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10
11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 In re:

15 PARAMOUNT BUILDING SOLUTIONS,
16 LLC; CLEANING SOLUTIONS, LLC;
17 JMS BUILDING SOLUTIONS, LLC; and
18 STARLIGHT BUILDING SOLUTIONS,
19 LLC,

20 Debtors.

Chapter 11 Proceedings

Case No. 2:17-bk-10867-EPB
Case No. 2:17-bk-10868-EPB
Case No. 2:17-bk-10869-EPB
Case No. 2:17-bk-10870-EPB

(Jointly Administered)

**DISCLOSURE STATEMENT
CONCERNING DEBTORS' PLAN OF
LIQUIDATION DATED
APRIL 24, 2018**

21 PARAMOUNT BUILDING SOLUTIONS, LLC; CLEANING SOLUTIONS, LLC;
22 JMS BUILDING SOLUTIONS, LLC; and STARLIGHT BUILDING SOLUTIONS, LLC
23 (collectively the "Debtors") filed a petition for relief under Chapter 11 of Title 11 of the
24 United States Code ("Bankruptcy Code") on September 15, 2017 ("Petition Date") with
25 the United States Bankruptcy Court for the District of Arizona ("Bankruptcy Court").
26 The Debtors remain in possession of their property and continue to operate their financial
27 affairs as debtors-in-possession in accordance with Bankruptcy Code Sections 1107 and
28 1108.

29 The Debtors have prepared this Disclosure Statement ("Disclosure Statement") in
30 connection with the solicitation of acceptances for the Plan of Liquidation Proposed by
31 Debtors dated April 24, 2018 ("Plan"). A copy of the Plan is attached as "Exhibit 1" to
32 this Disclosure Statement and is incorporated herein by this reference. The Debtors are the
33 Proponents of the Plan.

34 Capitalized terms used in this Disclosure Statement have the same meanings ascribed
35 to those terms in the Plan and the Bankruptcy Code. Terms defined in this Disclosure
36 Statement that are also defined in the Plan are defined herein solely for convenience, and
37 there is no intent to change the definitions of those terms from the Plan.

1 **Information Regarding the Plan and Disclosure Statement**

2 The object of a Chapter 11 case is the confirmation (i.e., approval by the Bankruptcy
3 Court) of a plan of reorganization. A plan describes in detail (and in language appropriate
4 for a legal contract) the means for satisfying the claims against and interests in a debtor.
5 After a plan has been filed, the holders of such claims and interests are permitted to vote to
6 accept or reject the plan. Before a proponent can solicit acceptances of its plan, however,
7 Section 1125 of the Bankruptcy Code requires the proponent to prepare a disclosure
8 statement containing adequate information of a kind, and in sufficient detail, to enable those
9 parties entitled to vote on the plan to make an informed judgment about the plan and about
10 whether they should accept or reject the plan.

11 The purpose of this Disclosure Statement is to provide the Debtors' Creditors with
12 adequate information to make an informed judgment about the Liquidating Plan. This
13 information includes, among other matters, a brief history of the Debtors, a summary of
14 their Chapter 11 Case, a description of the Debtors' assets and liabilities, a description of
15 the terms under which the Debtors' assets will be administered in accordance with the Plan,
16 and an explanation of how the Plan will function.

17 It is important that Creditors read and carefully consider this Disclosure Statement
18 and the Plan, and that such Creditors vote promptly on the acceptance of the Plan.

19 **YOU SHOULD READ THIS DISCLOSURE STATEMENT IN ITS
20 ENTIRETY BEFORE VOTING ON THE PLAN. THIS DISCLOSURE
21 STATEMENT SUMMARIZES CERTAIN TERMS OF THE PLAN, BUT THE
22 PLAN ITSELF IS THE GOVERNING DOCUMENT. IF ANY INCONSISTENCY
23 EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE
24 TERMS OF THE PLAN CONTROL.**

25 **IF YOU HAVE QUESTIONS CONCERNING YOUR TREATMENT UNDER
26 THE PLAN, PLEASE CONTACT COUNSEL TO THE DEBTOR, MICHAEL W.
27 CARMEL, MICHAEL W. CARMEL, LTD., 80 EAST COLUMBUS AVENUE,
28 PHOENIX, ARIZONA 85012, TELEPHONE NUMBER (602) 264-4965, FAX
NUMBER (602) 277-0144, E-MAIL: MICHAEL@MCARMELLAW.COM.**

29 **A SUMMARY DESCRIPTION OF THE CLASSIFICATION OF THE
30 CLAIMS AND THE TREATMENT PROPOSED UNDER THE PLAN ARE
31 CONTAINED UNDER CLASSIFICATION AND TREATMENT UNDER THE
32 PLAN BEGINNING ON PAGE 6.**

33 **THE PROPONENTS RESERVE THE RIGHT TO AMEND, MODIFY, OR
34 SUPPLEMENT THE PLAN AT ANY TIME BEFORE THE CONFIRMATION OF
35 THE PLAN, PROVIDED THAT SUCH AMENDMENTS OR MODIFICATIONS DO
36 NOT MATERIALLY ALTER THE TREATMENT OF, OR DISTRIBUTIONS TO,
37 CREDITORS UNDER THE PLAN.**

38 **THE FINANCIAL PROJECTIONS CONTAINED IN THIS DISCLOSURE
STATEMENT REPRESENT THE DEBTOR'S ESTIMATES OF FUTURE EVENTS
BASED ON CERTAIN ASSUMPTIONS MORE FULLY DESCRIBED BELOW,
SOME OR ALL OF WHICH MAY NOT BE REALIZED. NONE OF THE
FINANCIAL ANALYSES CONTAINED IN THIS DISCLOSURE STATEMENT
ARE CONSIDERED TO BE A FORECAST OR PROJECTION AS TECHNICALLY
DEFINED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS. THE USE OF THE WORDS, "FORECAST," "PROJECT", OR
"PROJECTION" WITHIN THIS DISCLOSURE STATEMENT RELATE TO THE**

1 **BROAD EXPECTATIONS OF FUTURE EVENTS OR MARKET CONDITIONS**
2 **AND QUANTIFICATIONS OF THE POTENTIAL RESULTS OF OPERATIONS**
3 **UNDER THOSE CONDITIONS.**

4 **ALL FINANCIAL INFORMATION PRESENTED IN THIS DISCLOSURE**
5 **STATEMENT WAS PREPARED BY THE DEBTOR. EACH CREDITOR IS**
6 **URGED TO REVIEW THE PLAN IN FULL BEFORE VOTING ON THE PLAN TO**
7 **ENSURE A COMPLETE UNDERSTANDING OF THE PLAN AND THIS**
8 **DISCLOSURE STATEMENT.**

