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

17 In re:	Chapter 11 Proceedings
18 MACAVITY COMPANY, LLC	Case No. 2:17-bk-08474-BKM
19 Debtor.	

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21 **DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION**
22 **DATED OCTOBER 20, 2017**
23 **FILED BY THE DEBTOR MACAVITY COMPANY, LLC**

24 **PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. IT CONTAINS**
25 **INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR**
26 **REJECT THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION DATED**
OCTOBER 20, 2017. THE DEBTOR BELIEVES THAT THE PLAN IS IN THE
BEST INTEREST OF THE CREDITORS AND IS FAIR AND EQUITABLE. THE
DEBTOR URGES THE VOTER TO VOTE TO ACCEPT THE PLAN.

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ARTICLE I
INTRODUCTION

Pursuant to 11 U.S.C. § 1125, Macavity Company, LLC (the “Debtor”), the debtor and debtor-in-possession in the above-captioned bankruptcy case (the “Case”), hereby submits its *Disclosure Statement in Support of Plan of Reorganization dated October 20, 2017* (the “Disclosure Statement”) in the Case. The purpose of this Disclosure Statement is to provide adequate information to the holders of claims or interests in this matter so that they may make an informed judgment in exercising their right to vote for acceptance or rejection of the *Plan of Reorganization dated October 20, 2017* (the “Plan”), a copy of which is attached as Exhibit “A”. The Plan provides for the satisfaction of Allowed Claims and Interests against the Debtor in accordance with the distributive priorities allowed by the Bankruptcy Code.

THE DEBTOR RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN IN ORDER TO MAXIMIZE THE RECOVERY OF YOUR CLAIM.

Capitalized terms used in this Disclosure Statement will correspond to terms defined in the Plan and the Bankruptcy Code. Terms used in this Disclosure Statement that are also defined in the Plan are defined solely for convenience; and the Debtor does not intend to change the definitions of those terms from the Plan. If there is any inconsistency between the Plan and this Disclosure Statement, the Plan is, and will be, controlling.

ARTICLE II
OVERVIEW OF CHAPTER 11

A. Information Regarding the Plan and Disclosure Statement

The objective of a Chapter 11 case is the confirmation (i.e., approval by the Bankruptcy Court) of a plan of reorganization. A Chapter 11 plan describes in detail (and

1 in language appropriate for a legal contract) the means for satisfying the claims against and
2 equity interests in a debtor, or in this case, the Debtor. After a plan has been filed, the
3 holders of claims and equity interests that are impaired by the plan are permitted to vote to
4 accept or reject the plan. Before a debtor can solicit acceptances of its plan, however,
5 Section 1125 of the Bankruptcy Code requires the debtor to prepare a disclosure statement
6 containing adequate information of a kind, and in sufficient detail, to enable those parties
7 entitled to vote on the plan to make an informed judgment about the plan and about whether
8 they should accept or reject the plan.

9 The purpose of this Disclosure Statement is to provide sufficient information about
10 the Debtor and the Plan to enable you to make an informed decision in exercising your right
11 to accept or reject the Plan. Therefore, this Disclosure Statement provides relevant
12 information about the Debtor, its property and financial condition, and the Plan.

13 This Disclosure Statement will be used to solicit acceptances of the Plan only after
14 the Bankruptcy Court has entered an order either approving or conditionally approving this
15 Disclosure Statement. Approval by the Bankruptcy Court of this Disclosure Statement
16 means only that the Bankruptcy Court has found that this Disclosure Statement contains
17 sufficient information for the Debtor to transmit the Plan and Disclosure Statement to
18 Creditors and to solicit acceptances of the Plan. The Bankruptcy Court's approval of this
19 Disclosure Statement does not constitute a certification by the Court that the Disclosure
20 Statement is without inaccuracy.

21 After the Bankruptcy Court has granted approval or conditional approval of this
22 Disclosure Statement and there has been voting on the Plan, the Bankruptcy Court will
23 conduct a Confirmation Hearing concerning whether the Plan should be approved. At the
24 Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the
25 various requirements of the Bankruptcy Code. The Bankruptcy Court also will receive and
26 consider a ballot report prepared by the Debtor that will present a tally of the votes accepting

1 or rejecting the Plan cast by those entitled to vote. Accordingly, all votes are important
2 because they can determine whether the Plan will be confirmed. Once confirmed, the Plan
3 is essentially a new contract between the Debtor, its Creditors, and Equity Security Interests
4 holders and is binding on all Creditors, Equity Security Interests holders and other parties-
5 in-interest in the Debtor's Bankruptcy Case regardless of whether any particular Creditor
6 or Equity Interest holder voted to accept the Plan.

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

14 **B. Representations**

15 This Disclosure Statement has not been subjected to a certified audit; however, it has
16 been prepared in part from information compiled by the Debtor from records maintained in
17 the ordinary course of business or from information received by the Debtor from third
18 parties. Every effort has been made to be as accurate as possible in the preparation of this
19 Disclosure Statement. Nevertheless, the inclusion of financial information in this
20 Disclosure Statement and exhibits is subject to adjustment, and the Debtor reserves all rights
21 to object to or challenge any Claims that are filed or asserted in the Case.

22 This is a solicitation by the Debtor only and is not a solicitation by the attorneys,
23 agents, financial advisors, and accountants retained by the Debtor. No statement or
24 information concerning the Debtor or its assets or securities is authorized, other than as set
25 forth in the Disclosure Statement. STATEMENTS MADE IN THIS DISCLOSURE
26 STATEMENT REGARDING THE FINANCIAL PERFORMANCE OF THE DEBTOR
AND PREPETITION EVENTS ARE REPRESENTATIONS OF THE DEBTOR ONLY.

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ARTICLE III
BACKGROUND AND EVENTS LEADING TO FILING

1. The Debtor's primary asset is approximately 860 acres of real property located at the NW Corner of Monte Carlo Blvd. and FM 75 in Princeton, Texas (the "Property"). The Property is in the process of being developed for a residential housing community. According to a May, 2017 appraisal performed by CBRE, the Property is worth approximately \$28,000,000.

2. The Property is located in the City of Princeton (roughly 30 miles northeast of Dallas) between County Road 408 on the North and County Road 407 (Monte Carlo Boulevard) on the South and is bounded by Farm to Market Road 75 on the East.

3. The Property is being developed into a master planned community called Whitewing Trails with 2,400+ Residential Lots along with resort-style amenities (together, the "Project"). The web site for Whitewing Trails is www.whitewingtrails.com.

4. The Debtor intends to develop and sell the Residential Lots in phases to national and local homebuilders after satisfactory entitlements have been obtained for the Residential Lots. The Debtor expects that the first phase of 352 Residential Lots will be delivered in the next 14 months and subsequent phases are anticipated to become available every 10 months thereafter. Several nationally and regionally recognized home builders have expressed keen interest in purchasing Residential Lots in phase I of the Project. Attached as Exhibit "G" are copies of agreements and pending contracts with various builders for the Project (collectively, the "Builder Contracts").

