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9
10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 **IN RE WILKINSON FLOOR COVERING,**
13 **INC.,**

14 **Debtor.**

15 Case No. 2:17-bk-01228-EPB

16 Chapter 11

17 **DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR'S PLAN OF**
18 **REORGANIZATION**

19 NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED
20 BY THE DEBTOR OTHER THAN THOSE STATED HEREIN. YOU SHOULD NOT RELY ON
21 ANY REPRESENTATIONS OR INDUCEMENTS CONCERNING THE PLAN OTHER THAN
22 THOSE CONTAINED IN THIS DISCLOSURE STATEMENT.

23 AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED IN THIS
24 DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTOR CANNOT WARRANT OR
25 REPRESENT THAT THE INFORMATION IS WITHOUT ANY ERROR. HOWEVER, THE
26 INFORMATION IS ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE AND
27 BELIEF.

28 **ARTICLE I**

INTRODUCTION TO THE DISCLOSURE STATEMENT AND VOTING

1 1.1 Purpose of the Disclosure Statement.

2 This Disclosure Statement is submitted by the Debtor-in-Possession (“Debtor”)
3 pursuant to 11 U.S.C. § 1125. Its purpose is to provide Creditors with the information necessary to
4 enable them to arrive at an informed decision for voting on the Debtor’s Plan of Reorganization
5 (“Plan”), which is on file at the Bankruptcy Court. (A copy of the Plan is attached to this Disclosure
6 Statement as Exhibit 1.) As a Creditor, your acceptance of the Plan is important. Acceptance of the
7 Plan by a Class of Creditors requires a vote by at least two-thirds in Claim amount and more than
8 fifty percent in number of the Allowed Claims in the Class that actually cast votes. Failure to vote on
9 the Plan does not count as either an acceptance or rejection of the Plan.

10 1.2 Definitions.

11 Unless a word is otherwise defined in this Disclosure Statement, it has the meaning
12 given to it in the U.S. Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules
13 of Bankruptcy Procedure for the District of Arizona or the Definition section in the Plan.

14 1.3 Authorized Representations.

15 This Disclosure Statement is the only document authorized by the Bankruptcy Court
16 to be used in connection with the solicitation of votes on the Plan.

17 1.4 Voting Procedures.

18 To be entitled to vote, a Creditor must have an Allowed Claim that is impaired under
19 the Plan. The Bankruptcy Code defines whether a Claim is impaired in 11 U.S.C. § 1124. Summarily,
20 a Claim is impaired if the Plan modifies the legal, equitable or contractual rights of the Claimant, or
21 if the Plan does not cure and reinstate the legal rights of the Claimant upon default. A Creditor in a
22 Class that will not, under any circumstances, receive any distributions under the Plan, is not entitled
23 to vote because the Class of which it is a member is deemed to have rejected the Plan. If a Creditor
24 holds more than one Claim in one Class, all of the Claims in such Class will be aggregated and the
25 Creditor will be entitled to one vote in the amount of all aggregated Claims in that Class.

26 All Creditors or Parties in interest entitled to vote on the Plan may cast their votes for
27 or against the Plan by completing, dating, and signing the ballot which will be mailed to all Creditors
28 in the event this Disclosure Statement is approved by the Court. In order for the ballot to be

1 considered, the original ballot must be mailed to the attorneys for the Plan proponents. Upon approval
2 of this Disclosure Statement, the Court will issue an Order requiring that all votes for the acceptance
3 or rejection of the Plan be received by the close of business on the date set by the Court. The ballots
4 should be sent as follows:

5 The original to:
6 Ballot Returns
7 Law Office of Blake D. Gunn
8 P.O. Box 22146
9 Mesa, AZ 85277

10 Your ballot will not be counted if the Debtor's counsel receives it after such deadline. You
11 may not change your vote after it is cast, unless the Bankruptcy Court permits you to do so after
12 notice and a hearing to determine whether sufficient cause exists to permit the change.

13 1.5 Confirmation of the Plan.

14 In order for the Plan to be effective, it has to be confirmed. Confirmation of the Plan
15 means that the Court has approved the Plan. For the Plan to be confirmed, votes by each impaired
16 Class representing at least two-thirds in amount of the Allowed Claims voting in each Class and
17 greater than one-half in number of individual Creditors for such Class (of those actually casting votes)
18 must be submitted in favor of acceptance of the proponent's Plan. If the requisite acceptances are not
19 obtained from one or more impaired Classes, the Court may nonetheless confirm the proponent's
20 Plan pursuant to 11 U.S.C. § 1129(b). If one impaired Class accepts the Plan and the Court finds that
21 the Debtor's Plan provides, among other things, fair and equitable treatment of the Classes rejecting
22 the Plan and that Creditors receive as much or more under the Plan than they would receive in a
23 Chapter 7 liquidation (discussed more fully below), the Court may confirm the Plan. When confirmed
24 by the Bankruptcy Court, this Plan will bind all holders of Claims or equity interests in the Debtor,
25 whether or not they are entitled to vote, or did vote, on the Plan, and whether or not they received or
26 retained any distributions of property under the Plan. A more thorough analysis on voting procedures
27 and confirmation is outlined in Article XII below.

28 **ARTICLE II**

INFORMATION ABOUT THE DEBTOR

2.1 Pre-Bankruptcy Filing Factual Background.

1 Wilkinson Floor Covering, Inc., is an Arizona corporation and licensed floor installation
2 specialty contractor. Over the years, it has held licenses in Arizona, California, Nevada, and Hawaii.
3 Its primary business consists of acquiring and installing flooring materials in multi-family residential
4 structures.