9 **THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF**
10 **CREDITORS, EQUITY HOLDERS AND OTHER PARTIES-IN-INTEREST, AND**
11 **FOR THE SOLE PURPOSE OF ASSISTING THEM IN MAKING AN INFORMED**
12 **DECISION ABOUT THE PLAN. NO PERSON HAS BEEN AUTHORIZED TO**
13 **GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS IN**
14 **CONJUNCTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR**
15 **REJECT THE PLAN OTHER THAN THE INFORMATION AND**
16 **REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT OR IN**
17 **THE BALLOTS. IF GIVEN OR MADE, ANY SUCH INFORMATION OR**
18 **REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN**
19 **AUTHORIZED BY THE DEBTOR.**

20 **THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY**
21 **THE BANKRUPTCY COURT. THE BANKRUPTCY COURT WILL CONSIDER**
22 **ANY OBJECTIONS TO AND DETERMINE THE LEGAL ADEQUACY OF THIS**
23 **DISCLOSURE STATEMENT IN CONJUNCTION WITH CONFIRMATION OF**
24 **THE PLAN. APPROVAL OF THE LEGAL ADEQUACY OF THIS DISCLOSURE**
25 **STATEMENT BY THE BANKRUPTCY COURT IS NOT A CERTIFICATION BY**
26 **THE BANKRUPTCY COURT AS TO THE TRUTH OR ACCURACY OF THE**
27 **FACTUAL MATTERS THAT ARE CONTAINED IN THIS DISCLOSURE**
28 **STATEMENT.**

THE DEBTORS STRONGLY URGE YOU TO VOTE FOR THE PLAN AS
THEY BELIEVE THE PLAN WILL PROVIDE FOR A SIGNIFICANTLY
LARGER DISTRIBUTION TO HOLDERS OF CLAIMS THAN WOULD
OTHERWISE RESULT IF AN ALTERNATIVE RESTRUCTURING PLAN WERE
PROPOSED OR THE DEBTORS' ASSETS WERE LIQUIDATED UNDER
CHAPTER 7 OF THE BANKRUPTCY CODE.

This Disclosure Statement has not been subject to a certified audit but has been prepared in part from the information compiled by the Debtors from records maintained by it in the ordinary course of business or from information received by the Debtors from third parties. Every effort has been made to be as accurate as possible in the preparation of this Disclosure Statement.

Other than as stated in this Disclosure Statement, the Debtors have not authorized any representations or assurances concerning the Debtors, their operations, or the value of assets. Therefore, in deciding whether to accept or reject the Plan, you should not rely on any information relating to the Debtors or the Plan other than that contained in this Disclosure statement or in the Plan itself. You should report any unauthorized representations or inducements to counsel for the Debtors, who may present such information to the Bankruptcy Court for action as may be appropriate.

1 This is a solicitation by the Debtors only and is not a solicitation by any affiliates,
2 attorneys, agents, financial advisors, accountants, or any other professionals employed by
the Debtors.

3 **GENERAL BACKGROUND OF THE DEBTOR AND EVENTS LEADING TO**
4 **BANKRUPTCY FILING**

5 This is a Liquidating Plan. The best Summary of the Debtors' History, and need for
6 filing for relief under Chapter 11 of the Bankruptcy Code, is set forth in the "Declaration of
7 Jeffory Southard in Support of First Day Pleadings" ("**Southard Declaration**"). The
8 Southard Declaration was filed on September 15, 2018. For ease of reference, it is attached
9 to this Disclosure Statement as **Exhibit 2**.

10
11 **Post-Petition Operations**

12 Since the Petition Date, the Debtors have continued to operate their affairs as a
13 "debtor-in-possession" under Sections 1107(a) and 1108 of the Bankruptcy Code. The
14 Debtors have been filing Monthly Operating Reports on a regular basis, which reflect the
ongoing financial activities. The U.S. Trustee appointed an Official Committee of
Unsecured Creditors, who has been very active throughout the proceedings.

15 **Retention of Professionals**

16 The Bankruptcy Court entered an order authorizing the Debtor to retain Michael W.
17 Carmel, Ltd. as bankruptcy and reorganization counsel. The Court also entered an Order
18 authorizing the employment of two (2) separate law firms to represent the Official
Committee of Unsecured Creditors ("**Committee**").

19
20 **Bar Date for Filing Proofs of Claims**

21 The Court signed an Order establishing a Bar Date for all creditors to file proofs of
Claim. The Bar Date was **December 22, 2017**.

22 **YOU MUST HAVE FILED A PROOF OF CLAIM NO LATER THAN DECEMBER**
23 **22, 2017 IN THIS CASE, OR BE FOREVER BARRED FROM RECEIVING A**
24 **DIVIDEND FORM THE ESTATE.** A copy of the Claims Register is attached as
Exhibit 3. The Debtors have filed an Omnibus Objection to Claims. It is attached as
Exhibit 4.

25
26 **DESCRIPTION OF THE PLAN OF REORGANIZATION**

27 As noted, a copy of the Plan is attached as **Exhibit 1**.

28

1 The following summary of the material provisions of the Plan is qualified in its
2 entirety by the specific provisions of the Plan, including the Plan's definitions of certain
3 terms used below. The following is intended to provide a general description of the Plan.
4 For more specific information, please refer to the Plan itself. The Debtor has attempted to
5 minimize the use of defined terms in describing the Plan. However, any capitalized terms
6 that are not defined in this section of the Disclosure Statement are defined in the Plan.

7 **Voting and Confirmation Procedures**

8 This Disclosure Statement is accompanied by copies of the following: (a) the Plan,
9 attached as Exhibit 1 to this Disclosure Statement; (b) the Bankruptcy Court's Order: (1)
10 Setting Hearing on Approval of Adequacy of Disclosure Statement and Plan Confirmation;
11 (2) Setting Objection Deadlines thereon; (3) Setting Record Date; (4) Approving Ballots
12 and Solicitation Protocol; (5) Setting Ballot Deadlines; and (6) Related Matters (the
13 "Solicitation Order"); and (c) a Ballot to accept or reject the Plan.

