claims of the three Debtors will be paid from these sources, without
23 regard to which Debtor is liable for the claim; the Plan pays all creditors from these sources
24 of funds. The reorganized Debtors will operate a farming operation and a custom feeding
25 operation.
26

1 As the Debtors are seeking to pay the creditors from all three Debtors from the same
2 source of funds, the issue of whether the Debtors' Plan is effectively a substantive
3 consolidation of these cases is an issue for purposes of Plan Confirmation. Substantive
4 consolidation is an equitable remedy of the bankruptcy court and the bankruptcy court has
5 the ability to order less than complete substantive consolidation or to place conditions on the
6 substantive consolidation. Substantive consolidation is necessary to ensure the equitable
7 treatment of creditors. All creditors interacted with Marco Palmer regardless of corporate
8 forms; there were numerous inter-company transactions and cross-collateralized loans.
9 Under the Plan, the sources of payment for unsecured creditors will be the operation of the
10 businesses and the equity distributions to the Palmers. The Court may have to determine
11 whether a substantive consolidation is implicated by the Plan and whether the issue is raised
12 by objections to the Plan, if any.

13 Although the following is not a substitute for a careful reading of the Plan, it is a
14 general discussion of the treatment of allowed claims and interests under the Plan. Through
15 the Plan, the Debtors intend to modify the payment terms of secured and unsecured creditors
16 to allow for payment of all allowed prepetition claims in full with interest over a period of
17 years.

18 **XI. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

19 **A. Class 1 – Administrative Claims**

20 Administrative Claims are those that have been incurred since the initiation of these
21 bankruptcy cases or expenses entitled to administrative priority pursuant to §§507(a)(2) or
22 503(b) of the Bankruptcy Code. Administrative Claims are funded from operations or from
23 the Debtor-in-Possession financing approved by the Court. Class 1 Claims are as follows:
24

25 **1. United States Trustee Fees.** Quarterly fees required under applicable law.
26

1 Any amounts owing will be paid on the Effective Date, or as due in the normal course
2 of billing and payment. The Debtors shall be responsible for timely payment of fees incurred
3 pursuant to 28 U.S.C. § 1930(a)(6). The reorganized Debtors shall file with the Court, and
4 serve on the United States Trustee, a quarterly financial report for each quarter (or portion
5 thereof) that the cases remain open in a format prescribed by the United States Trustee and
6 provided to the Debtors by the United States Trustee, and shall pay such quarterly fees as
7 become due for each quarter post-confirmation that the cases remain open.

8 **2. Estate Professionals.** Allowed Claims of Estate Professionals. The estimated
9 amount is currently \$58,500.

10 All approved and unpaid fees and costs will be paid in full on the later of Allowance
11 of such Claims or the Effective Date.

12 **3. Collateral Control.** Allowed claim of Collateral Control asserted in the
13 amount of \$55,654.00.

14 All approved and unpaid fees and costs will be paid in full on the later of Allowance
15 of such Claims or the Effective Date.

16 **B. Class 2 – Disputed, Secured Claims of Great Western Bank**

17 This class consists of the disputed claims of Great Western Bank in the approximate
18 amount of \$4.3 million, which the Bank asserts is secured by a first priority lien on all of the
19 real property owned by Marco and Elena Palmer and a lien on the personal property of
20 Palmer Farms and Palmer Cattle, including feed, equipment, contracts, crops, and accounts
21 receivable.

22 Option A

23 Great Western Bank's Secured Claim will be reduced to their current interest in their
24 collateral. The Debtors assert Great Western Bank is secured in the amount of \$2.3 million,
25 as agreed to by the parties, or as determined by 11 U.S.C. §506.

26 Pursuant to this option, the Debtors will make interest only payments at 4.5% for
months 1-24 and amortize the allowed secured claim for twenty years with equal monthly
payments of interest and principal with a balloon payment on the seventh anniversary of the
Effective Date. The under-secured portion of any allowed claim of Great Western Bank will
be treated as provided in Class 13 below.