5. The Project's design includes resort-style amenities centered around the Whitewing Trails Club, which features a fitness center and spa, swimming pools, sports fields and parks. The Project will allocate about 120 acres to floodplain/open space with walking and biking trails that meander throughout the community connecting parks, playgrounds and the Whitewing Trails Club. The current Site Plan includes approximately

1 42 acres of mixed-used lots.

2 6. Pursuant to an Economic Development Agreement, the prior owner of the
3 Property agreed to donate and convey fee simple title to a minimum 7-acre site to the City
4 of Princeton for a new city hall and municipal offices. The Site Plan also contemplates a 13-
5 acre site for an elementary school. The remaining mixed-use lots have not been designated
6 for any particular purpose and may be sold to third parties or purchased by the affiliates or
7 others for the fair market value for such property at the time of purchase.

8 7. As noted above, the City of Princeton and the prior owner entered into the
9 Economic Development Agreement whereby the City of Princeton agreed to use its best
10 efforts to create a Public Improvement District (“PID”) to fund, in part, the development
11 efforts pursuant to the issuance of special revenue bonds (“PID Bonds”) secured by
12 assessments on the development. The PID Bonds are expected to defray the expense of
13 much of the infrastructure for the Project, including water, sewer, and roads, among other
14 items.

15 8. In connection with sale of the Property to the Debtor, in August, 2015, the City
16 of Princeton executed a Memorandum of Understanding Regarding the Economic
17 Development Agreement confirming its agreement to create the PID and issue the PID
18 Bonds. The PID was created in late 2016.

19 9. The Debtor’s initial projections anticipated that it would receive PID proceeds
20 of approximately \$30,879,296 from the PID Bonds. In addition, the Debtor expects to raise
21 funds through a debt or equity offering to finance the development of the Project.

22 10. A copy of the Debtor’s Whitewing Trails presentation setting forth the Project
23 parameters, demographics, pricing, and plans is attached as Exhibit “B.”

24 11. The Bankruptcy Case was prompted in part by a threatened foreclosure of the
25 Property by Montex Lands Inc. (“Montex”).

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ARTICLE IV
POSTPETITION PROCEEDINGS

A. Summary Of Key Events Related To The Bankruptcy Case.

While more detailed information related to the events in the Bankruptcy Case can be obtained by accessing the Bankruptcy Court’s CM/ECF filing system and reviewing the pleadings filed in the Case, the following is a summary of certain key bankruptcy-related proceedings and events associated with this Bankruptcy Case.

1. The Commencement of the Case.

On July 24, 2017, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”). The Debtor continues in possession of its property and the management of its business as debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed.

2. Employment of Estate Professionals.

Postpetition, the Debtor requested authorization to retain Gallagher & Kennedy, PA (“G&K”) as its general bankruptcy and restructuring counsel [Dkt. #4]. The Court granted the Debtor’s application [Dkt. #8]. The Debtor also filed an application to employ MCA Financial Group, Ltd. (“MCA”) as its financial advisor [Dkt. #18]. The court granted the Debtor’s application to employ MCA [Dkt. #21]. The Court also approved the retention of CBRE as the estate’s appraiser [Dkt. #30]. Finally, the Court granted approval for employment of CBIZ MHM as the tax accountant for the Debtor [Dkt. #47].

3. Ordinary Course Professionals.

The Debtor also requested authorization to retain two law firms located in Texas that have historically assisted the Debtor with development, contract, and public incentives, and municipal services [*see* Dkt. #22]. After objection by Montex [Dkt. #32], a hearing was conducted on September 26, 2017 [Dkt. #55]. The Court granted the

1 Application, as modified. [Dkt. #56].

2 **4. McNatt Plan Support Agreement.**

3 Al McNatt, on his own behalf and with authority to act on behalf of the Al McNatt
4 Family Partnership and Princeton Meadows, LP (together, “McNatt”), entered into the Plan
5 Support Agreement dated August, 2017 (the “McNatt PSA”) with the Debtor. In short,
6 McNatt agreed to convert his \$5.515 million secured loan to a 20% equity interest in the
7 Reorganized Debtor. A copy of the McNatt PSA is attached as Exhibit “C.”

8 **5. DIP Financing Request.**

9 On September 19, 2017, the Debtor filed the *Motion for Order Authorizing*
10 *Borrowing with Priority Over Administrative Expenses and Secured by Senior Liens on*
11 *Property of the Estate* (Dkt. #42; the “DIP Financing Motion”). One objection to the DIP
12 Financing Motion was filed by Montex [Dkt. #57]. A hearing on the DIP Financing Motion
13 was conducted October 12, 2017 [Dkt. #45], and the matter is set for evidentiary hearing on
14 November 29, 2017.

15 **6. Post-Petition Proceedings.**

16 MORE DETAILED AND UPDATED INFORMATION REGARDING POST-
17 PETITION EVENTS IN THE BANKRUPTCY CASE CAN BE OBTAINED BY
18 ACCESSING THE DOCKET IN THE BANKRUPTCY CASE ON PACER:
19 https://ecf.azb.uscourts.gov/cgi-bin/DktRpt.pl?122083397291529-L_1_0-1.

20 **ARTICLE V**
21 **SOURCES OF INFORMATION**

22 The financial information contained in this Disclosure Statement is derived the books
23 and records of the Debtor. The information contained in this Disclosure Statement
24 represents the Debtor’s best estimate in light of current market conditions and past
25 experience. All the information provided is subject to change and represents the best
26 information available at the time, the actual results may differ.

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ARTICLE VI
SUMMARY OF THE PLAN

The following provides a summary of the overall structure and classification of claims against or interests in the Debtor and is qualified in its entirety by reference to the Plan, which is attached as Exhibit “A”. The statements in this Disclosure Statement include summaries of the provisions contained in the Plan. This summary does not purport to be a complete statement of all terms in the Plan, and reference is made to the Plan for the full and complete statement of such terms. The Plan controls the treatment of Claims against and Equity Interests in the Debtor and other parties-in-interest. Where Claims are divided into subclasses in the Plan, each subclass will be considered to be a separate class for all confirmation purposes, including treatment and voting on the Plan.

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ARTICLE VII
CLASSIFICATION OF CLAIMS AND INTERESTS

1. **General Classification Provisions.** For purposes of organization, voting, and all confirmation matters, except as otherwise provided herein, all Claims (except for Administrative Claims), and Equity Interests shall be classified as set forth in this Article III of the Plan. All Claims and Equity Interests are classified under the Plan as hereafter stated in this Article III; provided, however, that a Claim or Equity Interest will be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such different Class. As of the Confirmation Hearing, any Class of Claims that does not contain any Creditor’s Claim will be deemed deleted automatically from the Plan; and any Class of Claims that does not contain an Allowed Claim (or a Claim temporarily or provisionally allowed by the Bankruptcy Court for voting purposes) will be deemed

1 automatically deleted from the Plan with respect to voting on confirmation of the Plan. A
2 Claim or Equity Interest is in a particular Class only to the extent the Claim or Equity
3 Interest is an Allowed Claim, or an Allowed Equity Interest as defined herein.