14 Appropriate forms of Ballots must be used.

15 **Who May Vote**

16 Under the Bankruptcy Code, impaired Classes of Claims are entitled to vote to accept
17 or reject a plan of reorganization. A Class that is not impaired under a plan is deemed to
18 have accepted a plan and does not vote. A Class is impaired under the Bankruptcy Code
19 when the legal, equitable, and contractual rights of the holders of Claims or Equity Interests
20 in that Class are modified or altered. **For purposes of this Plan, holders of Claims in
21 Classes 3 and 4 are entitled to vote on the Plan.**

22 If, however, the Debtors file an objection to your claim, you are responsible to
23 request that the Bankruptcy Court temporarily allow your claim for voting purposes. Rule
24 3018 of the Federal Rules of Bankruptcy Procedure provides that the Bankruptcy Court
25 after notice and hearing may temporarily allow the Claim in an amount which the
26 Bankruptcy Court deems proper for the purpose of voting. If the Debtor files an objection
27 to your claim, you should seek an attorney's assistance with respect to this matter.

28 **Voting Instructions**

All votes to accept or reject the Plan must be cast by using the appropriate form of
Ballot enclosed with this Disclosure Statement. Only votes using such Ballots will be
counted, except to the extent the Bankruptcy Court orders otherwise.

**For your vote to count, your Ballot must be properly completed according to
the voting instructions on the Ballot and received no later than the Voting Deadline by
the Debtor's counsel. Any Ballot not indicating an acceptance or rejection will be
deemed an acceptance of the Plan.**

If you have any questions concerning the Plan, please contact:

Michael W. Carmel, Esq.
Michael W. Carmel, Ltd.
80 East Columbus Avenue
Phoenix, Arizona 85012

1 Telephone: (602) 264-4965
2 Facsimile: (602) 277-0144
3 E-Mail: michael@mcarmellaw.com

4 **Acceptance or Rejection of the Plan**

5 Under the Bankruptcy Code, a Class of Claims entitled to vote is deemed to have
6 accepted the Plan if it is accepted by creditors in such Class who, of those actually voting
7 on the Plan, hold at least two-thirds in amount and more than one-half in number of the
8 Allowed Claims of such Class.

9 **Confirmation Hearing; Objections**

10 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice,
11 to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any
12 party-in-interest may object to Confirmation of the Plan. Under Section 1128 of the
13 Bankruptcy Code and Rule 3017(c) of the Bankruptcy Rules, the Bankruptcy Court has
14 scheduled the Confirmation Hearing before the Honorable Eddward P. Ballinger, United
15 States Bankruptcy Judge, at the United States Bankruptcy Court, District of Arizona, 230
16 North First Avenue, 7th Floor, Phoenix, Arizona 85004 for [to be inserted after approval
17 of the Disclosure Statement] The Solicitation Order setting forth the time and date of the
18 Confirmation Hearing has been included along with this Disclosure Statement. Pursuant to
19 the Solicitation Order, the Confirmation Hearing has been set to consider the adequacy of
20 this Disclosure Statement, as well as to consider Confirmation of the Plan. The
21 Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without
22 further notice, except for an announcement of such adjourned hearing date by the
23 Bankruptcy Court in open court at such hearing.

24 Any objection to the adequacy of this Disclosure Statement or to Confirmation of
25 the Plan must be in writing, must comply with the Bankruptcy Rules and the Local Rules
26 of the Bankruptcy Court, and must be filed and served by 5:00 p.m. (Mountain Standard
27 Time) on the date as required in the Solicitation Order.

28 **SUMMARY OF CLASSIFICATION AND TREATMENT UNDER THE PLAN**

Set forth in the following section is a summary of the classification and treatment of
Claims under the Plan. Creditors are referred to Article I of the Plan for an explanation of
all Defined Terms.

The Classes of Claims against the Debtors shall be treated under the Plan as follows:

ADMINISTRATIVE CLAIMS

Claims for Professional Fees. Each Person seeking an award by the Bankruptcy
Court of Professional Fees: (a) must file its final application for allowance of compensation
for services rendered and reimbursement of expenses incurred through the Confirmation
Date within thirty days after the Confirmation Date; and (b) if the Bankruptcy Court grants
such an award, each such Person must be paid in full in Cash in such amounts as are allowed
by the Bankruptcy Court as soon thereafter as practicable.

Post-Confirmation Professional Fees. All Professional Fees for services rendered
in connection with the Chapter 11 Case and the Plan after the Confirmation Date, including
those relating to the prosecution of Litigation Claims preserved under the Plan and the
resolution of Disputed Claims, are to be paid by the Debtor upon receipt of an invoice for

1 such services, or on such other terms to which Debtor may agree, without the need for
2 further Bankruptcy Court authorization or entry of a Final Order. The Debtor shall have
3 ten days after the receipt of any such invoice to object to any item contained in such invoice.
4 If the Debtor and any Professional cannot agree on the amount of post-Confirmation Date
5 fees and expenses to be paid to such Professional, such amount is to be determined.

6 **CLASS 1 – Other Priority Claims.**

7 (a) **Impairment and Voting.** Class 1 is unimpaired by the Plan. Each holder of an
8 Allowed Other Priority Claim is conclusively presumed to have accepted the
9 Plan and is not entitled to vote to accept or reject the Plan. The Debtors are
10 unaware of any unpaid Other Priority Claim.

11 (b) **Distributions.** Except to the extent that a holder of an Allowed Other Priority Claim and
12 has been paid prior to the Effective Date or agrees to a different treatment, each holder of an
13 Allowed Other Priority Claim shall receive, in full and complete settlement, satisfaction and
14 discharge of its Allowed Other Priority Claim, Cash in an amount equal to such Allowed Other
15 Priority Claim on the later of the Effective Date and the date such Other Priority Claim
16 becomes an Allowed Other Priority Claim, or as soon thereafter as is practicable.

17 **1.2. CLASS 2 – Secured Claims.**

18 (a) **Impairment and Voting.** Class 2 is unimpaired by the Plan. Each holder of an
19 Allowed Secured Tax Claim is conclusively presumed to have accepted the Plan
20 and is not entitled to vote to accept or reject the Plan. The Debtors are unaware
21 of any unpaid Secured Claim.

22 (b) **Distributions.** Except to the extent that a holder of an Allowed Secured Claim
23 has been paid prior to the Effective Date or agrees to a different treatment, each
24 holder of an Allowed Secured Claim shall receive, in full and complete
25 settlement, satisfaction and discharge of its Allowed Secured Claim, at the
26 option of the Debtors or the Liquidation Trustee, (i) Cash in an amount equal to
27 such Allowed Secured Claim, including any interest on such Allowed Secured
28 Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code,
on the later of the Effective Date and the date such Secured Claim becomes an
Allowed Secured Claim, or as soon thereafter as is practicable, or (ii) the
Collateral securing its Allowed Secured Claim and any interest on such Allowed
Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy
Code, on the later of the Effective Date and the date such Secured Claim becomes
an Allowed Secured Claim, or as soon thereafter as is practicable.