5 Several years ago, the WFC's principal went through a divorce which resulted in his former
6 spouse receiving control of the company. Then WFC's principal became ill with cancer and could
7 not work in the business. Steve Wilkinson collected sufficient funds to buy out his former spouse's
8 interest in the business and regained control of the company, but the transaction left his funds
9 depleted. Upon regaining control of the business, Wilkinson found irregularities in the company
10 books. For example, materials had been purchased on company accounts, but the materials had not
11 be used on jobs that the company had performed. Company credit limits had been exceeded with
12 unsigned purchase orders, and deliveries of those purchase orders had been made to non-company
13 projects. WFC believes these irregularities were orchestrated efforts by a former controller to
14 embezzle money from the company.

15 WFC requires significant cash or credit lines to conduct its business. When contracts are
16 entered and work commences, WFC receives initial draws for materials and overhead, but such draws
17 are normally insufficient to purchase all required materials. Consequently, WFC (like all
18 subcontractors) must temporarily fund the purchase of materials with its own cash or credit. With its
19 financial reserves depleted from unusual activities described above, WFC sought to modify its
20 existing Small Business Administration loan with Bank 34. Bank 34 approved an increase in the loan
21 balance to \$5,000,000.00, which would have resulted in net cash to WFC of approximately
22 \$1,500,000.00. In desperation, WFC had also entered into agreements to factor or sell some of its
23 receivables to various entities for relatively high interest rates—so high, in fact, that the rates violated
24 usury laws in the lenders' home states. These debts were disclosed to Bank 34 in connection with
25 the loan process, and proceeds were intended to pay off the high-interest loans and provide
26 approximately \$500,000.00 in working capital.

27 Inexplicably, after issuing an approval of the modified SBA loan, Bank 34 refused to fund it.
28 When WFC defaulted on its obligation to the high-interest lenders, some of them filed “confessions

1 of judgment” in New York, contacted Bank 34, and began collection activity. Bank 34 deemed itself
2 “insecure” under a discretionary clause in the existing loan documents, and exercised its option to
3 accelerate the debt owed to it by WFC. Bank 34 recorded a notice of trustee’s sale, and filed suit
4 seeking a pre-judgment remedy of replevin of all its security. WFC filed this case to preserve its
5 assets.

6 Income Projection

7 8 9 2.2 Post-Bankruptcy Filing Events.

10 2.2.1 Retention of Professionals

11 The Debtor retained The Law Office of Blake D. Gunn as bankruptcy counsel, and
12 contemporaneously with the Petition filed an application to employ that firm as counsel. The Debtor
13 has not sought employment of other professionals, but it anticipates that it will employ a certified
14 public accountant to assist it in review of its financial records and preparation of taxes. No firm
15 representing the Debtor has filed an application for reimbursement of fees or expenses.

16 2.2.2 Creditors’ Meeting

17 The United States Trustee’s Office presided over an Initial Creditors’ Meeting pursuant to 11
18 U.S.C. § 341 on March 29, 2016. The Meeting was continued and concluded on that date.

19 2.2.3 Creditors’ Committee

20 No creditor’s committee has been appointed.

21 2.2.4 Adversary Proceedings

22 The Debtor have not commenced any adversary proceedings. However, the Debtor reserve
23 the right to do so in the future and will amend this Disclosure Statement accordingly to address any
24 such future judgment.

25 2.2.5 Claims Bar Date

26 No claims bar date has been set.

27 2.2.6 Stay Relief

28 Bank 34 holds a blanket lien on all the Debtor’s assets. Bank 34 filed a motion for relief from
the automatic stay. That motion was resolved by stipulation that included a stipulation to use cash

1 collateral of Bank 34.

2 2.3 Financial Information About the Debtor.

3 The Debtor's assets and liabilities are fully disclosed in the Debtor's Schedules and Statement
4 of Financial Affairs and any Amendments to the Debtor's Schedules and Statement of Financial
5 Affairs filed in this matter.

6 During the course of this bankruptcy case, the Debtor has filed Monthly Operating Reports
7 required by the Office of the U.S. Trustee and by the Bankruptcy Code and Rules, and they have paid
8 all quarterly fees that have come due. The Debtor does not intend to incur any non-ordinary course
9 of business or financial affairs post-petition debt.

10 Accounts Receivable. As of the Petition Date, the Debtor held two primary accounts
11 receivable. One is owed by Layton Construction and relates to a project retainage for a completed
12 project. Layton Construction interpleaded the retainage funds. Layton Construction has indicated
13 that it plans to turn over the funds to the Debtor, but has not yet taken that action. Bank 34 has a
14 perfected lien in such funds. The second account is owed by Studio 3125, LLC, which is an entity in
15 which the Debtor's principal holds an interest. The receivable arises primarily from rent billed by
16 the Debtor to Studio 3125, but it also appears to include improvements the Debtor made to its
17 buildings. The Debtor is in the process of retaining an accountant to review the prior controller's
18 allocation of those expenses, but the Debtor estimates that the receivable from Studio 3125 will
19 ultimate have a value of \$100,000.00 to \$300,000.00.

20 Furnishings, Fixtures, Equipment. The Debtor's furnishings consists of office equipment,
21 office furniture, and flooring displays. Fixtures include storage racks and permanently-installed
22 displayed, and stone fabrication tables semi-permanently affixed to the real property. The Debtor's
23 equipment consists of granite saws, stone fabrication tools. A more detailed inventory of the Debtor's
24 FF&E appears in Exhibit 1 to the Disclosure Statement Statement.

25 The Debtor's cash on hand on the Petition Date is estimated at \$20,000.00.

26 2.4 Transfers Made Within Preference Period

27 The Debtor has made multiple transfers during the 90 period prior to the filing date.
28 The Debtor believes that all transfers were ordinary-course transfers such as debt service payments

1 and operating expenses. Consequently, the Debtor does not anticipate that it will commence any
2 action to recover voluntary transfers.