 Great Western Bank shall retain a lien on the Debtors' real and personal property,
of the same priority and enforceability that was held on the petition date. Any lien that

1 *Great Western Bank holds or retains on the crops of Palmer Farms or the feeding inventory*
2 *of Palmer Cattle shall remain in place but not extend to any post-petition crops, livestock or*
3 *cattle feed for which the Bank's cash collateral was not employed. Any liquid funds in the*
4 *possession of the Debtors at the time of confirmation shall be used for the payment of*
5 *administrative expenses and as a reserve for payments to be made to Great Western Bank,*
6 *but shall remain the collateral of Great Western Bank.*

7 *If the Bank selects Option A, then the Debtors will retain all claims held on the*
8 *petition date against the Bank. Any recovery by the Debtors on their claims against the*
9 *Bank will be an off-set against the amounts owed*

10 Option B

11 *If Great Western Bank elects to have its disputed claim treated pursuant to 11 U.S.C.*
12 *§1111(b), Great Western Bank's secured claim will be allowed in the full amount claimed*
13 *which is approximately \$4.3 million.*

14 *The Secured Claim will be paid \$100,000 on the Effective Date and the anniversary*
15 *of the Effective Date for fifteen years. Each payment shall reduce the allowed 1111(b) claim*
16 *of Great Western Bank. On the fifteenth anniversary, the Debtors shall pay the remaining*
17 *balance of the 1111(b) claim.*

18 *Great Western Bank shall retain a lien on the Debtors' real and personal property,*
19 *any lien that Great Western Bank retains on the crops of Palmer Farms or the cattle of*
20 *Palmer Cattle shall not attach to the post-petition crops, or receivables for the feeding of*
21 *the cattle, or livestock acquired post-petition, except to the extent that Great Western Bank's*
22 *cash collateral is used.*

23 *If the Bank selects Option B, then the Debtors will retain all claims held on the*
24 *petition date against the Bank. Any recovery by the Debtors on their claims against the*
25 *Bank will be an off-set against the amounts owed*

26 Option C

Great Western Bank will accept \$877,000 plus the cash collateral held by the Debtors
at the time of confirmation after the payment of the administrative claim of Collateral
Control in full satisfaction of its claim against the Debtors. The Debtors will release any
claims that they hold against the Bank if Option C is chosen by Great Western Bank and the
plan confirmed.

Class 2 claims are impaired and may vote.

1 **C. Class 3 – Secured Tax Claims**

2 This class consists of the secured claims of Graham County for the payment of real
3 property taxes by the Debtors in the amount of \$6,143.50.
4

5 *The Secured Tax claims will be allowed in the principal amount of the tax due with*
6 *interest at the statutory rate. The Secured Tax Claims will be paid quarterly amortized over*
7 *our years at the statutory interest rate.*

8 **Class 3 claims are impaired and may vote.**

9 **D. Class 4 – Secured Claim of AgDirect/Farm Credit Southwest Services**

10 This class consists of the prepetition purchase money secured claim of Ag
11 Direct/Farm Credit Southwest Services against a certain tractor in the amount of
12 \$11,521.81.

13 *The Class 4 Claim shall retain its prepetition security. The Class 4 Claim will be*
14 *amortized for 60 months at 4.0%. The Debtors shall fully satisfy the Class 4 Claim on or*
15 *before the 5th anniversary of the Effective Date.*

16 **Class 4 Claims are impaired and may vote.**

17 **E. Class 5 – Secured Claim of CNH Capital**

18 This class consists of the prepetition purchase money secured claim of CNH Capital
19 against certain forage wagons and silage equipment in the amount of \$25,000.00.
20

21 *The Class 5 Claim shall retain its prepetition security. The Class 5 Claim will be*
22 *amortized for 60 months at 4.0%. The Debtors shall fully satisfy the Class 5 Claim on or*
23 *before the 5th anniversary of the Effective Date.*

24 **Class 5 Claims are impaired and may vote.**

25 **F. Class 6 – Secured Claim of Ally Financial**

26 This class consists of the prepetition purchase money secured claim of Ally Financial

1 against a 2011 GMC Truck in the amount of \$8,000.00.