1 (c) Retention of Liens. Except to the extent that a holder of an Allowed Secured
2 Claim has been paid prior to the Effective Date or agrees to a different treatment,
3 each holder of an Allowed Other Claim shall retain the Liens (or replacement
4 Liens), if any, securing its Other Secured Claim as of the Effective Date until any
5 distribution(s) shall have been made to such holder hereunder, at which time
6 such Liens shall be deemed null and void and shall be unenforceable for all
7 purposes. As to any holder of an Allowed Secured Claim that has been paid prior
8 to the Effective Date, such Liens shall be deemed null and void and shall be
9 unenforceable for all purposes.

10 (d) Classification. Unless otherwise ordered by the Bankruptcy Court, each
11 Allowed Secured Claim in Class 2 shall be considered to be a separate subclass
12 within Class 2, and each such subclass shall be deemed to be a separate Class for
13 purposes of the Plan.

14 CLASS 3 – General Unsecured Claims.

15 (a) Impairment and Voting. Class 3 is impaired by the Plan. Each
16 holder of an Allowed General Unsecured Claim is entitled to vote to accept or
17 reject the Plan.

18 (e) Distributions. The holder of an Allowed General Unsecured Claim shall
19 receive, in full and complete settlement, satisfaction and discharge of such
20 Allowed Claim, on each Distribution Date (including the Final Distribution Date),
21 after full satisfaction of (or the establishment of an appropriate reserve
22 therefor) Allowed Administrative Expense Claims, Allowed Priority Tax Claims,
23 Allowed Other Priority Claims, and Allowed Secured Claims, its, his or her Pro
24 Rata Share of Available Cash. The GUC Carve Out is held for the sole and
25 exclusive benefit of Class 3 Claims, and each holder of an Allowed General
26 Unsecured Claims shall receive its, his or her Pro Rata share of the GUC Carve
27 Out in addition to its, his or her Pro Rata share of Available Cash. Class 3
28 distributions are subject to all statutory, equitable and contractual
subordination claims, rights and grounds available to the Debtors and their
Estate.

1 **CLASS 4 – EQUITY.**

2 (a) **Impairment and Voting.** Class 4 is impaired by the Plan. It is
3 deemed to have rejected the Plan, and therefore not entitled to vote.

4 **Treatment.** The holder of any Equity Interest shall have its, his or her interests
5 extinguished.

6
7 **Debtor’s Assets**

8 The Debtors’ assets were sold pursuant to a Court Order. The transaction closed on
9 November 30, 2017. The Bankruptcy Estates received \$425,000 cash at closing, of which
10 \$325,000 was set aside for (1) professional fees; and (2) US Trustee Fees. The remaining
11 \$100,000 has been set aside for unsecured creditors. In addition to this sum, the Buyer will
12 turn over (a) \$100,000 on the successful conclusion of litigation against US Metro, Inc.;
and (b) thirty percent (30%) of the net monies recovered from claim(s) being asserted
against the Debtors’ former CEO, Glen Kucera. Finally, to the extent any claims are
asserted against any parties pursuant to Chapter 5 of the Bankruptcy Code, those monies
will be turned over for distribution to unsecured creditors.

13 **Brief Explanation of Chapter 11 Reorganization**

14 The Debtors assets are being liquidated pursuant to the Plan that is proposed under
15 Chapter 11 of the Bankruptcy Code (“Chapter 11”). Under Chapter 11, a debtor is
16 authorized to reorganize its financial affairs for the benefit of itself, its creditors and equity
17 holders. It is also allowed to liquidate its assets, which has occurred in these cases. The
primary method to now distribute the proceeds of liquidation is through Confirmation of a
Plan.

18 In general, a Chapter 11 Plan of Reorganization (a) divides Claims into separate
19 Classes; (b) specifies the property that each Class is to receive under the Plan; and
20 c) contains other provisions necessary to the reorganization of the Debtor. A Chapter 11
21 Plan of Reorganization may provide that certain Classes of Claims are either: (i) to be paid
22 in full upon the effective date of the plan; (ii) reinstated; or (iii) their legal, equitable and
23 contractual rights are to remain unchanged by the reorganization or liquidation effectuated
by the plan. These Classes are referred to under the Bankruptcy Code as unimpaired and,
because of such favorable treatment, are deemed to accept the plan. Accordingly, it is not
necessary to solicit votes from the holders of Claims in such unimpaired Classes. A
Chapter 11 plan may also provide that certain Classes will not receive any distributions of
property. Such Classes are deemed to reject the plan.

24 All other Classes of Claims contain impaired Claims. An impaired Class is generally
25 a Class which will receive something less than their Claim under the plan of reorganization.
26 Before a plan can be confirmed by the Bankruptcy Court, Chapter 11 generally requires that
27 each impaired Class of Claims votes to accept a plan. Acceptances must be received from
28 the holders of Claims constituting at least two-thirds in dollar amount and more than one-
half in number of the allowed Claims in each impaired Class of Claims that have voted on
the plan. However, even if an impaired Class rejects the plan, the Bankruptcy Court may
confirm the plan if certain minimum treatment standards are met with respect to such Class
or Classes. This is discussed in this Disclosure Statement under the Section heading

1 “Confirmation Without Acceptance by All Impaired Classes”. Classes that receive nothing
2 are deemed to reject the Plan.

3 Chapter 11 does not require each holder of a Claim to vote in favor of a plan of
4 reorganization in order for the Bankruptcy Court to confirm the Plan. However, the
5 Bankruptcy Court must find that the Plan meets a number of tests (other than the voting
6 requirements described in this section) before it may confirm, or approve, the Plan. Many
7 of these tests are designed to protect the interests of holders of Claims who do not vote to
8 accept the Plan but who will nonetheless be bound by the Plan’s provisions if it is confirmed
9 by the Bankruptcy Court.

10 **Preserved Claims**

11 The Parties are referred to §9.3 of the Plan for a description of the claims which are
12 being preserved for future prosecution/collection.

13 **Solicitation of Acceptance of the Plan**

14 The Debtor is seeking acceptances of the Plan from holders of Allowed Claims
15 classified in Classes 3 and 4, which are the only Classes entitled to vote under the Plan. The
16 remaining Classes are unimpaired, and therefore deemed to accept the Plan. If the requisite
17 acceptances are received, the Debtor will use the acceptances as evidenced by the Ballots
18 solicited in connection with this Disclosure Statement and the Solicitation Order to seek
19 confirmation of the Plan under Chapter 11.