3 2.5 Entities with Common Ownership

4 The Debtor's sole shareholder also holds an interest in Studio 3125, LLC and Studio
5 Direct, LLC. Studio 3125 is a designer and product broker, and Studio Direct is a materials
6 purchasing entity.

7 **ARTICLE III**

8 **DESCRIPTION OF THE REORGANIZATION PLAN**

9 The Debtor will retain control of its assets and use its income to make the payments as set
10 forth in Article IX of the Plan. All funds remaining in the Plan Fund shall be turned over to the Debtor
11 upon payment of all Allowed Claims in full or to the duly appointed and acting Chapter 7 Trustee if
12 this Case is converted to Chapter 7.

13 **ARTICLE IV**

14 **CLASSIFICATION AND TREATMENT OF CLAIMS**

15 As required by § 1122 of the Bankruptcy Code, Creditors are divided into Classes, each of which
16 includes Creditors who are similarly situated with the other Creditors in the Class. The Classes
17 provided for by the Plan and their treatment under the Plan are as follows:

18 4.1 Class 1 – Administrative Claims

19 Class 1 consists of all allowed Administrative Claims for actual and necessary costs
20 and expenses of administration entitled to priority under §§ 503(b) and 507(a)(2) of the Bankruptcy
21 Code. This Class includes, without limitation, post-petition tax Claims, the Debtor's attorneys' fees,
22 approved accounting fees and fees due the United States Trustee, if any. The holders of Allowed
23 Class 1 Claims shall be paid, in full, on the Effective Date of the Plan of Reorganization or upon such
24 other terms as the Debtor and the holders of Allowed Class 1 Claims agree. The Debtor anticipate
25 that there will be two Class 1 Claims for the Debtor's bankruptcy attorneys and special counsel.

26 The Debtor estimate that Class 1 Claims will be no less than \$60,000.00, subject to
27 final approval by the Court. That amount has not been fixed and administrative expenses may exceed
28 that amount. US Trustee quarterly fees presently exceed \$70,000.00 on an annualized basis, and

1 because those fees are paid in the ordinary course of business, the amount of those fees is not included
2 in the estimate of claims in this class. To the extent the Debtor does not hold adequate funds as of
3 the Effective Date to pay all Class 1 Claims in full, the Debtor contends that it will be able to satisfy
4 any remaining unpaid Class 1 Claims within three month following the Effective Date. Class 1 is
5 unimpaired.

6 4.2 Class 1-B – 11 U.S.C. § 507(a)(8) Priority Claims

7 The Class 1-B Claims consist of all Claims which are entitled to priority treatment
8 pursuant to 11 U.S.C. § 507(a)(8). Each holder of a Priority Claim in Class 1-B is considered to be
9 in its own separate subclass within Class 1-B, and each such subclass is deemed to be a separate Class
10 for purposes of the Plan. Class 1-B consists of various sub-classes of asserted Priority Creditor
11 Claims. Unless otherwise specified, a holder of an Allowed Priority Claim in any of the Class 1-B
12 sub-Classes shall receive payment in full, within five (5) years of the Petition Date. Payments will
13 commence on the Effective Date or after Class 1 Claims are paid in full if the Debtor are unable to
14 pay Class 1 Claims in full on the Effective Date. The Debtor will make regular payments to any
15 creditors holding a Class 1-B Claim in accordance with the provisions set forth under 11 U.S.C.
16 §1129(a)(9)(C) so that all amounts are paid within five years of the Petition Date. The interest rate
17 paid to Class 2 Claims shall be four percent (4%) per annum from and after the Effective Date.

18 4.2.1 Class 1-B-1 consists of any claims held by the Internal Revenue
19 Service for payment of priority taxes. The Debtor believes that no claims exist in this class. If a
20 Claim in this Class does exist, the Claim shall be paid with interest at the rate of four percent (4%)
21 per annum in monthly payments in an amount sufficient to pay the Claim in full on a date no later
22 than 60 months after the Petition Date. This subclass is unimpaired.

23 4.3 Class 1-B-2 – Priority (Non-Tax) Claim

24 Class 3 consists of those claims which are entitled to priority under §§ 507(a)(3)
25 through 507(a)(10) of the Bankruptcy Code. The Allowed Class 3 Claim will be paid after Class 1
26 Claims and in conjunction with Class 2 Claims, if any. The Debtor does not believe any Class 1-B-2
27 Claims exist.

28 4.4 Class 1-C: Secured Tax Claims

1 This Class consists of tax lien claims of the Maricopa County Treasurer for real
2 property taxes that became due prior to the Petition Date. This Class includes real property taxes that
3 were assessed as of January 1, 2017. The total amount owed to this Class is believed to be
4 \$118,918.86. Claims in this class will be paid in full with interest at the statutory rate of 16% per
5 annum in quarterly payments beginning 30 days following the Effective Date. Also, following
6 completion of cure payments to Bank 34 specified in the cash collateral and adequate protection
7 stipulation entered in this case, the Debtor will begin making pre-confirmation payments to this Class
8 in the amount of \$5,000.00 each month.

9 4.5 Class 2-A: Secured Claim of Bank 34

10 Bank 34 holds a claim secured by the Debtor's real estate, accounts, and business
11 property. Although the lien existed pre-petition, the Debtor and Bank 34 entered a cash collateral
12 stipulation that granted Bank 34 a post-petition lien to the full extent of its pre-petition lien. WFC
13 estimates that the balance on the Bank 34 claim is approximately \$3,245,000.00. Prior to evaluation
14 of the Studio 3125 receivable, but including oth accounts receivable and equipment upon which Bank
15 34 holds a lien, the value of the collateral securing the claim is approximately \$3,800,000.00. The
16 Debtor believes the receivables value will decrease approximately \$300,000.00 after building
17 improvement expenses are re-allocated to the Debtor instead of Studio 3125.