2
3 *The Class 6 Claim shall retain its prepetition security. The Class 6 Claim will be*
4 *amortized for 60 months at 4.0%. The Debtors shall fully satisfy the Class 6 Claim on or*
5 *before the 5th anniversary of the Effective Date.*

6 **Class 6 Claims are impaired and may vote.**

7 **G. Class 7 – Secured Claim of Chase**

8 This class consists of the prepetition secured home equity claim of Chase against the
9 Palmers' principal residence at 13189 Palmer Farms Road, Pima, Arizona 85543 in the
10 amount of \$160,000.00. The Debtors are current on this obligation.

11 *The Class 7 Claim shall retain its prepetition security. The Class 7 Claim will be*
12 *treated consistent with its pre-petition contract.*

13 **The Class 7 Claim is not impaired and may not vote.**

14 **H. Class 8 – Secured Claim of Ditech Financial**

15 This class consists of the prepetition secured claim of Ditech Financial against the
16 Palmers' principal residence at 13189 Palmer Farms Road, Pima, Arizona 85543 in the
17 amount of \$23,000.00. The Debtors are current on this obligation.

18 *The Class 8 Claim shall retain its prepetition security. The Class 8 Claim will be*
19 *treated consistent with its pre-petition contract.*

20 **The Class 8 Claim is not impaired and may not vote.**

21 **I. Class 9 – Secured Claim of NAEDA Financial**

22 This class consists of the prepetition purchase money secured claim of NAEDA
23 Financial for money lent to purchase a shredder in the amount of \$9,800.00.
24

25 *The Class 9 Claim shall retain its prepetition security. The Class 9 Claim will be*
26 *amortized for 60 months at 4.0%. The Debtors shall fully satisfy the Class 9 Claim on or*

1 before the 5th anniversary of the Effective Date.

2 **The Class 9 Claim is impaired and may vote.**

3 **J. Class 10 – Secured Claim of Phil Willmeth**

4 This class consists of the secured claim of Phil Willmeth in the amount of
5 \$150,000.00. The claim is secured by certain titled vehicles for which Phil Willmeth's lien
6 has been perfected by recordation on the title of the vehicles and third mortgage on the
7 Palmers' principal residence at 13189 Palmer Farms Road, Pima, Arizona 85543.

8
9 *This claim shall be allowed in the amount of principal and accrued and unpaid*
10 *interest at the non-default rate, as of the Effective Date. The claim shall be amortized over*
11 *30 years at 4.0% interest. The Debtors shall make equal payments of principal and interest*
on the first day of each month commencing the first month after the Effective Date.

12 **The Class 10 Claim is impaired and may vote.**

13 **K. Class 11 – Priority Unsecured Claims**

14 This class consists of the allowed unsecured priority tax claims owed to government
15 agencies.

16
17 *The Class 11 Claims will be allowed in the principal amount of the tax due, with*
18 *interest at the applicable statutory rate and without penalties. The Class 11 Claims will be*
19 *paid in quarterly payments amortized over four years at the statutory rate. The Debtors will*
fully satisfy all Class 11 Claims within 5 years from the petition date.

20 **Class 11 claims are impaired and may vote.**

21 **L. Class 12 – General Unsecured Claims**

22 This class consists of the general unsecured claims of all Debtors that do not have
23 recourse against collateral.

24
25 *The Class 12 allowed claims will share pro-rata in funds contributed by the Debtors*
26 *on the Effective Date of \$10,000.00. The Debtors shall make distributions to the unsecured*
claims from Marco and Elena Palmer's disposable income, but in an amount not less than

1 \$10,000 per year. Class 12 Claims holders shall receive the same treatment as Class 13
2 claim holders.