4 2. **Classification of Claims and Interests.** The Plan classifies Claims and
5 Equity Interests in various Classes according to their right to priority of payments as
6 provided in the Bankruptcy Code. The Plan states whether each Class of Claims or Equity
7 Interests are impaired or unimpaired. The Plan provides the treatment each Class will
8 receive under the Plan. In accordance with the requirements of the Bankruptcy Code,
9 Allowed Administrative Expense Claims and Priority Tax Claims are not set forth in
10 Classes and are not entitled to vote on the Plan. The Allowed Claims and Equity Interests
11 against the Debtor's Estate are divided into the following classes:

12 **Class 1 (Secured Tax Claims).** Class 1 consists of all Allowed Secured Tax Claims
13 against the Debtor.

14 **Class 2 (Secured Claims).** Class 2 consists of the Allowed Secured Claims against
15 the Debtor (as and when they become Allowed Claims).

16 **Class 3 (General Unsecured Claims).** Class 3 consists of all Allowed Unsecured
17 Claims held against the Debtor.

18 **Class 4 (Equity Interests in the Debtor).** Class 4 consists of the Allowed Equity
19 Interests of the members of the Debtor.

20 **ARTICLE VIII**
IDENTIFICATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS
IMPAIRED OR UNIMPAIRED UNDER THE PLAN

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22 1. **Unimpaired Classes of Claims and Interests.** The following Classes are not
23 impaired under the Plan and are deemed to have accepted the Plan under the provisions of
24 Section 1126(f) of the Bankruptcy Code:

25 None.

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1 2. **Impaired Classes of Claims and Interests.** The following Classes are
2 impaired under the Plan as provided in Section 1124 of the Bankruptcy Code, and the
3 Debtor will seek acceptance of the Plan from these Classes:

4 Class 1 (Secured Tax Claims)

5 Class 2 (Secured Claims)

6 Class 3 (Unsecured Claims)

7 Class 4 (Equity Interests in the Debtor)

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9 **ARTICLE IX**
10 **PROVISIONS FOR TREATMENT OF**
11 **UNCLASSIFIED CLAIMS UNDER THE PLAN**

12 1. **Administrative Claims.** Every Creditor holding an Allowed Administrative
13 Claim against the Debtor will be paid, in full satisfaction of its Allowed Claim: (a) fully
14 and in Cash on or before the Effective Date if the Claim is then an Allowed Claim; (b) fully
15 and in Cash when and if the Claim becomes an Allowed Claim after the Effective Date; or
16 (c) as otherwise agreed in writing by the Creditor holding the Allowed Administrative
17 Claim or ordered by the Bankruptcy Court. Administrative Claims are unimpaired pursuant
18 to the Plan and votes to accept or reject the Plan will not be solicited from Creditors holding
19 Administrative Claims.

20 2. **Administrative Claims Bar Date.** Proofs of claim (or, for Professional
21 Charges, fee applications) requesting payment of administrative costs and expenses
22 incurred prior to the Effective Date pursuant to Sections 507(a)(2) and 503(b) of the
23 Bankruptcy Code must be served and filed with the Bankruptcy Court no later than thirty
24 (30) days after the Effective Date; provided, however, that proofs of claim will not be
25 required with respect to any unpaid post-petition operating expenses incurred in the normal
26 course of the Debtor's business prior to the Effective Date. Any such Claim that is not
served and filed within this time period will be forever barred. Any Claims for fees, costs,

1 and expenses incurred by any Chapter 11 Professionals after the Effective Date will be paid
2 in the ordinary course of the Debtor's business.

3 3. **Priority Tax Claims.** To the extent Priority Tax Claims exist on the Effective
4 Date, holders of Allowed Priority Tax Claims will be (a) paid in full on the later of the
5 Effective Date or the allowance of the Claim, or (b) over a period not exceeding five (5)
6 years after the Petition Date. Priority Tax Claims will be allowed in the principal amount
7 of the tax due as of the Petition Date, with interest at the applicable statutory rate, without
8 penalties. In the event that the Debtor elects to make periodic payments rather than pay any
9 or all Priority Tax Claims in full on the Effective Date, Priority Tax Claims will be paid:
10 (i) in equal monthly installments; (ii) with interest at an appropriate rate to be determined
11 in accordance with 11 U.S.C. § 511; (iii) with payments beginning within thirty days after
12 the Effective Date, (iv) all in accordance with 11 U.S.C. § 1129(a)(9).

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14 **ARTICLE X**
15 **PROVISIONS FOR TREATMENT OF**
16 **CLAIMS OR EQUITY INTERESTS NOT IMPAIRED UNDER THE PLAN**

16 None.

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18 **ARTICLE XI**
19 **PROVISIONS FOR TREATMENT OF**
20 **CLAIMS IMPAIRED UNDER THE PLAN**

20 1. **Class 1 (Secured Tax Claims).** Class 1 Secured Tax Claims are for real
21 estate taxes assessed by Collin County against the Property. Holders of Allowed Class 1
22 Secured Tax Claims will retain their liens on the Property as security for repayment of
23 Allowed Class 1 Secured Tax Claims. Allowed Class 1 Secured Tax Claims will be paid
24 in full with interest at the applicable statutory rate in accordance with section 511 of the
25 Bankruptcy Code. The Allowed Amount of the Class 1 Secured Claim will be paid: (a) if
26 the Debtor sells the Property, from escrow at closing from the sale of the Property; or (b) if

1 the Debtor elects to retain the Property, within five (5) years of the Petition Date through
2 regular equal monthly installments of principal and interest.

3 Class 1 Secured Tax Claims are impaired and holders of Allowed Class 1 Secured
4 Tax Claims will be entitled to vote to accept or reject the Plan.

5 2. **Class 2 (Secured Claims)**. Each holder of Class 2 Allowed Secured Claims
6 will be placed in a separate subclass of Class 2 for all purposes under the Plan. Unless
7 otherwise provided and subject to the Release Prices and corresponding lien releases set
8 forth under this Plan, until payment of the Release Prices holders of Class 2 Allowed
9 Secured Claims will retain their Liens in Assets of the Debtor after the Effective Date to the
10 same extent, validity, and priority as existed on the Effective Date. Class 2 Secured Claims
11 are impaired, and the holders are entitled to vote to accept or reject the Plan.