18 Bank 34 shall be paid the full amount of its claim, together with interest at the non-
19 default contract rate, attorney's fees, and all additional reasonable charges according to the terms of
20 the pre-petition loan documents. Post-petition arrearages shall be paid according to the terms of the
21 cash collateral and cure stipulation entered by the Debtor and Bank 34. Pre-petition arrearages and
22 any post-petition attorney's fees shall be paid in quarterly payments over 8 quarters beginning in the
23 first quarter in which the Plan is confirmed. Pre-petition arrearages are estimated at \$80,000.00. This
24 class is impaired under the Plan.

25 4.6 Class 2-B: Secured Claim of Wells Fargo Bank

26 Class 2-B consists of the claim of Wells Fargo Bank that is secured by a first-position
27 lien on two forklifts. The combined value of this equipment is believed to be no more than
28 \$65,000.00. Wells Fargo will be paid the value of its equipment with interest at the rate of 5.5% per

1 annum in monthly payments over five years beginning 30 days after the Effective Date. This Class
2 is impaired.

3 4.7 Class 2-C: Yellowstone Capital.

4 Class 2-C consists of the claim of Yellowstone Capital that arises from the purported
5 sale of receivables. Any such sale of receivables was subject to the senior lien of Bank 34, and Bank
6 34's lien is equal to or exceeds the value of all receivables existing as of the Petition Date.
7 Consequently, the Claim of Yellowstone Capital shall be treated as a Class 3 General Unsecured
8 Claim. Any lien claimed by Yellowstone Capital is extinguished under the Plan, and it shall have no
9 future claim to any of the Debtor's receivables or other property. Furthermore, to the extent that
10 Yellowstone Capital obtained a judgment against the Debtor and has recorded such judgment, such
11 judgment lien shall be avoided and extinguished by the order confirming the Plan. This class is
12 impaired.

13 4.8 Class 2-D: Platinum Recovery Group

14 Class 2-D consists of the Claim of Platinum Recovery Group arising from the
15 purported sale of receivables. Any such sale was subject to the senior lien on such receivables held
16 by Bank 34, and Bank 34's lien equals or exceeds the value of such collateral. Furthermore, the
17 Debtor has not granted Class 2-D a post-petition lien claim, and any secured claim would be equal
18 only to the value of unencumbered receivables on the Petition Date. Consequently, the Claim of
19 Class 2-D shall be treated as a Class 3 General Unsecured Claim and it shall have no future claim to
20 any receivables.

21 4.9 Class 2-E: Strategic Funding Source.

22 Class 2-E consists of the Claim of Strategic Funding Source, Inc. that arises from a
23 sale or pledge of receivables. It is junior to the claims of Bank 34. Strategic Funding Source obtained
24 a judgment against the Debtor and its Steven Wilkinson and recorded that judgment post-petition.
25 Since such filing occurred in violation of the automatic stay, any judgment lien claim is invalid, and
26 no lien claim shall be retained by Strategic Funding Source. The order confirming the Plan will
27 contain specific language avoiding the judgment lien of this claimant in its entirety on any real
28 property in which the Debtor holds an interest. This Class shall be treated as a Class 3 general

1 unsecured claim.

2 4.10 Class 2-F: Secured Claim/Capital Lease Claim of Susquehanna Finance

3 Class 2-F consists of the claim arising from the capital lease of equipment between
4 Susquehanna Finance and the Debtor relating to various audio video equipment installed at the
5 Debtor's building. The amount of the Class 2-F Claim is approximately \$58,000.00. Class 2-F shall
6 receive payment on its claim equal to the fair market value of its Claim in monthly payments
7 beginning 30 days after the Effective Date. The estimated fair market value of the property is
8 \$40,000.00. The allowed claim equal to the fair market value of the equipment shall be paid in full
9 over five years in month payments equal to 1/60th of the balance outstanding on the Effective Date.
10 This Class This Class shall receive adequate protection payments of \$575.00 per month prior to
11 confirmation of the Plan. This Class is impaired.

12 4.11 Class 3 –General Unsecured Claims

13 Class 3 consists of the General Unsecured Claims held by creditors. Unsecured
14 creditors will receive a pro-rata share of the Unsecured Claims Fund of \$200,000.00. Payments shall
15 be made quarterly for 8 quarters beginning on the last day of the first quarter following the month in
16 which the Plan is confirmed. This Class is impaired.

17 4.12 Class 4—Equity Security Holders

18 Class 4 consists of the equity security holders of the Debtor, who are the shareholders
19 of the Debtor. Class 4 claimants will receive new stockholder interests in the Debtor in exchange for
20 new value contributions described herein.

21 **ARTICLE V**

22 **ADDITIONAL PLAN PROVISIONS**

23 In addition to the provisions outlined in Articles III and IV above, there may be additional
24 provisions and details contained in the Plan of Reorganization which should be reviewed before
25 voting. A copy of the Plan is attached to this Disclosure Statement as Exhibit 1. This Article outlines
26 some of the additional provisions of the Plan.

27 5.1 Effect of Confirmation

28 Except as otherwise provided in the Plan or in the Court's order confirming the Plan

1 (the “Confirmation Order”), the Confirmation Order will act as a discharge, effective as of the
2 Effective Date, of any and all debts of the Debtor that arose at any time before the entry of the
3 Confirmation Order, including, but not limited to, all principal and any and all interest accrued
4 thereon. Unless otherwise provided in an order entered by the Court at that time, the discharge of the
5 Debtor shall be effective as to each Claim, regardless of whether a Proof of Claim was filed, whether
6 the Claim is an Allowed Claim or whether the holder thereof votes to accept the Plan.