3 **Class 12 claims are impaired and may vote.**

4 **M. Class 13 – Undersecured Claims**

5 This class consists of any undersecured creditor that maintains a claim against any
6 property of the reorganized Debtors.

7 *The Class 13 allowed claims will share pro-rata in funds contributed by the Debtors*
8 *on the Effective Date of \$10,000.00. The Debtors shall make distributions to the unsecured*
9 *claims from Marco and Elena Palmer’s disposable income, but in an amount not less than*
10 *\$10,000 per year. Class 13 claims holders shall receive the same treatment as Class 12*
claim holders.

11 **Class 13 claims are impaired and may vote.**

12 **N. Class 14 – Convenience Class**

13 This class consists of any unsecured creditor that has a claim of \$500.00 or below or
14 wishes to reduce the claim to \$500.00 and opts to participate in the convenience class.

15 *The Class 14 allowed claims will receive a distribution of 50% of their allowed claim*
16 *on the Effective Date not to exceed \$250.00.*

17 **O. Class 15 - Equity Interests**

18 This class consists of the Debtors’ Equity Holders.

19 *The Debtors will retain all property under the Plan. The Palmers will cause the funds*
20 *necessary for the payment of all Effective Date payments to be contributed to the Plan for*
21 *all Debtors as new value for their retention of the property of the Estate.*

22 **Class 15 claims are impaired and may vote.**

1 **XII. MEANS FOR EXECUTION OF THE PLAN**

2 **A. *Funding/Financing***

3 The Debtors' business operations have been funded from the income generated by
4 the harvest of certain cotton. The Debtors have obtained financing from DMK Living Trust
5 for the wheat crop. The Debtors are currently negotiating financing for the 2017 cotton crop
6 and are negotiating with various parties to provide for custom feeding in the cattle yard. The
7 funding for future years will come from the net profits of the operations of Palmer Farms
8 and Palmer Cattle and the salaries received by Marco and Elena Palmer.

9 **B. *Operation of Reorganized Debtors and Feasibility of the Plan***

10 The reorganized Debtors will operate Palmer Farms and Palmer Cattle post-
11 confirmation. Palmer Farms and Palmer Cattle will be operated post-confirmation by Marco
12 and Elena Palmer and their existing employees. Marco Palmer will be compensated
13 commensurate with his current salary as disclosed in each monthly operating report. Elena
14 Palmer will continue her employment with the Arizona Department of Corrections and will
15 receive a salary from Palmer Farms and Palmer Cattle of \$1,000.00 per month for
16 bookkeeping when funds are available. Any post-confirmation compensation for insiders
17 will comply with any loan covenants that may be imposed by the exit lender, DMK Living
18 Trust.

19 Attached to this Disclosure Statement as Exhibit 1 are financial projections for the
20 Debtors' business operations. These projections were prepared with the assistance of the
21 Debtors' Court appointed Accountant. The projections were prepared based on historical
22 and current financial information, as well as reasonable assumptions regarding future
23 economic conditions in Arizona, in the farm and cattle industries. The projections should
24 assist creditors in understanding the difficult financial considerations and issues the Debtors
25 faced in this reorganization. These projections demonstrate the feasibility of the Plan.
26

1 **XIII. TAX CONSEQUENCES**

2 These Debtors have not obtained a tax opinion and do not express any opinion as to
3 the tax consequences to the creditors or equity security holders. Interested parties are
4 encouraged to obtain their own professional counsel to determine the tax consequences of
5 the Plan.

6 BECAUSE THE DEBTORS EXPRESS NO TAX ADVICE, IN NO EVENT WILL
7 THESE DEBTORS OR THEIR PROFESSIONAL ADVISORS BE LIABLE FOR ANY
8 TAX CONSEQUENCES OF THE PLAN. CREDITORS MUST LOOK SOLELY TO AND
9 RELY SOLELY UPON THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES
10 OF THE PLAN.