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

23 The Debtor believes that its Plan complies with applicable bankruptcy and non-
24 bankruptcy law. The Debtor believes this Disclosure Statement contains adequate
25 information for all holders of Impaired Claims to cast an informed vote to accept or reject
26 the Plan. Furthermore, the Debtor believes the holders of Impaired Claims will obtain a
27 greater recovery under the Plan than they would otherwise obtain if the Debtor’s assets were
28 immediately liquidated under Chapter 7 of the Bankruptcy Code.

29 If the Plan is confirmed by the Bankruptcy Court, each holder of an Impaired
30 Allowed Claim will receive the same pro-rata consideration as other holders of Claims in
31 the same Class, whether or not such holder voted to accept the Plan. Moreover, upon
32 Confirmation, the Plan will bind all Creditors regardless of whether or not such Creditors
33 voted to accept the Plan.

34 **Classification of Claims and Equity Interests**

35 Section 1123 of the Bankruptcy Code provides that a plan of reorganization must
36 classify Claims against a debtor. Under Section 1122 of the Bankruptcy Code, a plan must
37 classify Claims into Classes that contain substantially similar Claims. The Plan divides the
38 Claims of known Creditors into Classes and sets forth the treatment offered each Class. The
39 Debtor believes it has classified all Claims in compliance with the provision of Section 1122
40 of the Bankruptcy Code, but it is possible that a Creditor may challenge such classification
41 of Claims and that the Bankruptcy Court may find that a different classification is required
42 for the Plan to be confirmed. If so, the Debtor intends, to the extent permitted by
43 Bankruptcy Code and the provisions of the Plan, to amend or revoke the Plan and file an
44 amended or different Plan that would make modifications to the classification of Claims
45 required by the Bankruptcy Court for confirmation.

1 The Classes under the Plan take into account the differing nature and priority of
2 Claims against the Debtor. Section 101(5) of the Bankruptcy Code defines Claim as a
3 right to payment, whether or not such right is reduced to judgment, liquidated, fixed,
4 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or
5 unsecured; or a right to an equitable remedy for breach of performance if such breach gives
rise to a right to payment whether or not such right to an equitable remedy is reduced to
judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or
unsecured. A Claim against the Debtor also includes a Claim against the Debtor's property
as provided in Section 102(2) of the Bankruptcy Code.

6 For the holder of a Claim to participate in a reorganization plan and receive the
7 treatment offered to the Class in which it is classified, its Claim must be Allowed. Under
8 the Plan, an Allowed Claim is defined as a Claim: (a) proof of which, requests for payment
9 of which, or application for allowance of which, was filed or deemed filed on or before the
10 Bar Date, Administrative Claim Bar Date, or the Professional Fee Bar Date, as applicable,
11 for filing proofs of claim or requests for payment of claims of such type against the Debtor;
12 (b) if no proof of claim is filed, which has been or is ever listed by the Debtor in the
13 Schedules as liquidated in amount and not disputed or contingent; or c) a Claim that is
14 allowed in any contract, instrument, indenture, or other agreement entered into in
connection with the Plan and, in any case, a Claim as to which no objection to its allowance
has been interposed within the applicable period of limitation fixed by the Plan, the
Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court. Any Claim to which an
Objection is filed is not an allowed claim until a court of competent jurisdiction has entered
a final, no-appealable order.

14 **Implementation of the Plan/Appointment of Liquidating Agent**

15 As noted, the proceeds from the liquidation of various assets and claims will be the
16 source of recovery to creditors. The monies will be disbursed by a Liquidating Agent. The
17 proposed Liquidating Agent is Mr. James E. Cross, Esq. Mr. Cross is one of the
Committee's attorneys.

18 **Management of the Liquidated Debtors**

19 Subject to the provisions of the Plan, and in accordance with Section 1123(b)(3)(B)
20 of the Bankruptcy Code, Mr. Cross is the Liquidating Agent, and will, subject to the
21 provisions of the Plan, have the power to take any and all such actions as are, in his
22 judgment, necessary to fulfill the Plan's terms.

23 **Distributions**

24 On the Distribution Date, or as soon thereafter as practical, the Debtor shall effect a
25 Distribution to holders of Allowed Claims that, as of the date of the Distribution, have not
26 otherwise been paid or satisfied in accordance with the Plan.

27 **Description of Other Provisions of the Plan**

28 **Post-Effective Date Distributions**

Distributions made after the Effective Date to holders of Claims that are not Allowed
Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed
to have been made on the Effective Date. Notwithstanding any provision in any contract
or other document that may relate to a Claim, all Distributions made pursuant to the Plan
shall be made as if paid on the Initial Distribution Date, without the additional accrual of
interest, fees or penalties.

1 **Discharge**

2 Except as provided in the Plan or the Confirmation Order, the rights afforded under
3 the Plan and the treatment of Claims under the Plan are in exchange for and in complete
4 satisfaction, discharge, and release of, all Claims including any interest accrued on
5 Administrative Expense Priority Claims and General Unsecured Claims from the Petition
6 Date. Except as provided in the Plan or the Confirmation Order, confirmation of the Plan:
7 (a) discharges the Debtor from all Claims or other debts that arose before the Confirmation
8 Date, and all debts of the kind specified in Sections 502(g), 502(h) or 502(I) of the
9 Bankruptcy Code, whether or not: (i) a proof of claim based on such debt is filed or deemed
10 filed under Section 502 of the Bankruptcy Code; (ii) a Claim based on such debt is Allowed
11 under Section 502 of the Bankruptcy Code; or (iii) the holder of a Claim based on such debt
12 has accepted the Plan.

8 **Injunction**

9 Except as provided in the Plan or the Confirmation Order, as of the Confirmation
10 Date, all entities that have held, currently hold or may hold a Claim or Interest or other debt
11 or liability that is discharged are permanently enjoined from taking any of the following
12 actions on account of any such discharged Claims, debts or liabilities: (a) commencing or
13 continuing in any manner any action or other proceeding against the Debtor (including any
14 officer or director acting as a representative of the debtor) or property of the Debtor;
15 (b) enforcing, attaching, collecting or recovering in any manner any judgment, award,
16 decree or order against the Debtor or property of the Debtor; (c) creating, perfecting, or
17 enforcing any lien or encumbrance against the Debtor or property of the Debtor, including;
18 (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt,
19 liability, or obligation due to the Debtor; and (e) commencing or continuing any action, in
20 any manner, in any place, that does not comply with or is inconsistent with the provisions
21 of the Plan or the Bankruptcy Code.