7 In addition, any Post-Petition, but Pre-Confirmation obligations of the Debtor dealt
8 with in this Plan shall be considered New Obligations of the Debtor, and these New Obligations shall
9 not be considered in default unless and until the Debtor default on the New Obligations pursuant to
10 the terms of the Plan. The New Obligations provided for in the Plan shall be in the place of, and
11 completely substitute for, any Pre-Confirmation obligations of the Debtor and, once the Plan is
12 confirmed, the only obligations of the Debtor shall be such New Obligations as provided for under
13 the Plan.

14 5.2 Revesting

15 Except as provided for in the Plan or in the Confirmation Order, on the Effective Date
16 the Debtor shall be vested with all of the property of the estate free and clear of all Claims, Liens,
17 Charges and other Interests of Creditors arising prior to the filing date.

18 5.3 Executory Contracts and Unexpired Leases

19 Upon Confirmation of the Plan, all executory contracts of the Debtor will be assumed,
20 with the exception of any executory contracts listed as rejected on Schedule G or any Amendment to
21 Schedule G pursuant to the provisions of §§ 365 and 1123 of the Bankruptcy Code, or any other
22 subsequent rejection made by the Debtor. This Plan provision does not alter in any way orders of the
23 Bankruptcy Court approving the assumption of executory contracts and leases. All such orders are
24 reaffirmed without modification and incorporated fully in the Plan so that the Plan is in compliance
25 with those orders. Notwithstanding the foregoing, if a lease claimant holds a claim identified in Class
26 2, above, then the provisions of the Plan relating to such Class will control the treatment of such
27 Claimant.

28 5.4 Modification Of The Plan

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

8 5.5 Default

9 If the Debtor are unable to perform the terms and conditions of this Plan, then they
10 will be in default. Any Creditor may seek to enforce the Plan. Before doing so, however, a Creditor
11 must first provide notice to the Debtor specifying the nature of the alleged default and providing the
12 Debtor a 30-day period to cure such default. Any such notice shall be in writing and sent via certified
13 mail to the Debtor at the address on file with the Clerk of the Court and with a copy sent via certified
14 mail to:

15 Blake D. Gunn
16 P.O. Box 22146
17 Mesa, AZ 85277

18 5.6 Retention of Jurisdiction.

19 Notwithstanding confirmation of this Plan, the Bankruptcy Court shall retain its
20 jurisdiction of this bankruptcy to the full extent allowed by law, including for the following purposes:

- 21 1. Determination of Claims and Interests upon objection to such Claims by the
22 Debtor or by any other party-in-interest;
- 23 2. Determination of requests for payment of Claims entitled to priority under §
24 507(a)(2) of the Bankruptcy Code, including compensation of parties entitled thereto;
- 25 3. Resolution of controversies and disputes regarding the interpretation or
26 enforcement of the terms of the Plan;
- 27 4. Implementation of the provisions of the Plan and entry of orders in aid of
28 Confirmation of the Plan, including, without limitation, appropriate orders to protect the Debtor;

1 5. Entry of an Administrative Order closing this case while Plan payments are
2 made;

3 6. Entry of a Final Decree closing the case.

4 **ARTICLE VI**

5 **FEASIBILITY OF THE PLAN AND FINANCIAL PROJECTIONS**

6 The Debtor believe that the proposed Plan is feasible and is unlikely to be followed by the
7 liquidation or need for further financial reorganization of the Debtor except as proposed in the Plan.

8 **ARTICLE VII**

9 **LIQUIDATION ANALYSIS**

10 The following is a Liquidation Analysis indicating what the Debtor believe Creditors would receive
11 in the event of a Chapter 7 liquidation. The figures for “market value” and “liquidation value” are the
12 Debtor’s best estimate on what these assets are worth on a market or liquidation basis.

13

14 Asset	Value	Selling Cost	Encumbrances ¹	Net Liquidation 15 Value
16 Real Property	\$3,200,000.00	\$300,000.00	\$3,363,000.00	\$0.00
17 Cash	\$20,000.00	---0--	\$20,000.00	\$0.00
18 Accounts Rec.	\$356,000.00	--0--	\$356,000.00	\$0.00
19 FF&E	\$85,400.00	\$10,000.00	\$75,400.00	\$0.00
20 Totals	\$3,661,400.00	\$310,000.00	\$3,363,000.00	\$0.00

21

22 The estimated selling cost assumes that a Chapter 7 trustee would hire a realtor and pay the
23 realtor a six percent (6%) commission, and that escrow fees, title charges, and other closing costs
24 would be approximately two percent (2%) of the selling price. The Debtor has also assumed that an
25 auction of its furnishings, fixtures, and equipment would cost twelve percent (12%) of the liquidation
26 value of such property. Also, in a liquidation, accrued, unpaid taxes would be paid, which as of the

27 _____
28 ¹ Bank 34’s lien is valued at \$3,245,000.00 and the Maricopa County Treasurer’s tax lien is \$118,000.00, and has first
priority on the Debtor’s real property assets. Bank 34’s lien, to the extent unpaid by sale of the real property, would be
paid from remaining assets.

1 date of this Disclosure Statement are approximately \$118,000.00 (which amount is included in the
2 liens above).