11 **XIV. LIQUIDATION ANALYSIS**

12 Pursuant to 11 U.S.C. §1129(a)(7), the Plan must provide that creditors who do not
13 accept the Plan will receive at least as much as they would receive in a liquidation of the
14 Debtors under Chapter 7 of the Bankruptcy Code. The Debtors believe that the Plan satisfies
15 this “best interest of creditors” test.

16 Distributions to creditors under the Plan will exceed the recoveries they would
17 receive in a Chapter 7 liquidation. If the cases were converted to Chapter 7 liquidations,
18 claims will significantly increase. As a result, insufficient proceeds would be realized in
19 Chapter 7 liquidations to pay priority claims in full, and unsecured creditors would receive
20 little to no distribution. The Plan proposes a repayment to all creditors greater than the
21 amount of liquidation.

22 The analysis attached as Exhibit 2 summarizes the value of the Debtors’ assets and

23 //

24 //

1 the treatment of the Debtors' creditors in a Chapter 7 liquidation as compared to their
2 treatment under the Plan.¹

3 Based on Exhibit 2's liquidation analysis, the Debtors believe that the Plan will
4 provide a greater return to creditors than they would receive in a liquidation under Chapter 7
5 or Chapter 11. Accordingly, the Debtors can satisfy the "best interests of creditors" test for
6 confirmation of the Plan.

7 **XV. RISK ANALYSIS**

8 The projections are the Debtors' best and most realistic projections of future
9 performance. Based upon these projections, the payments contemplated by the Plan will be
10 made. Inherent in the Chapter 11 Plan are standard business risks. In addition to the risk
11 faced by most businesses, the business conducted by the Debtors is impacted by many other
12 contingencies, including the following factors: the lack of available credit in today's
13 economy both locally and nationally; commodity prices which incorporates local, national,
14 and international factors; the rising cost of living; inflation; changes in economic growth in
15 Arizona; changes to the projected growth in Arizona's population; and competition from
16 other competitors. Despite these risks, the Debtors' Plan is workable and economically
17 sound. The Plan will pay creditors with more than they would receive if the Debtors' Plan
18 were not confirmed, and these bankruptcy estates were liquidated instead.

19 **XVI. CONFIRMATION IN SPITE OF REJECTION OF PLAN**

20 The Court will be asked to confirm the Plan as to any class of claims or interest that
21 does not accept the Plan. To do so, the Court must find that the Plan is (1) fair and equitable
22

23 _____
24 ¹ The value of the Debtors' assets in a hypothetical liquidation were formulated by
25 Marco Palmer in consultation with the Debtors' professionals based on their many years of
26 experience in completing sales of such assets as part of their business, their historical
purchase of assets from vendors, their many years knowledge of the farming and dairy
businesses, and their opinions formulated from discussing the same with industry
professionals who they work within the ordinary course of business.

1 to each class of claims or interests that is impaired and has not accepted the Plan, and that
2 classification of claims is not discriminatory; and (2) that each claim or interest holder
3 receives, under the Plan, property of a value as of the Effective Date, that is not less than
4 what would be received or retained if the property was liquidated under Chapter 7 of the
5 Code.

6 The second requirement is satisfied as demonstrated by the Liquidation Analysis set
7 forth above. The first requirement is satisfied with respect to any class that might not accept
8 the Plan, because the classification has not been designed in a discriminatory manner.

9 If a class of secured claims does not accept the Plan, the Code provides that the fair
10 and equitable requirement is satisfied if the class retains its lien and receives deferred cash
11 payments of a present value equal to the value of the claimant's secured interest in the
12 collateral. This requirement may be satisfied as to each class treated as a secured claim,
13 because the Plan provides for them to receive the value of their interest in their collateral
14 together with an interest at a current rate.