16 **Preservation of Insurance**

17 The Debtor's discharge and release from Claims as provided in the Plan, except as
18 necessary to be consistent with the Plan, do not diminish or impair the enforceability of any
19 insurance policy that may cover Claims against the Debtor or any other Person.

19 **Section 1146 Exemption**

20 In accordance with Section 1146(c) of the Bankruptcy Code: (a) the distribution,
21 transfer, or exchange of Estate property; (b) the creation, modification, consolidation, or
22 recording of any deed of trust or other security interest, the securing of additional
23 indebtedness by such means or by other means in furtherance of, or connection with, the
24 Plan or the Confirmation Order; (c) the making, assignment, modification, or recording of
25 any lease or sublease; or (d) the making, delivery, or recording of a deed or Order, or any
26 transaction contemplated above, or any transactions arising out of, contemplated by, or in
27 any way related to, the foregoing shall not be subject to any document recording tax, stamp
28 tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act or real estate transfer
act, mortgage recording tax or other similar tax or governmental assessment and the
appropriate state or local government officials or agents shall be directed to forego the
collection of any such tax or assessment and to accept for filing or recordation any of the
foregoing instruments or other documents without payment of any such tax or assessment.

1 **Withholding and Reporting Requirements**

2 In connection with the Plan and all instruments issued in connection with the Plan,
3 the Debtor shall comply with all withholding and reporting requirements imposed by any
4 federal, state, local or foreign taxing authority, and all Distributions under the Plan remain
5 subject to any such withholding and reporting requirements. The Debtor shall be authorized
6 to take all actions necessary to comply with such withholding and recording requirements.
7 Notwithstanding any other provision of the Plan, each holder of an Allowed Claim that has
8 received a Distribution of Cash, shall have sole and exclusive responsibility for the
9 satisfaction or payment of any tax obligation imposed by any governmental unit, including
10 income, and other tax obligation on account of such Distribution. For tax purposes,
11 Distributions received in respect of Allowed Claims will be allocated first to the principal
12 amount of such Claims, with any excess allocated to unpaid accrued interest.

8 **Full and Final Satisfaction and Penalties and Fines**

9 In accordance with the Plan, all payments and all distributions are in full and final
10 satisfaction, settlement, release, and discharge of all Claims and Equity Interests, except as
11 otherwise provided in the Plan.

11 Except as expressly provided for in the Plan, no distribution shall be made under the
12 Plan on account of, and no Allowed Claim (whether Secured, Unsecured, Priority or
13 Administrative) shall include any fine, penalty, or exemplary or punitive damages relating
14 to or arising from any default or breach by the debtor, and any claim on account of such
15 fine, penalty, or exemplary or punitive damages shall be deemed to be disallowed, whether
16 or not an objection is filed to such Claim.

15 **Impaired Classes to Vote**

16 Each holder of a Claim in an impaired Class shall be entitled to vote separately to
17 accept or reject the Plan unless such holder is deemed to reject the Plan.

17 **Acceptance by Class of Creditors and Holders of Interest**

18 An impaired Class of holders of Claims shall have accepted the Plan if the Plan is
19 accepted by at least two-thirds in dollar amount and more than one-half in number of the
20 Allowed Claims of such Class that have voted to accept or reject the Plan. A class of holders
21 of Claims shall be deemed to accept the Plan in the event that no holder of a Claim within
22 that Class submits a Ballot by the Voting Deadline.

21 **Cramdown**

22 If any impaired Class of Claims entitled to vote does not accept the Plan by the
23 requisite statutory majorities provided in Section 1126(c) or 1126(d) of the Bankruptcy
24 Code as applicable, or if any impaired Class is deemed to have rejected the Plan, the Debtor
25 reserves the right to request that the Bankruptcy Court confirm the Plan under Section
26 1129(b) of the Bankruptcy Code and to amend the Plan, in accordance with the applicable
27 provisions of the Plan governing amendments or modifications, to the extent necessary to
28 obtain entry of the Confirmation Order.

26 **Disbursement of Funds**

27 Any payment of Cash required to be made under the Plan will be made by check
28 drawn on a domestic bank or by wire transfer from a domestic bank at the election of the
Person making such payment. Any payment or distribution required to be made under the

1 Plan on a day other than a Business Day will be made on the next succeeding Business Day,
2 without interest.

3 From and after the Effective Date, the Liquidating Agent may litigate to Final Order,
4 propose settlements of, or withdraw objections to, all pending or filed Disputed Claims or
5 Litigation Claims and may settle or compromise any Disputed Claim or Litigation Claim
6 without notice and a hearing and without approval of the Bankruptcy Court.

7 **Retention of Jurisdiction**

8 Notwithstanding the entry of the Confirmation Order and the occurrence of the
9 Effective Date, the Bankruptcy Court retains broad jurisdiction over the Chapter 11 case
10 after the Effective Date, to the extent legally permissible.

11 **Amendment of the Plan**

12 At any time before the Confirmation Date, the Debtors may alter, amend, or modify
13 the Plan under Section 1127(a) of the Bankruptcy Code provided that such alteration,
14 amendment, or modification does not materially or adversely affect the treatment and rights
15 of holders of Claims or Interests under the Plan. After the Confirmation Date and before
16 substantial consummation of the Plan as defined in Section 1101(2) of the Bankruptcy
17 Code, the Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings
18 in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies
19 in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may
20 be necessary to carry out the purposes and effects of the Plan so long as such proceedings
21 do not materially and adversely affect the treatment of holders of Allowed Claims under the
22 Plan; provided, however, that prior notice of such proceedings shall be served in accordance
23 with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

24 **Revocation or Withdrawal of the Plan**

25 The Debtors reserve the right to revoke or withdraw the Plan at any time before the
26 Confirmation Date. If the Plan is withdrawn or revoked, then the Plan shall be deemed null
27 and void and nothing contained in the Plan shall be deemed a waiver of any Claims by or
28 against the Debtor or any other person in any further proceedings involving the Debtor or
an admission of any sort, and the Plan and any transaction contemplated by the Plan shall
not be admitted into evidence in any proceeding.

29 **Post-Confirmation Fees**

30 The Liquidating Agent will be responsible for the payment of any fees payable to
31 the Office of the United States Trustee after Confirmation, consistent with applicable
32 provisions of the Bankruptcy Code, Bankruptcy Rules, and 28 U.S.C. Section 1930(a)(6).
33 The Debtors plan to seek an order closing the case as soon as it is substantially
34 consummated, without the burden of ongoing fees being assessed.