12 Each subclass in Class 2 Allowed Secured Claims shall be considered a separate
13 class for all confirmation purposes, including treatment and voting on the Plan, as follows:

14 **Class 2-A – Montex Lands Inc.¹**

15 The total amount of each Class 2-A Allowed Secured Claim will be paid in full with
16 simple interest at the rate of 5.00% per annum (or such other rate as the Court determines
17 is a market rate) no later than the seventh anniversary of the Effective Date. Holders of
18 Class 2 Allowed Secured Claims will receive the following amounts in payment of their
19 Allowed Claims: (a) beginning on the first day of the first calendar month following the
20 Effective Date, 84 monthly principal and interest payments calculated based on a twenty-
21 five (25) year amortization schedule with simple interest at the rate of 5.00% per annum (or
22 such other rate as the Court determines is a market rate); and (b) a single payment of all
23 remaining principal and interest on or before the seventh anniversary of the Effective Date.
24 Upon receipt of payment in full of the amount of the Montex Class 2-A Secured Claim, all
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26 ¹ The Debtor may dispute some or all of the alleged interest charges or fees asserted by
Montex, and reserves all rights to challenge or otherwise object to the Montex Claim.

1 related Liens shall be deemed satisfied and released, and the holder of the Class 2-A Secured
2 Claim shall execute, file and record appropriate documents evidencing the release and
3 termination of all Liens.

4 In the alternative, at the election of Montex and provided sufficient funding is
5 available to the Reorganized Debtor, payment of \$6.5 million on the Effective Date. As
6 another alternative, and also at the election of Montex, Montex can convert its secured claim
7 into a 27% ownership interest in the Reorganized Debtor.

8 **Class 2-B – McNatt**

9 McNatt will receive a 20% ownership interest in the Reorganized Debtor in
10 exchange for the McNatt Class 2-B Secured Claim (estimated at approximately \$5.5
11 million). Upon receipt by McNatt of the 20% ownership interest in the Reorganized Debtor,
12 McNatt will release all claims and encumbrances against the Property that secure the
13 McNatt Claim. The 20% ownership interest of McNatt in the Reorganized Debtor will
14 receive a preferred annual return of \$825,000 accruing until the exercise of the put or call
15 option. McNatt will have the option to “put” its 20% ownership interest to Macavity, and
16 Macavity will have the right to “call” or buy back the 20% ownership interest of McNatt
17 for \$5.5 million plus the accrued 15% preferred annual return on or after 1/2/20. Additional
18 terms regarding the treatment of the McNatt Secured Claims are set forth in the Plan Support
19 Agreement dated August, 2017, attached to the Disclosure Statement.

20 **Class 2-C – Finkelman**

21 Finkelman will receive a 5.3% ownership interest in the Reorganized Debtor in
22 exchange for the Finkelman Class 2-C Claim (estimated at approximately \$1.485 million).
23 Upon receipt by Finkelman of the 5.3% ownership interest in the Reorganized Debtor,
24 Finkelman will release all claims and encumbrances against the Property that secure the
25 Finkelman Claim. The Finkelman Equity Interest in the Debtor shall have a twelve (12)
26 month redemption period (the “Redemption Period”) during which Macavity will have the

1 right to redeem the 5.3% ownership interest of Finkelman for \$1.485 million plus an
2 accrued 15% return. If the Finkleman Equity Interest is not redeemed by Macavity within
3 the Redemption Period, at the election of either Finkelman or Macavity, the Finkelman
4 Equity Interest may be converted back to debt secured by the Property at the conclusion of
5 the Redemption Period (the "Conversion Date"), with accrued interest at the rate of 15%
6 from and after the Effective Date, and shall be paid quarterly interest payments from and
7 after the Conversion Date. The Reorganized Debtor shall have twelve months from the
8 Conversion Date to pay the principal and all accrued interest on the converted debt.

9 3. **Class 3 (Unsecured Claims)**. Holders of Allowed Class 3 Unsecured Claims
10 will be paid in full with simple interest at the rate of 2.25% per annum no later than the fifth
11 anniversary of the Effective Date. Holders of Allowed Class 3 Unsecured Claims will
12 receive the following amounts in payment of their Allowed Claims: (a) beginning on the
13 first anniversary of the Effective Date, sixty (60) monthly principal and interest payments
14 with simple interest at the rate of 2.25% per annum; and (b) a single payment of all
15 remaining principal and interest on or before the sixth anniversary of the Effective Date.
16 Class 3 Unsecured Claims are impaired, and the holders are entitled to vote to accept or
17 reject the Plan.

18 As an alternative, at the election of the Holder of a Class 3 General Unsecured Claim
19 and provided sufficient funding is available to the Reorganized Debtor, payment of twenty-
20 five percent (25%) of the Allowed Claim on the Effective Date.

21 4. **Class 4 (Equity Interests)**. Holders of Equity Interests will retain adjusted
22 ownership shares of the Debtor, after adjusting for the addition of McNatt as a 20% equity
23 interest holder and Finkelman as a 5.3% equity interest holder.

24 **ARTICLE XII**
25 **MEANS OF EFFECTUATING THE PLAN**

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

1 1. **Conditions Precedent to Occurrence of Effective Date.** It is a condition of
2 the Effective Date that the Confirmation Order has been entered by the Bankruptcy Court
3 and has become a Final Order.

4 2. **Implementation.**

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6 **Development and Sale of the Property.** The Property will be developed
7 (horizontally) and sold to homebuilders in phases consistent with the approved Site
8 Plan. Net Proceeds from each sale will be paid pro rata to the Secured Creditor that
9 provides the Development Loan and Montex (assuming Montex does not elect the
10 discounted payoff on the Effective Date). The Secured Creditor that provides the
11 Development Loan and Montex will release their liens on the portion of the Property
12 sold upon receipt of 120% of the pro rata amount of their respective loans on the
13 Property sold (the “Release Price”). For example, if one acre is sold, and the amount
14 of the Montex debt against the sold acre is \$100, Montex will release its lien on the
15 sold Property upon payment of \$120. A projection of development costs, land sales,
16 and creditor payments is attached as Exhibit “D.”

17 **Future Management of Reorganized Debtor.** The Reorganized Debtor will
18 continue to be managed by current management of Macavity.

19 **ARTICLE XIII**
20 **RESOLUTION OF CLAIMS, DEMANDS, AND CAUSES OF ACTION**

21 1. **Preservation of Debtor’s Claims, Demands, and Causes of Action.** All
22 claims, demands, and causes of action of any kind or nature whatsoever held by, through,
23 or on behalf of the Debtor arising before the Effective Date (including the Claims of the
24 Debtor against SilverArch listed in Schedule A/B at Dkt. #39) and that have not been
25 resolved or disposed of prior to the Effective Date, are preserved in full for the benefit of
26 the Debtor; and following the Effective Date, the Reorganized Debtor will own and retain,

1 and may prosecute, enforce, compromise, settle, release, or otherwise dispose of, any and
2 all claims, defenses, counterclaims, setoffs, and recoupments belonging to the Debtor.

3 2. **Procedure for Determination of Claims and Interests.**

4 **Objections to Claims and Interests.** Except as to any Claim or Equity Interest that
5 has been Allowed prior to the Effective Date, the Debtor (or the Reorganized Debtor)
6 may object to the allowance of any Claim or Equity Interest asserted against the
7 Debtor.

