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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF ARIZONA**

In re:	In Proceedings under Chapter 11
TWO BAR O COUNTRY STORE, INC.,	Case No. 4:17-BK-12618-BMW
Debtor.	<b>FIRST AMENDED DISCLOSURE STATEMENT DATED AUGUST 30, 2018</b>

**DISCLOSURE STATEMENT FOR DEBTOR'S CHAPTER 11 PLAN**

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**EXHIBITS**

EXHIBIT A Plan of Reorganization

EXHIBIT B Liquidation Analysis

EXHIBIT C LETTER OF INTENT B/W CROWN CASTLE AND DEBTOR

EXHIBIT D Pro forma projections of Debtor



1 Most words or phrases in this Disclosure Statement have their usual and customary  
2 meanings. Certain capitalized terms have the same meaning as defined in the Plan. If not  
3 otherwise defined, certain terms in this Disclosure Statement have the meaning provided in  
4 the Bankruptcy Code or Bankruptcy Rules.  
5

6 Unless otherwise noted, those portions of the Plan and this Disclosure Statement  
7 providing factual information concerning the Debtor, including assets and liabilities, have  
8 been prepared from information submitted by the Debtor and professionals retained by the  
9 Debtor.  
10

11 The financial information contained in this Disclosure Statement has not been  
12 subjected to an audit by an independent certified public accountant. For that reason, neither  
13 the Debtor nor Debtor's Counsel are able to warrant or represent the information contained  
14 in this Disclosure Statement is without any inaccuracy. To the extent practicable, the  
15 information has been prepared from the Debtor's financial books and records and great  
16 effort has been made to ensure that all such information is accurate.  
17

18 The Disclosure Statement and the Plan will classify all creditors into Classes. The  
19 treatment of each class of creditors will be set forth in this Disclosure Statement and in the  
20 Plan. You should carefully examine the treatment of the Class to which your claim will be  
21 assigned.  
22

23 This Disclosure Statement must be approved by the Bankruptcy Court after notice  
24 and a hearing pursuant to section 1125 of the Bankruptcy Code. Approval of the Disclosure  
25 Statement by the Bankruptcy Court does not constitute either certification or approval of the  
26  
27

Debtor's Plan or that the Disclosure Statement is without any inaccuracy. Creditors may vote on the Plan once the Disclosure Statement is approved by the Bankruptcy Court.

No representations concerning the Debtor or the Plan are authorized other than as set forth in this Disclosure Statement.

**B. Classification of Claims and Interests**

The following table designates the Classes of Claims and Interests in the Debtor and specifies the Classes that are impaired by the Plan and entitled to vote to accept or reject the Plan. A detailed description of the Classes of Claims and Interests is provided in Section VII below.

Class	Description	Impairment	Entitled to Vote
1	Secured Tax Claims	Unimpaired	No
2	Priority Tax Claims	Unimpaired	No
3	Secured Claim of Hogan School of Real Estate PSP	Unimpaired	No
4	Claim of Sweet Rosie Investments, LP	Impaired	Yes
5	General Unsecured Claims	Impaired	Yes
6	Contingent, Disputed, Unliquidated	Impaired	Yes
7	Debtor's Interest	Unimpaired	No



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2 2810 North Swan Road Suite 160  
3 Tucson, Arizona 85712

4 **D. Confirmation Hearing**

5 In accordance with section 1128 of the Bankruptcy Code and Bankruptcy Rule  
6 3017(c), a hearing will be held before the Honorable Brenda M. Whinery, 38 S. Scott, Ave.,  
7 Tucson, AZ 85701, at a time and date to be set by this Court and noticed out to all interested  
8 parties. At such hearing, the Court will consider whether the requirements for confirmation  
9 have been met and whether the Plan has received the requisite acceptance, or whether the  
10 Plan can be confirmed pursuant to section 1129(b) of the Bankruptcy Code. At the  
11 Confirmation Hearing, the Debtor will request confirmation of the Plan.  
12

13  
14 **II. Description of the Debtor**

15 **A. History of the Debtor**

16 Debtor has been in the retail tack and feed business since the 1970s, operating  
17 primarily but not exclusively out of that commercial property commonly known as 7821 E.  
18 Wrightstown Road, Tucson, Arizona (the "Two Bar Property"). Debtor, or Debtor's two  
19 principals, brothers Lloyd and Frank Ormsby, has owned the Two Bar Property dating back  
20 to when they commenced work as retail operators. The Ormsby brothers continue to own  
21 the Two Bar Property but have not conducted retail tack and feed operations since 2008. In  
22 2008 Debtor determined to sell the Two Bar Property along with the Debtor's operating  
23 retail business to Cilanoco, LLC ("Cilanoco") on a seller-financed basis. Cilanoco executed  
24 a note and deed of trust in favor of Debtor, Debtor executed conveyance instruments which  
25  
26  
27



1 included an assignment of Debtor's interest in an Option and Site Lease Agreement dating  
2 back to 1996 with AT&T Wireless PCS, LLC ("AT&T Lease").