35 **Conditions to Confirmation and Effective Date**

36 **Conditions to Confirmation.** The following are conditions precedent to
37 confirmation of the Plan:

- 38 • The Bankruptcy Court shall have entered a Final Order approving the
Disclosure Statement with respect to the Plan;

- 1 • The Confirmation Order has been entered in form and substance reasonably
2 acceptable to the Debtor, and contains specific provisions as set forth in the
3 Plan.
- 4 • Conditions to Effectiveness: The following are conditions precedent to the
5 occurrence of the Effective Date:
 - 6 • The Confirmation Date has occurred;
 - 7 • The Confirmation Order is a Final Order, except that the Debtor
8 reserves the right to cause the Effective Date to occur
9 notwithstanding the pendency of an appeal of the Confirmation
10 Order, under circumstances that would render moot such an
11 appeal;
 - 12 • No request for revocation of the Confirmation Order under
13 Section 1144 of the Bankruptcy Code has been made, or, if
14 made, remains pending;
 - 15 • The Bankruptcy Court, in the Confirmation Order, has
16 approved the retention of jurisdiction provisions of the Plan;
17 and
 - 18 • All documents necessary to implement the transactions
19 contemplated by the Plan are made in form and substance
20 reasonably acceptable to the Debtor and the Creditors'
21 Committee.
 - 22 • *Waiver of Conditions.* The conditions to confirmation and the
23 Effective Date may be waived in whole or in part by the Debtor
24 at any time without notice, an order of the Bankruptcy Court, or
25 any further action other than proceeding to confirmation and
26 consummation of the Plan.

27 **ACCEPTANCE AND CONFIRMATION OF THE PLAN**

28 The following is a brief summary of the provisions of the Bankruptcy Code relevant to acceptance and confirmation of a plan of reorganization. Holders of Claims are encouraged to review the relevant provisions of the Bankruptcy Code with their own attorneys.

Acceptance of the Plan

This Disclosure Statement is provided in connection with the solicitation of acceptances of the Plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a Class of Claims as acceptance by holders of at least two-thirds (2/3) in dollar amount, and more than one-half (1/2) in number, of the Allowed Claims of that Class

1 that have actually voted or are deemed to have voted to accept or reject a plan. The
2 Bankruptcy Code defines acceptance of a plan of reorganization by a Class of interests as
3 accepted by at least two-thirds in amount of the allowed interests of that Class that have
4 actually voted or are deemed to have voted to accept or reject a plan.

5 If one or more impaired Classes reject the Plan, the Debtor may, in its discretion,
6 nevertheless seek confirmation of the Plan if the Debtor believes that the requirements of
7 Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are
8 summarized below) will be met, despite the lack of acceptance by all Impaired Classes.

9 **Confirmation**

10 **Confirmation Hearing**

11 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice,
12 to hold a hearing on confirmation of a plan. Notice of such hearing is being provided to all
13 known holders of Claims or Interests or their respective representatives along with this
14 Disclosure Statement. The hearing may be adjourned from time to time by the Bankruptcy
15 Court without further notice except for an announcement of the adjourned date made at such
16 hearing or any subsequent adjournment thereof.

17 Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may
18 object to confirmation of a plan. Any objection to confirmation of the Plan must be in
19 writing, must conform with the Bankruptcy Rules and the Local Rules of the Bankruptcy
20 Court, must set forth the name of the objecting party, the nature and amount of Claims or
21 Equity Interests held or asserted by that party against the Debtor's Estate or property, and
22 the specific basis for the objection. Such objection must be filed with the Bankruptcy Court,
23 with a copy forwarded directly to the chambers of the Honorable Paul Sala, together with a
24 proof of service, and served on all parties and by the date set forth on the notice of the
25 confirmation hearing in accordance with the Local Rules of the Bankruptcy Court.

26 **Statutory Requirements for Confirmation of the Plan**

27 At the confirmation hearing, the Debtor will request the Bankruptcy Court determine
28 that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code. If the
Bankruptcy Court so determines, the Bankruptcy Court will enter an order confirming the
Plan. The applicable requirements of Section 1129 of the Bankruptcy Code are as follows:

- The Plan must comply with the applicable provisions of the Bankruptcy Code;
- The Debtors must have complied with the applicable provisions of the Bankruptcy Code;
- The Plan must have been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised to be made by the Debtors under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan, must have been disclosed to the Bankruptcy Court, and any such payment made before Confirmation of the Plan must be reasonable, or if such payment is to be fixed after Confirmation

1 of the Plan, such payment must be subject to the approval of the Bankruptcy
2 as reasonable;

- 3 • The Debtors must have disclosed the identity and affiliates of any individual
4 proposed to serve, after Confirmation of the Plan, as a director, officer, or
5 voting trustee of the Debtors under the Plan. Moreover, the appointment to,
6 or continuance in, such office of such individual, must be consistent with the
7 interests of holders of Claims and with public policy, and the Debtor must
8 have disclosed the identity of any insider that the Debtor will employ or retain,
9 and the nature of any compensation for such insider;
- 10 • Best Interests of Creditors Test: With respect to each Class of Impaired
11 Claims, either each holder of a Claim of such Class must have accepted the
12 Plan, or must receive or retain under the Plan on account of such Claim,
13 property of a value, as of the Effective Date of the Plan, that is not less than
14 the amount such holder would receive or retain if the Debtor was liquidated
15 on such date under Chapter 7 of the Bankruptcy Code. In a Chapter 7
16 liquidation, creditors and interest holders of a debtor are paid from available
17 assets generally in the following order, with no lower Class receiving any
18 payments until all amounts due to senior Classes have either been paid in full
19 or payment in full is provided for: (i) first to secured creditors (to the extent
20 of the value of their collateral); (ii) next the Chapter 7 trustee's and his
21 attorney's fees and expenses, and other liquidation costs; (iii) next to priority
22 creditors; (iv) next to unsecured creditors; (v) next to debt expressly
23 subordinated by its terms or by order of the Bankruptcy Court; and (vi) last
24 to holders of equity interests. The Debtor's best estimates of values of assets
25 and liabilities are set forth herein.
- 26 • Each Class of Claims must have either accepted the Plan or not be Impaired
27 under the Plan;
 - 28 • Except to the extent that the holder of a particular Claim has agreed
to a different treatment of such Claim, the Plan provides that
Allowed Administrative and Priority Claims (other than Allowed
Priority Tax Claims) will be paid in full on the Effective Date and
that Allowed Priority Tax Claims will receive on account of such
Claim's deferred Cash payment, over a period not exceeding six
years after the date of assessment of such Claim, of a value, as of
the Effective Date, equal to the Allowed amount of such Claim;
and
 - At least one Impaired Class of Claim must have accepted
the Plan, determined without including any acceptance of
the Plan by any insider holding a Claim of such Class.