8 **Disputed Claims.** No payments or other distributions will be made to holders of
9 Disputed Claims or Interests unless and until such Claims or Interests are Allowed
10 Claims or Interests pursuant to a Final Order. If a Claim or Interest is not an Allowed
11 Claim or Interest by or on the Effective Date or when payment is otherwise due under
12 the Plan, payment of the Allowed Claim or Interest will be made when the disputed
13 Claim or Interest becomes an Allowed Claim or Interest after the Effective Date or
14 as otherwise specifically provided in the Plan.

15 **Treatment of Contingent Claims.** Until such time as a contingent Claim or a
16 contingent portion of an Allowed Claim becomes fixed or absolute or is Disallowed,
17 such Claim will be treated as a Disputed Claim for all purposes related to
18 distributions under the Plan. The holder of a contingent Claim will only be entitled
19 to a distribution under the Plan when and if such contingent Claim becomes an
20 Allowed Claim.

21
22 **ARTICLE XIV**
EXECUTORY CONTRACTS

23 1. **Rejection of Executory Contracts.** The Plan contemplates and provides for
24 the rejection, pursuant to Section 365 of the Bankruptcy Code, of any and all Executory
25 Contracts of the Debtor which are in force on the Confirmation Date, except those
26 Executory Contracts which were specifically assumed pursuant to an order of the Court.

1 2. **Assumption of Other Executory Contracts.** Before the Confirmation
 2 Hearing, the Debtor may file one or more motions identifying any Executory Contracts that
 3 the Debtor will assume as of the Effective Date; and such motions and the Bankruptcy
 4 Court's orders will be deemed incorporated in the Plan. All Executory Contracts not
 5 otherwise assumed will be rejected as of the Confirmation Date.

6 3. **Rejection Claims Bar Date.** Every Claim asserted by a Creditor arising from
 7 an Executory Contract that is rejected under the Plan must be filed with the Bankruptcy
 8 Court no later than the first Business Day that is thirty (30) days after the Effective Date.
 9 Every such Claim that is timely filed will be treated under the Plan as a General Unsecured
 10 Claim. Every such Claim that is not timely filed by the deadline stated above will be forever
 11 barred, unenforceable, and discharged, and the Creditor holding the Claim will not receive
 12 or be entitled to any distribution under the Plan on account of such Claim.

13
 14 **ARTICLE XV**
 MODIFICATION OF THE PLAN

15 1. **Modification of the Plan.** The Plan may be modified by the Debtor from
 16 time to time in accordance with, and pursuant to, Section 1127 of the Bankruptcy Code.
 17 The Plan may be modified by the Debtor at any time before the Effective Date, provided
 18 that the Plan, as modified, meets the requirements of Sections 1122 and 1123 of the
 19 Bankruptcy Code, and the Debtor has complied with Section 1125 of the Bankruptcy Code.
 20

21 **ARTICLE XVI**
 RETENTION OF JURISDICTION

22
 23 1. **In General.** The Bankruptcy Court will retain jurisdiction to determine the
 24 allowance and payment of any Claims or Interests upon any objections (or other appropriate
 25 proceedings) by the Debtor or by any other party-in-interest entitled to proceed in that
 26 manner. As part of such retained jurisdiction, the Bankruptcy Court will continue to

1 determine the allowance of Administrative Claims and any request for payment, including
2 Administrative Claims for Professional Charges.

3 2. **Plan Disputes and Enforcement.** The Bankruptcy Court will retain
4 jurisdiction to determine any dispute that may arise regarding the interpretation of any
5 provisions of the Plan. The Bankruptcy Court also will retain jurisdiction to enforce any
6 provisions of the Plan and any and all documents relating to the Plan. The Bankruptcy
7 Court also will retain jurisdiction over any matter relating to the implementation or
8 consummation of the Plan.

9 3. **Further Orders.** The Bankruptcy Court will retain jurisdiction to facilitate
10 the performance of the Plan by entering, consistent with the provisions of the Plan, any
11 further necessary or appropriate order regarding enforcement of the Plan and any provision
12 thereof. In addition, the Bankruptcy Court will retain jurisdiction to facilitate or implement
13 the allowance, disallowance, treatment, or satisfaction of any Claim, or any portion thereof,
14 pursuant to the Plan.

15 4. **Governmental Units or Regulatory Agencies.** The Bankruptcy Court will
16 retain jurisdiction to adjudicate any dispute or to hear and determine any action taken,
17 proposed, or threatened by any state, federal, or local governmental regulatory agency or
18 unit having or asserting jurisdiction or power over the conduct of the business of the Debtor.

19 5. **Final Decree.** The Bankruptcy Court will retain jurisdiction to enter an
20 appropriate final decree in the Bankruptcy Case.

21 6. **Appeals.** In the event of an appeal of the Confirmation Order or any other
22 kind of review or challenge to the Confirmation Order, and provided that no stay of the
23 effectiveness of the Confirmation Order has been entered, the Bankruptcy Court will retain
24 jurisdiction to implement and enforce the Confirmation Order and the Plan according to
25 their terms, including, but not limited to, retention of jurisdiction to enter such orders
26 regarding the Plan or the performance thereof as may be necessary to consummate the Plan.

1 7. **Executory Contracts.** The Bankruptcy Court will retain jurisdiction to
2 determine any and all motions regarding assumption or rejection of Executory Contracts
3 and any and all Claims arising out of Executory Contracts.

4 8. **Fees of the Chapter 11 Professionals.** The Bankruptcy Court will retain
5 jurisdiction to determine any disputes regarding the fees, costs, and expenses of the Chapter
6 11 Professionals or any professionals or other Persons employed by the Debtor.

7 9. **Other Claims.** The Bankruptcy Court will retain jurisdiction: (a) to hear and
8 determine any claim or cause of action arising in or related to the Debtor’s Bankruptcy
9 Case; and (b) to adjudicate any causes of action or other proceedings currently pending or
10 otherwise referenced here or elsewhere in the Plan, including, but not limited to, the
11 adjudication of any avoidance actions and any and all “core proceedings” under 28 U.S.C.
12 § 157(b), which are or may be pertinent to the Bankruptcy Case and which the Debtor may
13 deem appropriate to commence and prosecute in support of implementation of the Plan.

14 **ARTICLE XVII**
15 **GENERAL PROVISIONS**

16 1. **Extension of Payment Dates.** If any payment date falls due on any day that
17 is not a Business Day, then such due date will be extended to the next Business Day.

18 2. **Notices.** Any notice required or permitted to be provided under the Plan will
19 be in writing and served by regular postage prepaid first-class mail, hand-delivery,
20 facsimile, or e-mail.

21 3. **Closing of the Case.** At such time as the Plan has been fully administered
22 (i.e., when the Plan has been substantially consummated), the Debtor will file an application
23 for Final Order showing that the Plan has been fully administered.