3 Cilanoco defaulted on its note owing to Two Bar and Two Bar foreclosed its lien  
4 interest in the Two Bar Property and regained title in 2012 and recovered those rights under  
5 the AT&T Lease that it had assigned to Cilanoco.  
6

7 Prior to the Cilanoco transaction, Debtor and the holder of the tenant rights under  
8 AT&T Lease had been modified and assigned on more than one occasion over the last two  
9 decades. The holder of the easement granted under the AT&T Lease is presently Crown  
10 Castle, Inc., a successor in interest to Wireless Capital partners, LLC. Rent monies on  
11 account of the AT&T Lease were presold several years prior to the sale of the Two Bar  
12 Property to Cilanoco and well prior to the Order for Relief in this matter.  
13

14 Payments as and for the most recent addendum or modification to the AT&T Lease  
15 re-commence in favor of the Debtor in October 2018. The last tenant option under the most  
16 recent addendum expires in 2026.  
17

18 The Debtor is also party to an expired multi-year commercial lease with Tucson Feed  
19 and Pet Food, LLC ("Pet Lease"). Since the Order for Relief in this matter, Debtor has  
20 received the base rent contemplated in the Pet Lease in the amount of \$3,646.48 per month.  
21 Rent has been received and deposited by the Debtor subject to a reservation of its rights  
22 since at least the Order for Relief in this matter. Although contemplated by the Pet Lease,  
23 Debtor has NOT received the common area maintenance, insurance or real property taxes  
24 obligations that are owed under the Pet Lease. The payment Debtor is receiving is also less  
25  
26  
27  
28

1 than the holdover base rent contemplated by the expired Pet Lease, which is simply a 10%  
2 increase in the base rent that was contemplated in the final year of the Pet Lease.

3       The reason Debtor has not pursued rights under the Pet Lease at this time is  
4 complicated. The named tenant under the Pet Lease is supposedly not the entity occupying  
5 the premises. The current occupant is allegedly the franchisor of the named tenant.  
6 According to Richard Spector, General Counsel and Director of Real Estate for the current  
7 occupant, Natural Pet Partners, LLC they were foreclosed or assumed the operation of the  
8 named tenant. due some kind of default that predated Debtor's counsel's involvement.  
9 Upon information and belief, the current occupant and the named tenant were connected by  
10 a franchise agreement. It is possible that the two were or are affiliates, but the explanations  
11 received have been as unsatisfactory as their willingness to communicate with Debtor's  
12 counsel.  
13  
14  
15

16       The Two Bar Property is encumbered by a first position lien in favor of the State of Arizona  
17 Department of Revenue in the approximate amount of \$53,165.24 (the "AZDOR Lien").

18       The Property is also encumbered by a second position Deed of Trust and  
19 Assignment of Rents (the "Hogan School DOT") and the note ("Hogan Note") for which it  
20 secures has an approximate balance of \$140,000.00. The Hogan Note is presently held by  
21 Hogan School of Real Estate, Inc. Profit Sharing Plan (the "Hogan School").  
22

23       Real property taxes are due and owing against the Property as well in the  
24 approximate amount of \$50,000.00 and are statutorily of the highest lien priority.  
25

26       A non-consensual judgment lien in favor of Sweet Rosie Investments, LP was also  
27 recorded. Debtor has amended its schedules to provide for the Sweet Rosie debt in schedule  
28

1 F and identifies the claim as unknown and disputed although an alleged balance has been  
2 furnished to Counsel for Debtor. To the extent a balance is owed, Sweet Rosie's lien  
3 priority is also in dispute because the Sweet Rosie Judgment was recorded without a  
4 cover/information sheet when the judgment was obtained in 2004, possibly compromising  
5 its lien priority pursuant to A.R.S. § 33-967. Counsel is aware that affidavits of renewal of  
6 the Sweet Rosie Judgment appear to be timely and contain the cover sheet necessary under  
7 state law.  
8

9  
10 The AT&T Lease consists of a long-term easement which commenced in 1993 for  
11 the right to erect and maintain a cellular phone tower. The AT&T Lease also afforded  
12 AT&T the exclusive right to sublease the tower signal to cellular phone carriers.  
13

14  
15 For health reasons of its owners over the years, the management of the commercial  
16 rental has suffered some, in particular its ability to enforce CAM provisions under the Pet  
17 Lease.  
18

### 19 **III. Debtors Debt.**

20  
21 In no definitive order of priority, as of the Order for Relief in this matter, Debtor  
22 owes Pima County for real property taxes, the Arizona Department of Revenue, Hogan  
23 School of Real Estate PSP, the Internal Revenue Service, and there exists a disputed claim  
24 of unknown lien priority held by Sweet Rosie Investments, LP.  
25