15 If a class of unsecured claims does not accept the Plan, the fair and equitable rule
16 requires that each claimant be paid the allowed amount of the claim plus interest at a market
17 rate; otherwise, no junior class of creditors can receive or retain any property under the Plan.
18 The Plan proposes payment to all classes of creditors over time. The Debtors are going to
19 bring funds in from outside of the estate to satisfy Effective Date payments as new value. As
20 a result, the Plan complies with the absolute priority rule and permits current equity to retain
21 its ownership of the Debtors.

22 **XVII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

23 The Debtors are parties to certain executory contracts related to the operation of their
24 businesses, including farm leases and equipment leases. Allowed prepetition unsecured
25 claims arising from the rejection of leases shall be treated as Class 12 creditors and will be
26

1 paid pursuant to the terms of the Plan.

2 The Debtors have assumed or will be assuming many other necessary executory
3 contracts prior to confirmation of the Plan. If an executory contract is assumed, there will
4 not be any alteration of its existing terms without the express agreement of the parties. Other
5 executory contracts have been or will be rejected by the Debtors prior to confirmation.
6 Attached to the Plan are schedules of contracts that will be assumed, rejected, or are under
7 consideration for assumption or rejection. The first schedule is a list of executory contracts
8 the Debtors have or intends to assume prior to confirmation (See Plan Exhibit A). The
9 second schedule is a list of executory contracts the Debtors have rejected or will reject prior
10 to confirmation (See Plan Exhibit B). The third schedule is a list of executory contracts the
11 Debtors are considering whether to assume or reject prior to confirmation (See Plan Exhibit
12 C).

13 If the Debtors assume an executory contract, any amounts owed to third parties for
14 “cure” will be paid in accordance with the agreement of the parties or pursuant to an order
15 of the Court. Landlords whose leases are assumed and who are owed allowed cure amounts
16 will be paid in accordance with the terms of the Lease Assumption Agreement, as approved
17 by Court Order, or in the alternative, in full in cash in the sixth (6th) month after the
18 Effective Date with interest accruing on the allowed “cure” amount post-confirmation at the
19 rate of five percent (5%) per annum. To the extent a party to an executory contract holds a
20 deposit, setoff right, or other collateral, such rights will be retained until all cure payments
21 and accrued interest have been paid.

22 If the Debtors rejected an executory contract, the unsecured claim arising from the
23 rejection will be paid in accordance with the provisions for payment of rejected lease claims
24 pursuant to the terms of the Plan. With regard to any executory contracts or unexpired lease
25 not addressed, the Court will retain jurisdiction and the Debtors will retain the ability to
26

1 assume or reject upon realization of the existence of the contract or lease.

2 **XVIII. LIQUIDATION OF CLAIMS**

3 To date, the Debtors have not objected to any of the filed claims. All rights to object
4 to any and all scheduled (if scheduled as disputed, contingent or unliquidated) and/or filed
5 claims are reserved by the Debtors. The Debtors must file with the Court any and all claim
6 objections within 180 days after the Effective Date. The Debtors listed several unsecured
7 creditors in their schedules that were not disputed. To the extent such creditors did not file
8 claims, or filed claims in amounts equal to or less than those scheduled by the Debtors, they
9 will be deemed Allowed if not objected to within 180 days after the Effective Date, in the
10 lesser amount of the filed or scheduled claims.

11 Payments and distributions to each holder of a Disputed Claim that becomes an
12 Allowed Claim will be made in accordance with the provisions of the Class in the Plan to
13 which such Allowed Claim belongs. The Debtors will withhold from the funds to be
14 distributed under the Plan the amount attributable to any Claim that is a Disputed Claim.
15 The Debtors will withhold the amount of cash in an aggregate amount sufficient to pay each
16 holder of a Disputed Claim: (i) the amount of cash such holder would have been entitled to
17 receive under the Plan if such Claim had been an Allowed Claim on the Distribution Date in
18 the “face amount” of such Disputed Claim as defined in the Plan; or (ii) such other amount
19 as the Court may estimate is appropriate. In the case of any Disputed Claim that is filed in
20 an unliquidated or undetermined amount, the Court, upon motion by the Debtors or the
21 holder of such Disputed Claim, shall determine an amount sufficient to withhold with
22 respect to such Disputed Claim and may estimate the likely maximum amount of the Claim
23 in order to make such determination. Any Creditor whose Claim is estimated by Court order
24 will not have recourse against the reorganized estate, any Distributions made on account of
25 Allowed Claims, or any other Entity or property if the finally Allowed Claim of such
26

1 creditor exceeds the estimated amount. Instead, such creditor will have recourse only against
2 the funds withheld for that Claim as calculated above.