24 4. **General Injunction.** Except as otherwise expressly provided in the Plan, the
25 Confirmation Order shall provide, among other things, that all parties-in-interest who have
26 held, hold, or may hold Claims or Interests are permanently enjoined on and after the

1 Effective Date from: (a) commencing or continuing in any manner any action or other
2 proceeding of any kind with respect to any such Claim against the Debtor or any successor-
3 in-interest of the Debtor, against property of the Debtor, or against property of any
4 successor-in-interest of the Debtor; (b) the enforcement, attachment, collection, or recovery
5 by any manner or means of any judgment, award, decree, or order against the Debtor or any
6 successor-in-interest of the Debtor, property of the Debtor, or against property of any
7 successor-in-interest of the Debtor with respect to any such Claim or Interest; (c) creating,
8 perfecting, or enforcing any encumbrance of any kind against the Debtor or any successor-
9 in-interest of the Debtor, against property of the Debtor, or against property of any
10 successor-in-interest of the Debtor with respect to any such Claim or Interest; (d) from
11 asserting any setoff, right of subrogation, or recoupment of any kind against any obligation
12 due the Debtor or any successor-in-interest of the Debtor, against property of the Debtor, or
13 against property of any successor-in-interest of the Debtor, with respect to any such Claim
14 or Interest; (e) conducting any form of discovery from the Debtor with respect to any such
15 Claim or Interest, or any successor-in-interest of the Debtor; and/or (f) harassing the Debtor
16 or any successor-in-interest of the Debtor.

17 5. **Interest.** Whenever interest is to be computed under the Plan, interest will
18 be simple interest and not compounded. Unless otherwise specifically provided for in the
19 Plan or the Confirmation Order, post-petition interest shall not accrue or be paid on Claims
20 or Interests, and no holder of a Claim or Interest will be entitled to interest accruing on or
21 after the Petition Date.

22 6. **Additional Assurances.** The Debtor and any party-in-interest holding
23 Claims or Interests will execute such other further documents as are necessary to implement
24 any of the provisions of the Plan.
25
26

1 7. **Confirmation by Non-Acceptance Method.** The Debtor requests, if
2 necessary, confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code
3 with respect to any impaired Class of Claims that does not vote to accept the Plan.

4 8. **Vesting.** As of the Effective Date of the Plan, the Reorganized Debtor shall
5 be vested with all of the Assets of the Estate. All assets transferred to the Reorganized
6 Debtor shall be free and clear of all liens, claims, and interest of creditors and parties-in-
7 interest, except as specifically provided in the Plan. Upon the Effective Date, except as
8 provided in the Plan, the Reorganized Debtor shall be free to borrow without further
9 Bankruptcy Court order, such sums of money upon such terms and conditions as they may,
10 in their sole discretion, determine, including the granting of liens and purchase money
11 security interests.

12 9. **Successors and Assigns.** The rights and obligations of any Creditor or other
13 party-in-interest referred to in the Plan will be binding upon, and will inure to the benefit
14 of, the successors, assigns, heirs, devisees, executors, and personal representatives of such
15 Creditor or party-in-interest.

16 10. **Withdrawal of Plan.** The Plan may be withdrawn or revoked by the Debtor
17 at any time before entry of the Confirmation Order.

18 11. **Severability and Reformation.** It is the intention of the Debtor to comply
19 fully with the Bankruptcy Code and applicable non-bankruptcy law in proposing the Plan.
20 Therefore, if any provision of the Plan is determined by the Bankruptcy Court to be contrary
21 to the Bankruptcy Code or applicable non-bankruptcy law, that provision will be deemed
22 severed and automatically deleted from the Plan, if it cannot be reformed or the provision
23 or its interpretation will be deemed reformed to ensure compliance; provided, however, that
24 nothing contained in this paragraph will prevent the Debtor from modifying the Plan in any
25 manner whatsoever in accordance with and as set forth in the Plan. Pursuant to any ruling
26 by the Bankruptcy Court regarding the subject matter of this paragraph, any such severance

1 or reformation will be stated specifically in the Confirmation Order, which then will control
2 notwithstanding any contrary or inconsistent provisions of the Plan.

3 12. **Prohibition Against Prepayment Penalties.** If the Debtor so chooses, in its
4 sole and absolute discretion, to prepay any obligation on which deferred payments are
5 provided for under the Plan, Debtor will not be liable or subject to the assessment of any
6 prepayment penalty unless otherwise ordered by the Bankruptcy Court.

7 13. **Fractional Dollars.** Notwithstanding any other provision of the Plan, no
8 payments or distributions under the Plan of or on account of fractions of dollars will be
9 made. When any payment or distribution of or on account of a fraction of a dollar to any
10 holder of an Allowed Claim would otherwise be required, the actual payment or distribution
11 made will reflect a rounding up of such fraction to the nearest whole number.

12 14. **Payment of Statutory Fees and Filing of Quarterly Reports.** All fees
13 payable pursuant to 28 U.S.C. § 1980, as determined by the Bankruptcy Court at or in
14 conjunction with the Confirmation Hearing, will be paid on or before the Effective Date
15 and, thereafter, in accordance with applicable bankruptcy law. All quarterly reports of
16 disbursements required to be filed by applicable bankruptcy law will be filed in accordance
17 with applicable bankruptcy law.

18 15. **Governing Law.** Except to the extent that the Bankruptcy Code is applicable,
19 the rights and obligations arising under the Plan shall be governed by, construed, and
20 enforced in accordance with, and subject to, the laws of the State of Arizona, excluding any
21 laws that result in the application of the laws of another jurisdiction.

22 16. **Special Tax Issues.** The issuance, transfer, or exchange of a security as
23 defined under the Bankruptcy Code or applicable law, or the making or delivery of any
24 instrument of transfer under the Plan, shall not be taxed under any state or local law
25 imposing a stamp tax or similar tax as provided in Section 1146 of the Bankruptcy Code.

26

1 17. **Conflicts Between Plan and Confirmation Order**. In the event the terms
2 of the Plan and the Confirmation Order conflict, the terms of the Confirmation Order shall
3 govern.

4 **ARTICLE XVIII**
5 **FEDERAL TAX CONSEQUENCES**

6 Each holder of a claim is urged to consult with its own tax advisor regarding the
7 federal, state, local and other tax consequences of the Plan. No rules have been requested
8 from the Internal Revenue Service with respect to any of the tax aspects of the Plan.

9 **ARTICLE XIX**
10 **VOTING PROCEDURES AND REQUIREMENTS**

11 **B. Parties Entitled to Vote**

12 If you hold an Allowed Claim that is “impaired” under the Plan, you are entitled to
13 vote to accept or reject the Plan. Accordingly, to be entitled to vote, your Claim must be
14 “allowed” as set forth in Section 502 of the Bankruptcy Code or temporarily allowed as set
15 forth in Bankruptcy Rule 3018(a). Additionally, Section 1126(f) of the Bankruptcy Code
16 permits you to vote to accept or reject the Plan only if your Claim is “impaired.”