3 Creditors should note that on a liquidation basis, full market value for assets cannot
4 necessarily be obtained. Further, there are costs associated with a liquidation of assets that must be
5 paid out of any sale proceeds. The liquidation analysis does not contain an estimation of any tax
6 liability which could be associated with the liquidation. This would lessen the recovery to Creditors.
7 Creditors should note that after payment of priority taxes, Administrative Claims and Priority Claims,
8 only \$123,000.00 would exist for the benefit of lienholders holding subordinate liens to Bank 34 and
9 for general unsecured claims. This analysis is provided for informational purposes only, given that
10 the Debtor's Plan does not contemplate a liquidation in this fashion. The Debtor's Plan contemplates
11 payment in full of all claims in this case.

12 **ARTICLE VIII**
13 **INCOME PROJECTION**

14 The Debtor's income is derived from three sources. First, the Debtor has leased space in its
15 building that generates approximately \$8,500.00 per month. Second, the Debtor generates income
16 from purchasing material for projects and billing a markup for projects. Third, the Debtor obtains
17 income from providing labor to projects. The Debtor has operated for many years and has a well-
18 established presence in the multi-family construction industry. Presently, the multifamily
19 construction market is robust and the Debtor has bid on (and has obtained) several contracts.
20 However, the future performance of the Debtor depends on many factors that are not easily
21 quantified and over which the Debtor has no control.

22 For example, a strong multifamily market in 2015 and 2016 pushed capitalization rates on
23 some apartment projects to historic lows of four percent per annum. In other words, owners of such
24 projects were accepting a return of approximately four percent annually on their investment. Under
25 such conditions, an owner would recover its initial investment in approximately 18 years. Also,
26 given the low capitalization rate, an owner would probably not find financing or refinancing
27 sources because commercial property loan payments would likely exceed net cash flow. The effect
28 on the Debtor's business from these types of general market conditions cannot be directly

1 estimated. For instance, a low capitalization rate for a project may be a result of excessive
2 maintenance and repair costs that affects net operating income for the project. More money spent
3 on repairs and maintenance may be a generally favorable circumstance for Debtor as owners are
4 spending money on the project. But a low capitalization rate that results from non-maintenance
5 expenses may have a neutral or negative effect on contractors generally (including the Debtor).

6 Multifamily owners have assumed a six percent to eight percent increase in rental revenue in
7 strong rental markets. With rental growth slowing, particularly in “Class A” properties, a four
8 percent increase may be a more reasonable estimate of rent growth. Rental rate increases can also
9 have a negative effect on property occupancy, and “Class A” properties (which the Debtor typically
10 services) can experience value and revenue fluctuations as marginal tenants move to “Class B”
11 properties to save money. The Debtor believes that it has positioned itself to take advantage of
12 increases in demand for Class B properties, as it has spent effort developing product sources
13 specifically for retrofitting older properties to comply with current code requirements.

14 The Debtor is actively pursuing projects and presently has three projects underway. The
15 Debtor has reduced its overhead and personnel expenses to allow it be more financially agile while
16 attempting to remain responsive to client needs. In the next 12 months, the Debtor expects to
17 generate revenue after direct costs of approximately \$1,150,000.00. That gross profit will be
18 reduced by operating expenses, which, while variable, is predictable to a degree.

19 The Debtor’s expenses are detailed in monthly operating reports and summarized below.
20 The summaries below are an approximation or average of expenses over several months. For the
21 purposes of this discussion, only categories of indirect expenses are generalized below. Detailed
22 information appears in the operating reports attached hereto as Exhibit 2. The expenses generally
23 consist of overhead expenses, payroll and administrative expenses, and real property expenses.

24	Real property debt service	\$252,000.00
25	Overhead expense	\$240,000.00
26	Payroll/Administrative Expense	\$540,000.00
27	Total Expenses	\$1,032,000.00

28 The Debtor will also incur reorganization-related expenses. U.S. Trustee quarterly fees add

1 a burden of approximately \$84,000.00 per year, and professional fees may reach \$60,000.00. Also,
2 the Debtor contemplates that ongoing monthly and quarterly payments under the Plan will increase
3 the Debtor's cash outflow by \$7,500.00 per month. Thus, the Debtor's total recurring expenses
4 during the next five years is expected to be approximately \$1,118,400.00.

5 **ARTICLE IX**

6 **IMPLEMENTATION AND FUNDING OF THE DEBTOR'S PLAN**

7 The Debtor are proposing to repay all Unsecured Creditor Claims within 24 months of the
8 Effective Date and will continue to service remaining Secured Creditor Claims based on the terms
9 set forth in this Disclosure Statement and the accompanying Plan. The Plan will be funded by the
10 Debtor's post-petition net income and excess cash held by the Debtor on the Effective Date.

11 The Debtor shall act as the Disbursing Agent under the Plan. The Debtor estimate that Class
12 1 Claims will be approximately \$60,000.00. To the extent the Debtor do not hold adequate funds as
13 of the Effective Date to pay all Class 1 Claims in full, the Debtor contend that they will be able to
14 satisfy any remaining unpaid Class 1 Claims within two months following the Effective Date. Class
15 1 Claims will be paid in full before distributions are made to Class 3.

16 The Debtor will pay the Class 2 Claims according to the payment schedule outlined above.
17 Payments to Class 3 will commence on the last day of the quarter in which the Effective Date falls
18 (the "Unsecured Claim Initial Distribution"). Following the Unsecured Claim Initial Distribution, the
19 Debtor will continue to make quarterly payments to Class 3.

20 The Debtor's sole shareholder, Steve Wilkinson, will receive a new stock interest in exchange
21 for contribution of his interest in the Debtor's real estate to the Debtor as of the effective date. Any
22 lien interest in such property arising from a claim against Steve Wilkinson shall continue to be
23 subordinate to the lien of Bank 34. To the extent that the claimant's lien arises from a claim upon
24 which the Debtor is jointly liable, such lien claim shall only be retained to the extent specifically
25 granted under the Plan.