3 **XIX. RETENTION OF JURISDICTION**

4 Notwithstanding confirmation or the Effective Date having occurred, the Court shall
5 retain and have full jurisdiction as is allowed under Title 28 of the United States Code, the
6 Bankruptcy Code, or other applicable law to enforce the provisions, purposes, and intent of
7 the Plan, including, without limitation, any proceedings related to:

8 A. Determination of the allowance, classification, or priority of claims and
9 interests, costs, attorney's fees, and payment of postpetition interest, or objections thereto,
10 including claims of the estates against Great Western Bank for failing to provide promised
11 funding for the cattle operations of Palmer Cattle;

12 B. Construing, implementing, enforcing, executing, or consummating the Plan,
13 the confirmation order, any other order of the Court, any document attached as an exhibit to
14 the Plan or contemplated by the Plan, or any other matter referred to in the Plan;

15 C. Determination of all matters that are pending before the Court in the
16 Chapter 11 Cases prior to the Effective Date or that may arise after the Effective Date;

17 D. Determination of any and all applications for allowance or requests for
18 payment of administrative claims, including, without limitation, requests for allowance and
19 payment of compensation and expense reimbursement of professional persons;

20 E. Determination of motions for the rejection, assumption, or assignment of
21 executory contracts or unexpired leases, and determination of the allowance of any claims
22 resulting from the rejection of executory contracts and unexpired leases;

23 F. Determination of all applications, motions, adversary proceedings, contested
24 matters, and any other litigated matters instituted prior to the closing of the Chapter 11
25 Cases;
26

1 G. Modification of the Plan pursuant to §1127 of the Bankruptcy Code, prior to
2 the Effective Date, remedy of any defect or omission in the Plan or confirmation order,
3 reconciliation of any inconsistency within the Plan and the loan documents, so as to carry
4 out the intent and purpose of the loan documents;

5 H. Issuance of injunctions or taking such other actions or making such other
6 orders as may be necessary or appropriate to restrain interference with the Debtors by any
7 party with the Plan or its execution or implementation by any person.

8 I. Issuance of such orders in aid of consummation of the Plan and the
9 confirmation order, notwithstanding any otherwise applicable non-bankruptcy law, with
10 respect to any person, to the full extent authorized by the Bankruptcy Code;

11 J. Ordering the assumption or rejection of executory contracts or leases to which
12 the Debtors are a party, which have not previously been resolved.

13 K. Any determination necessary or appropriate under §505 of the Bankruptcy
14 Code or any other determination relating to priority tax claims, taxes, tax refunds, tax
15 attributes, and tax benefits affecting the Debtors, their estates, or the Property through the
16 end of the fiscal year in which the Effective Date occurs;

17 L. Entry of a final decree closing these Chapter 11 Cases; and

18 M. Determination of such other matters, and for such other purposes, as may be
19 provided in the confirmation order.
20
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1 **XX. RECOMMENDATION**

2 The Debtors recommend that the Plan be approved as it is in the best interest of these
3 Estates and their creditors.

4 Dated January 9, 2017.

6 MESCH CLARK ROTHSCHILD

RAVEN, CLANCY & MCDONAGH, P.C.

7 By /s/Isaac D. Rothschild, #25726

By /s/Dennis J. Clancy (with permission)

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Exhibit 1

Financial Projections

To be supplemented

Exhibit 2

Liquidation Analysis

To be supplemented