17 **C. Procedures for Voting**

18 1. **Submission of Ballots**. After this Disclosure Statement has been approved
19 by the Bankruptcy Court, all Creditors whose votes are solicited (as explained above) will
20 be sent (a) a ballot, together with instructions for voting (the “Ballot”); (b) a copy of this
21 Disclosure Statement as approved by the Bankruptcy Court; and (c) a copy of the Plan. You
22 should read the Ballot carefully and follow the instructions. Please use only the Ballot sent
23 with this Disclosure Statement. You should complete your Ballot and return it to:

24 GALLAGHER & KENNEDY, P.A.
25 Attn: Lindsi Weber
26 2575 East Camelback Road, Suite 1100
 Phoenix, AZ 85016
 Telephone: (602) 530-8000
 Email: lindsi.weber@gknet.com

1 TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED AT THE ADDRESS
2 LISTED ABOVE BY 5:00 P.M., MOUNTAIN STANDARD TIME, ON
3 _____, 2017. IF YOUR BALLOT IS NOT TIMELY RECEIVED, IT
4 WILL NOT BE COUNTED IN DETERMINING WHETHER THE PLAN HAS BEEN
5 ACCEPTED OR REJECTED.

6 2. **Procedures for Vote Tabulation.** In determining whether the Plan has been
7 accepted or rejected, Ballots will be tabulated in accordance with the Court's Order
8 approving this Disclosure Statement.

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

12 4. **Questions and Lost or Damaged Ballots.** If you have any questions
13 concerning voting procedures, if your Ballot is damaged or lost, or if you believe you should
14 have received a Ballot but did not receive one, you may contact Debtor's counsel, Janel
15 Glynn, at the address and telephone number listed above.

16 **D. Summary of Voting Requirements.**

17 In order for the Plan to be confirmed, the Plan must be accepted by at least one (1)
18 impaired Class of Claims. For a Class of Claims to accept the Plan, votes representing at
19 least two-thirds in claim amount and a majority in number of the Claims voted in that Class
20 (not including votes of insiders) must be cast to accept the Plan.

21 **IT IS IMPORTANT THAT HOLDERS OF ALLOWED IMPAIRED**
22 **CLAIMS EXERCISE THEIR RIGHTS TO VOTE TO ACCEPT OR**
23 **REJECT THE PLAN. THE DEBTOR ASSERT THAT THE**
24 **TREATMENT OF CREDITORS UNDER THE PLAN IS THE BEST**
25 **ALTERNATIVE FOR CREDITORS, AND THE DEBTOR**
26 **RECOMMENDS THAT THE HOLDERS OF ALLOWED CLAIMS**
VOTE IN FAVOR OF THE PLAN.

The specific treatment of each Class under the Plan is described in the Plan and is

1 summarized in this Disclosure Statement.

2 **ARTICLE XX**
3 **LIQUIDATION ANALYSIS**

4 The Debtor's Liquidation Analysis is attached as Exhibit "E". The Liquidation
5 Analysis includes a summary of the Debtor's existing assets, including the estimated value
6 of all assets and a summary of all alleged claims against the Debtor.

7 **ARTICLE XXI**
8 **CONFIRMATION OF THE PLAN**

9 **E. Confirmation Hearing**

10 Section 1128(a) of the Bankruptcy Code provides that the Bankruptcy Court, after
11 notice, will hold a Confirmation Hearing on the Plan. The Confirmation Hearing will be
12 held at the United States Bankruptcy Court, 230 N. First Avenue, Phoenix, Arizona, on
13 _____, 2017, at _____ a.m./p.m. **THE HEARING MAY BE ADJOURNED**
14 **FROM TIME TO TIME BY THE COURT WITHOUT FURTHER NOTICE**
15 **EXCEPT FOR AN ANNOUNCEMENT MADE AT THE HEARING.**

16 **F. Objections to Confirmation**

17 Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may
18 object to confirmation of the Plan, regardless of whether it is entitled to vote. Objections
19 to confirmation of the Plan are governed by Bankruptcy Rule 9014. **IF AN OBJECTION**
20 **TO CONFIRMATION IS NOT TIMELY MADE, THE COURT NEED NOT**
21 **RECEIVE OR CONSIDER IT. ALL OBJECTIONS TO CONFIRMATION OF THE**
22 **PLAN MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON**
23 **COUNSEL FOR THE DEBTOR AT THE ADDRESSES SET FORTH ABOVE, ON**
24 **THE UNITED STATES TRUSTEE, AND ON ANY PARTY-IN-INTEREST WHO**
25 **HAS REQUESTED NOTICE IN THE DEBTOR'S BANKRUPTCY CASE, BY**
26 _____, 2017.

1 **G. Requirements for Confirmation of the Plan**

2 1. **Confirmation Under Section 1129(a) of the Bankruptcy Code.** At the
3 Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of
4 Section 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy
5 Court will enter an order confirming the Plan. Such requirements include, among others:

6 a. That the Plan Proponent has complied with the applicable provisions
7 of Chapter 11, including the provisions of Sections 1122 and 1123 of the Bankruptcy
8 Code governing classification of claims and interests and contents of a plan of
9 reorganization.

10 b. That the Plan has been proposed in good faith and not by any means
11 forbidden by law.

12 c. That any payment made or promised by the Plan Proponent to any
13 Person for services, costs, or expenses in connection with the Bankruptcy Case or
14 the Plan has been approved by or is subject to approval by the Bankruptcy Court as
15 reasonable.

16 d. That the Plan Proponent has disclosed the identity and affiliations of
17 Persons proposed to serve as officers after confirmation.

18 e. That one or more of the impaired Classes of Claims has voted to accept
19 the Plan.

20 f. That the Plan is in the best interests of holders of Claims and Equity
21 Interests; that is, each holder of an Allowed Claim or Allowed Equity Interest either
22 has accepted the Plan or will receive on account of its Claim or Equity Interest
23 property with a value, as of the Effective Date, that is not less than the amount that
24 the holder of such Claim or Equity Interest would receive if the Debtor were
25 liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

26 g. That the Plan is feasible; that is, confirmation is not likely to be

1 followed by the need for liquidation or further reorganization of the Debtor unless
2 that is provided for in the Plan.

3 **2. The Plan Satisfies Bankruptcy Code Requirements.**

4 a. Best Interests Test and Liquidation Analysis. Under the best interests
5 test, the Plan is confirmable if, with respect to each impaired Class of Claims or
6 Equity Interests, each holder of an Allowed Claim or Allowed Equity Interest in such
7 Class either: (i) has accepted the Plan; or (ii) will receive or retain under the Plan,
8 on account of its Claim or Interest, property of a value, as of the Effective Date, that
9 is not less than the amount such holder would receive or retain if the Debtor were
10 liquidated under Chapter 7 of the Bankruptcy Code. The Debtor believes the
11 distributions to Creditors under the Plan will meet or exceed the recoveries that
12 Creditors would receive in a Chapter 7 liquidation of the Debtor and the Estate. The
13 Debtor believes that the Plan provides an equal or better return to Creditors than they
14 can otherwise receive under Chapter 7, and therefore the best interests of creditors
15 test is met.