26 In the event any entity which possesses an Allowed Secured Claim, or any other lien in any
27 of the Debtor's property for which the Plan requires the execution of any documents to implement or
28 incorporate the terms of the Plan, and such entity fails to provide a release of its lien or execute the

1 necessary documents to satisfy the requirements of the Plan, the Debtor may record a copy of their
2 Plan and the Confirmation Order with the appropriate governmental agency, and such recordation
3 shall constitute the lien release and creation of the necessary new liens to satisfy the terms of the Plan.
4 If the Debtor deem advisable, they may obtain a future Order from the Court which may be recorded
5 in order to implement the terms of the Plan.

6 **ARTICLE X**

7 **TAX CONSEQUENCES**

8 The Debtor have not obtained a tax opinion as to the tax consequences of the Plan as to any
9 Claim, interest, or Creditor. However, payment of indebtedness and discharge of debt may have
10 significant tax consequences for Creditors. The Creditors are advised to see their tax advisor for
11 information concerning the tax consequences of the Plan.

12 BECAUSE THE DEBTOR EXPRESS NO TAX OPINION AND GIVE NO TAX ADVICE,
13 IN NO EVENT WILL THE DEBTOR OR THEIR PROFESSIONAL ADVISORS BE LIABLE IF
14 THE TAX CONSEQUENCES OF THE PLAN ARE NOT AS ANTICIPATED. CREDITORS
15 MUST LOOK SOLELY TO, AND RELY SOLELY ON, THEIR OWN ADVISORS AS TO THE
16 TAX CONSEQUENCES OF THE PLAN.

17 **ARTICLE XI**

18 **NON-ALLOWANCE OF PENALTIES AND FINES**

19 Except as otherwise provided herein, no distribution shall be made under this Plan on
20 account of and no Allowed Claim, whether Secured, Unsecured, Priority, or Administrative, shall
21 include any fine, penalty, exemplary or punitive damages, late charges or other monetary charge
22 relating to or arising from any default or breach by Debtor, and any Claim on account thereof shall
23 be deemed disallowed whether or not an objection to it is filed.

24 **ARTICLE XII**

25 **VOTING PROCEDURE**

26 The Plan divides the Claims of Creditors into separate Classes. All Classes of Claimants are
27 encouraged to vote but only the vote of holders of Claims that are impaired by the Plan will have a
28 significant impact upon the Confirmation process. Generally, this includes Creditors who, under the

1 Plan, will receive less than payment in full of their Claims on the Effective Date of the Plan. All
2 Creditors entitled to vote on the Plan must cast their vote by completing, dating and signing the
3 ballot which has been mailed to them together with a Disclosure Statement and Plan approved by
4 the Court after notice and hearing. The ballot contains instructions concerning the deadline for
5 submitting the ballot and to what address the ballot should be mailed. This Disclosure Statement
6 has been provided to each person whose Claim or Interest has been scheduled by the Debtor, or
7 who has filed a Proof of Claim or interest with respect to the Debtor or their property, each known
8 equity interest holder and other parties-in-interest known to the Debtor. The Disclosure Statement is
9 intended to assist Creditors in evaluating the Plan and in determining whether to accept the Plan. In
10 determining acceptances of the Plan, votes of Creditors will only be counted if submitted by a
11 Creditor whose Claim is duly scheduled by the Debtor as undisputed, non-contingent and
12 liquidated, or who has timely filed with the Court a proof of claim or proof of interest.

13 The Bankruptcy Court will schedule a hearing to determine whether the requirements for
14 Confirmation under the Bankruptcy Code have been met and whether the Plan has been accepted by
15 each impaired Class and by the requisite number of Creditors in such Class. Under § 1126 of the
16 Code, an impaired Class is deemed to have accepted the Plan upon a favorable vote of at least two-
17 thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of
18 Class members actually voting on the Plan. Further, unless there is unanimous acceptance of the
19 Plan by an impaired Class, the Court must also determine that Class members will receive at least
20 as much as they would if the Debtor were liquidated under Chapter 7 of the Code.

21 As stated above, the Debtor propose to pay their General Unsecured Creditors \$290,789.25,
22 which represents what the Unsecured Creditor Classes would receive in a Chapter 7 liquidation. To
23 the extent a Creditor objects to the proposed Plan and to the extent it is determined that an impaired
24 Class exists, the Debtor will pursue confirmation through the voting procedure set forth under
25 Chapter 11 of Title 11 of the United States Code. Pursuant to 11 U.S.C. §1129(b), the Debtor
26 intend to request the Bankruptcy Court to confirm the Plan even if a Class of Claims or Interests
27 does not accept the Plan. To do so, the Bankruptcy Court must find that the Plan is fair and
28 equitable with respect to each Class of Claims or Interests that is impaired and has not accepted the

1 Plan. The Debtor believe that the Plan will satisfy the fair and equitable requirements of the
2 Bankruptcy Code to the extent such requirements are applicable based upon the vote of Creditors
3 on the Plan.

4 1. Fair and Equitable Treatment of Secured Claims.

5 With respect to a Class of Secured Claims that does not accept the Plan, the
6 Bankruptcy Code's "fair and equitable" standard includes a requirement that the holders of the
7 Claims either (i) retain their liens on the collateral and receive cash payments, on the Effective Date
8 or in installments, of a value equal to the amount of the Secured Claim, or (ii) receive the
9 realization of the indubitable equivalent of the Secured Claim. The Debtor believe that this standard
10 is satisfied by the Plan, which provides that each holder of a Secured Claim will receive payment of
11 the full amount of its Claim through the life of the Plan, or in accordance with the terms of its
12 agreement with the Debtor, and the secured Creditor will retain the lien on its collateral to secure
13 payment of the amounts specified by the Plan.