1 **Confirmation Without Acceptance by All Impaired Claims**

2 Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a
3 plan, even if such plan has not been accepted by all impaired Classes entitled to vote on
4 such plan, provided that such plan has been accepted by at least one Impaired Class. If any
5 Impaired Classes reject or are deemed to have rejected the Plan, the Debtor reserves its right
6 to seek the application of the requirements set forth in Section 1129(b) of the Bankruptcy
7 Code for Confirmation of the Plan despite the lack of acceptance by all Impaired Classes.

8 Section 1129(b) of the Bankruptcy Code provides that notwithstanding the failure of
9 an Impaired Class to accept a plan of reorganization, the plan must be confirmed, on request
10 of the plan proponent (in a procedure commonly known as **Cramdown**), so long as the plan
11 does not discriminate unfairly and is fair and equitable with respect to each Class of
12 Impaired Claims or Interests that has not accepted the plan.

13 The condition that a plan be fair and equitable with respect to a rejecting Class of
14 Secured Claims includes the requirements that (a) the holders of such Secured Claims retain
15 the liens securing such Claims to the extent of the allowed amount of the Claims, whether
16 the property subject to the liens is retained by the debtor or transferred to another entity
17 under the plan, and (b) each holder of a Secured Claim in the Class receives deferred cash
18 payments totaling at least the allowed amount of such Claim with a present value, as of the
19 effective date of the plan, at least equivalent to the value of the secured claimant's interest
20 in the debtor's property subject to the liens.

21 The condition that a plan be fair and equitable with respect to a rejecting Class of
22 Unsecured Claims or a rejecting Class of Interests includes the requirement that either
23 (a) such Class receive or retain under the plan property of a value as of the effective date of
24 the plan equal to the allowed amount of such Claim or Interest, as the case may be, or (b) if
25 the Class does not receive such amount, no Class junior to the non-accepting Class will
26 receive a payment distribution under the plan.

27 **CERTAIN INCOME TAX CONSEQUENCES**

28 **SUBSTANTIAL UNCERTAINTY EXISTS WITH RESPECT TO THE TAX
CONSEQUENCES OF THE PLAN. NO RULINGS HAVE BEEN REQUESTED
FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE
TAX ASPECTS OF THE PLAN. THE TAX CONSEQUENCES OF THE PLAN ARE
COMPLEX AND, IN MANY AREAS, UNCERTAIN. THEREFORE, EACH
HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT HIS OWN TAX
ADVISOR REGARDING SUCH FEDERAL, STATE, LOCAL AND OTHER TAX
CONSEQUENCES.**

RISK FACTORS

 In this section, the Debtors have attempted to identify the potential material risks of
the Plan. **CREDITORS SHOULD CONSIDER CAREFULLY THE FOLLOWING
FACTORS, IN ADDITION TO THE OTHER INFORMATION CONTAINED IN
THIS DISCLOSURE STATEMENT, BEFORE SUBMITTING A VOTE TO
ACCEPT OR REJECT THE PLAN.**

Fluctuations in the Value of Debtor's Assets

 The current value assigned to the Debtor's assets is uncertain, may not remain
constant, and may decline over time due to a variety of factors including a downturn in the
general economy of the United States or the economics of the potential customers of the

1 Debtor. A disruption or continued downturn in the economy could make it more difficult,
2 or impossible, for the Debtor's product to be sold at a favorable price. In addition, the
3 projections on which these valuations are based could also prove to be incorrect. It is
important to remember that the value assigned to a business is in many cases difficult to
predict and involve uncertainty.

4 **Risk of Non-Confirmation of the Plan**

5 Although the Debtor believes the Plan will satisfy all requirements necessary for
6 confirmation by the Court, there can be no assurance that the Court will reach the same
7 conclusion. Amendments to the Plan may also be required by the Court for confirmation,
8 and these amendments could adversely affect the Creditors' rights to receive distributions
9 under the Plan. Any amendment may also necessitate the re-solicitation of votes. If the
10 Plan is not confirmed, a fire sale (i.e., immediate liquidation) of the Debtor's assets may
11 occur. While a fire sale of the Debtor's assets would likely yield less than the value of the
12 assets in accordance with the Plan, the range of estimated recoveries in either case is subject
13 to variation based upon market conditions and other factors that are beyond the Debtor's
14 control.

11 **ALTERNATIVES TO THE PLAN**

12 If the Plan is not timely confirmed, the most likely alternative is either (1) a sale of
13 the debtor's assets, or (2) a Chapter 7 liquidation proceeding. A sale is fraught with a
14 multitude of issues, such as the lease of where the debtor currently conducts its operations,
15 and the lease of a substantial amount of the debtor's equipment. In a Chapter 7 liquidation
16 proceeding, a Chapter 7 trustee would be appointed by the Bankruptcy Court to oversee the
17 liquidation of the Debtor's assets. Such trustee would be entitled to retain a new set of
professionals, including lawyers and accountants, to review and analyze all of the Claims
and the Debtor's assets. In addition, the Chapter 7 trustee would be entitled to request a fee
equal to 3% of all distributions made to the Creditors. The Debtor believes that the
conversion to a Chapter 7 liquidation proceeding and the appointment of a new trustee and
new estate professionals would substantially increase professional fees and result in further
delays and a reduction in distributions.

18 The Debtor has explored various alternative scenarios, including the scenarios
19 described above, and believes the Plan enables the holders of Claims to realize the
20 maximum recovery under the circumstances. The Debtor believes the Plan is the best plan
21 that can be proposed and serve the best interests of the Debtor and other parties-in-interest.
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RECOMMENDATION AND CONCLUSION

The Debtor has analyzed different scenarios and believes the Plan will provide the best opportunity for the Debtor to reorganize its financial affairs and provide a full payment to creditors. Any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in potentially less successful emergence from bankruptcy and ultimately liquidation. Accordingly, the Debtor recommends confirmation of the Plan and urges all holders of Impaired Claims to vote to accept the Plan and to indicate acceptance by returning their Ballots so as to be received by no later than the Voting Deadline.

RESPECTFULLY SUBMITTED this 24th day of April, 2018.

/s/ Jeffory Southard
Jeffory Southard