16 b. Feasibility of the Plan. Section 1129(a)(11) of the Bankruptcy Code
17 includes what is commonly described as the “feasibility” standard. In order for the
18 Plan to be confirmed, the Bankruptcy Court also must determine that the Plan is
19 feasible - that is, that the need for further reorganization or a subsequent liquidation
20 of the Debtor is not likely to result following confirmation of the Plan. As set forth
21 in this Disclosure Statement and in the Plan, Debtor believes that the Plan is feasible.
22 To the extent necessary, Debtor will provide evidence of the feasibility of the
23 payments required under the Plan prior to the Confirmation Hearing, including but
24 not limited to projections illustrating the feasibility of the Plan. *See* Exhibit “D” for
25 the projected costs and expenses of the Project, along with anticipated income and
26 creditor payments.

1 c. Acceptance by an Impaired Class. Because the Plan impairs some
2 Classes of Claims, Section 1129(a)(10) of the Bankruptcy Code requires that, for the
3 Plan to be confirmed, at least one impaired Class must accept the Plan by the
4 requisite vote without counting the votes of any “insiders” (as that term is defined in
5 Section 101(31) of the Bankruptcy Code) contained in that Class. Debtor anticipates
6 that at least one Class will vote to accept the Plan, therefore, this requirement will be
7 satisfied.

8 d. Confirmation Under Section 1129(b) of the Bankruptcy Code.
9 Although Section 1129(a)(8) of the Bankruptcy Code requires that the Plan be
10 accepted by each Class that is impaired by the Plan, Section 1129(b) of the
11 Bankruptcy Code provides that the Bankruptcy Court may still confirm the Plan at
12 the request of the Plan Proponent if all requirements of Section 1129(a) of the
13 Bankruptcy Code are met except for Section 1129(a)(8) and if, with respect to each
14 Class of Claims or Equity Interests that (a) is impaired under the Plan, and (b) has
15 not voted to accept the Plan, the Plan “does not discriminate unfairly” and is “fair
16 and equitable.” This provision commonly is referred to as a “cramdown.” The Plan
17 Proponent has requested cramdown confirmation of the Plan with respect to any such
18 non-accepting Class of Creditors. The Plan Proponent believes that, with respect to
19 such Class or Classes, the Plan meets the requirements of Section 1129(b) of the
20 Bankruptcy Code.

21 (1) Unfair Discrimination. A plan of reorganization “does not
22 discriminate unfairly” if: (i) the legal rights of a non-accepting class are
23 treated in a manner that is consistent with the treatment of other classes whose
24 legal rights are related to those of the non-accepting class; and (ii) no class
25 receives payments in excess of that which it is legally entitled to receive on
26 account of its Claims or Equity Interests. The Plan Proponent asserts that

1 under the Plan: (i) all classes of impaired Claims are being treated in a manner
2 that is consistent with the treatment of other similar classes of Claims; and (ii)
3 no Class of Claims will receive payments or property with an aggregate value
4 greater than the sum of the Allowed Claims in the Class. Accordingly, the
5 Plan Proponent believes that the Plan does not discriminate unfairly as to any
6 impaired Class of Claims or Equity Interests.

7 (2) Fair and Equitable Test. The Bankruptcy Code establishes
8 different “fair and equitable” tests for Secured Creditors, Unsecured
9 Creditors, and holders of Equity Interests, as follows:

10 (a) Secured Creditors. With respect to a secured claim, “fair
11 and equitable” means that a plan provides that either (A) the holder of
12 the secured claim in an impaired class retains the liens securing such
13 claim, whether the property subject to such liens is retained by the
14 debtor or transferred to another entity, to the extent of the amount of
15 such allowed claim, and that the holder of such claim receives on
16 account of such claim deferred cash payments totaling at least the
17 amount of such allowed claim, of a value, as of the effective date, of
18 at least the value of such holder’s interest in the estate’s interest in such
19 property; (B) for the sale, subject to Section 363(k) of the Bankruptcy
20 Code, of any property that is subject to the liens securing such claim,
21 free and clear of such liens, with such liens to attach to the proceeds of
22 such sale, and the treatment of such liens on proceeds under clauses
23 (A) and (C); or (C) the realization by such holder of the “indubitable
24 equivalent” of such claim.

25 (b) Unsecured Creditors. With respect to an unsecured
26 claim, “fair and equitable” means that a plan provides that either (A)

1 each impaired unsecured creditor receives or retains property of a
2 value, as of the effective date, equal to the amount of its allowed claim;
3 or (B) the holders of claims and equity interests that are junior to the
4 claims of the dissenting class will not receive or retain any property
5 under the plan.

6 (c) Equity Security Interest Holders. With respect to
7 holders of equity interests, “fair and equitable” means that a plan
8 provides that either (A) each holder will receive or retain under the
9 plan property of a value, as of the effective date, equal to the greater
10 of: (1) the fixed liquidation preference or redemption price, if any, of
11 such interest; or (2) the value of such interest; or (B) the holders of
12 equity interests that are junior to the non-accepting class will not
13 receive any property under the plan.

14 The Plan Proponent believes that the Plan complies with the Claims priority
15 established by the Bankruptcy Code and thus the “fair and equitable” test of the Bankruptcy
16 Code (including the absolute priority rule) is met with respect to the Secured Creditors and
17 the Equity Interest holders under the Plan.

18 **ARTICLE XXII**
19 **ALTERNATIVES TO THE PLAN**

20 If the Plan is not confirmed, several different events could occur: (1) the Debtor or a
21 third party could propose another plan providing for different treatment of certain Creditors;
22 (2) Secured Creditors could move for relief from the automatic stay to allow them to
23 foreclose their liens against their collateral, which may be granted by the Bankruptcy Court
24 if an alternative plan is not confirmed in a reasonable period of time; or (3) the Bankruptcy
25 Court (after appropriate notice and hearing) could dismiss the Bankruptcy Case or convert
26 such to a case under Chapter 7 if an alternative plan is not confirmed in a reasonable period

1 of time.

2 **ARTICLE XXIII**
3 **RECOMMENDATION AND CONCLUSION**

4 The Debtor believes that the Plan provides the best available alternative for
5 maximizing the recoveries that Creditors will receive from the Debtor's assets. Therefore,
6 the Debtor recommends that all Creditors and Equity Interest holders that are entitled to
7 vote on the Plan vote to accept the Plan.

8 RESPECTFULLY SUBMITTED this 20th day of October, 2017.

9 APPROVED BY:

FILED BY:

10 GALLAGHER & KENNEDY, P.A.

11 By: /s/ Lane Spencer

By: /s/ John R. Clemency

12 Lane Spencer
13 as Member-Manager of Ready RDC
14 LLC, the Member-Manager of the Debtor
15 *Macavity Company, LLC*

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