14 2. Fair and Equitable Treatment of Unsecured Claims.

15 With respect to an unsecured, non-accepting Class of Claims, the Bankruptcy Code's
16 "fair and equitable" standard includes a requirement that either (i) the holders of the Claims receive
17 cash payments, on the Effective Date or in installments, of a value equal to the amount of the
18 Claim, or (ii) no Class of junior Claims or Interests receives anything on account of such junior
19 Claim or Interest. The Debtor believe that this standard is satisfied by the Plan, because all
20 Administrative, Priority, and Secured Claims will be paid in full and Unsecured Claims will receive
21 a sum that exceeds the Debtor's liquidation analysis.

22 The failure of each Class to accept the Plan could very well result in a conversion of
23 this case to a Chapter 7 or dismissal of the Chapter 11, and the Secured Creditors repossessing their
24 collateral and disposing of it in a commercially reasonable manner with no obligation to Unsecured
25 Creditors.

26 **ARTICLE XIII**

27 **CLOSING THE CASE**

28 If the Court does not close this case on its own motion, the Debtor will move the Court to

1 close this case once the Plan is deemed substantially consummated. Until substantial
2 consummation, the Reorganized Debtor will be responsible for filing pre- and post-confirmation
3 reports required by the United States Trustee and paying the quarterly post-confirmation fees of the
4 United States Trustee, in cash, pursuant to 28 U.S.C. § 1930, as amended. Pursuant to 11 U.S.C. §
5 1129(a)(12), all fees payable under § 1930 of Title 28, as determined by the Court at the hearing on
6 Confirmation of the Plan, will be paid, in cash, on the Effective Date.

7 **ARTICLE XIV**

8 **DISCLAIMER**

9 Court approval of this Disclosure Statement and the accompanying Plan of Reorganization,
10 including exhibits, is not a certification of the accuracy of the contents thereof. Furthermore, Court
11 approval of these documents does not constitute the Court's opinion as to whether the Plan should
12 be approved and disapproved.

13 **ARTICLE XV**

14 **RISKS**

15 The risk of the Plan lies essentially with the Debtor's ability to maintain its income to make
16 Plan payments. Real estate market conditions will dictate vacancy rates and rent levels, although
17 the Debtor believes the market will be reasonably stable for the next several years.

18 **ARTICLE XVI**

19 **RECOMMENDATION OF THE DEBTOR**

20 The Debtor recommend that all Creditors entitled to vote for the Plan do so. The
21 alternatives to Confirmation of the Plan would be either conversion of this Case to a case under
22 Chapter 7 of the Bankruptcy Code or its dismissal. Conversion will result in the appointment of a
23 Chapter 7 trustee and, most likely, the hiring of an attorney by the trustee. Expenses incurred in
24 administering the Chapter 7 case will take priority in the right to payment over allowed,
25 administrative expenses incurred in the Chapter 11 case. Both Chapter 7 and Chapter 11
26 administrative expenses take priority over the payment of Unsecured Claims without priority. In
27 other words, conversion would likely decrease the net amount available to pay currently existing
28 Creditors. Further, a Chapter 7 proceeding would not provide the Debtor with the means to pay

1 their Priority Claims over time.

2 In addition, conversion could substantially delay any distribution to Creditors beyond the
3 time period for distribution defined in the Plan. A Chapter 7 trustee is not limited to specific
4 deadlines for closing a case and distributing assets to Creditors. It is not unusual for distributions in
5 Chapter 7 cases to be delayed for years. Moreover, the return on the assets of the estate a trustee is
6 likely to obtain through a standard Chapter 7 liquidation could be less than the return the Plan will
7 generate.

8 Dismissal of this Case would leave all Creditors holding Unsecured Claims in the position
9 of having to institute legal proceedings to collect the debts. Moreover, outside the context of a
10 bankruptcy case, the first Creditor to collect may collect all non-exempt property, leaving nothing
11 to be paid to remaining Creditors. In addition, dismissal of this case would open the door for the
12 Debtor to file a new bankruptcy case, which could further delay or reduce funds available to pay
13 creditors. For all these reasons, the Debtor urge you to vote to accept the Plan and to return your
14 ballot in time to be counted.

15 NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE
16 AUTHORIZED OTHER THAN THOSE STATED HEREIN. YOU SHOULD NOT RELY ON
17 ANY REPRESENTATIONS OR INDUCEMENTS CONCERNING THE PLAN OTHER THAN
18 THOSE CONTAINED IN THIS DISCLOSURE STATEMENT.

19 THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT
20 DOES NOT CONSTITUTE A CERTIFICATION OR RULING BY THE COURT REGARDING
21 THE COMPLETENESS OR ACCURACY OF ANY STATEMENTS CONTAINED HEREIN.

22 AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED IN
23 THIS DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTOR CANNOT WARRANT
24 OR REPRESENT THAT THE INFORMATION IS WITHOUT ANY ERROR. HOWEVER, THE
25 INFORMATION IS ACCURATE TO THE BEST OF THEIR KNOWLEDGE AND BELIEF.

26 This Disclosure Statement is not the Plan. This Disclosure Statement, together with the Plan,
27 attached hereto as Exhibit 1, should be read in their entirety before you vote on the Plan. The Plan
28 is summarized in this Disclosure Statement, but the Plan is controlling.

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DATED this 20th day of October 2017,

LAW OFFICE OF BLAKE D. GUNN
/s/ Blake D. Gunn 019112
Blake D. Gunn
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Mesa, AZ 8577
Attorney for Debtor