### 26 **IV. Events Precipitating the Bankruptcy Case**

27 After acquiring title to the Two Bar Property, Debtor became delinquent in the  
28

1 payment of real property taxes and borrowed money against the Two Bar Property. The  
2 interest-only note secured by the Two Bar Property matured around the time purchaser of  
3 the first delinquent real property tax lien was eligible to commence a tax lien foreclosure  
4 action. As a result, Debtor solicited the approximate amount of \$141,000.00 from Hogan.  
5

6 In the middle of 2017, Debtor failed to retire the Hogan Debt in advance of its  
7 balloon date. Due to the default, Hogan made demand of the tenant of the Two Bar  
8 Property and began collecting the rents due to Two Bar under the Pet Lease. Meanwhile,  
9 Hogan commenced non-judicial foreclosure proceedings, and agreed to postpone at least  
10 two (2) of those sale dates as Debtor made diligent attempts to sell the grant of easement to  
11 Crown Castle prior to the trustee's sale and pay off its secured lenders. Debtor was forced  
12 to file for bankruptcy relief due to Hogan's unwillingness to postpone the trustee's sale any  
13 further.  
14  
15

## 16 **V. Significant Events During the Bankruptcy Case**

### 17 **a. Administrative Proceedings**

18  
19 On October 24, 2017, the Debtor commenced the instant bankruptcy case under  
20 Chapter 11 of Title 11. The Debtor obtained authority to use cash collateral for the very  
21 limited purposes of paying real property taxes and insurance premiums. The cash collateral  
22 order expired at the end of April 2018 and a renewed hearing is scheduled for August 2,  
23 2018. Debtor amended its Petition only to evidence its belief that it was not a small  
24 business as that term is defined by the Bankruptcy Code, but Debtor does assert that the  
25  
26  
27  
28

1 Petition and the Amended Petition always contained the single asset real estate case  
2 designation.

3 **b. Sale of Perpetual Grant of Easement; Sale of Commercial Property**

4  
5 The Ormsby Brother's signed corporate resolutions to both list the Two Bar Property  
6 for sale with an agent and enter into a letter of intent for the sale of a perpetual easement of  
7 the space subject to the AT&T Lease ("Perpetual Grant of Easement") for \$260,000.00  
8 subject to Court approval. Prior to and after the Order for Relief in this matter, Debtor,  
9 through counsel, engaged Crown Castle on the purchase of the Perpetual Grant of Easement  
10 of that portion of the Debtor's real property that is the subject of the AT&T Lease. Crown  
11 Castle is a builder, broker, syndicator, lessor and lessee of wireless infrastructure to cell  
12 phone service providers and their ability to consummate a sale is not in question. Not  
13 coincidentally, Crown Castle is the current holder of those tenant rights under the current  
14 AT&T Lease.  
15  
16

17 Debtor has retained Greg Furrier and PICOR as the broker for the Two Bar Property,  
18 which is going to be sold subject to the Perpetual Grant of Easement because Debtor  
19 believes the Crown Castle transaction will close prior to any sale of the Two Bar Property.  
20 The Two Bar Property is being listed at \$375,000.00, exclusive of the AT&T Lease. Any  
21 sale of the Two Bar Property shall reserve to the seller/Debtor a perpetual easement  
22 consistent with the existing AT&T Lease and the letter agreement and which captures the  
23 scope of the easement. Both transactions will be consummated pursuant to Section 363(f)  
24 of the Bankruptcy Code.  
25  
26  
27  
28

1           **c. Retention of Professionals**

2           Court approved Debtor's attorney's employment application in October 2017. The  
3           Court also approved the employment of Troy Ruboyianes as CPA for the Debtor and  
4           PICOR Real Estate Services in May 2018.  
5

6           **d. Preparation and Filing of Delinquent Tax Returns**

7           In coordination with the Debtor's accountant, corporate tax returns  
8           covering tax periods 2016 through 2017 have been or will be filed, and assessed, during the  
9           course of this bankruptcy, which could change the amount of Allowed Claims of priority,  
10          and non-priority unsecured creditors but not in an amount that would jeopardize Debtor's  
11          belief that all creditors will be paid in full in this matter.  
12

13          **e. Discovery of Sweet Rosie Investments, LP Judgment**

14          In March of 2018, as Crown Castle and Debtor worked through the letter agreement  
15          (Exhibit C to be supplemented), and the form of easement, a latent judgment against Debtor,  
16          issued by Arizona Superior Court was discovered. This has delayed the filing of the sale  
17          motion, and Debtor addresses this judgment in Class 4 of the Plan.  
18  
19

20          **VI. Description of Assets**

21          **A. Real and Personal Property**

22          Debtor owns the Two Bar Property, the right to receive rents under the AT&T Lease  
23          through 2022 if the holder of the tenant rights under the AT&T Lease exercises its exclusive  
24          option. The sale of the Perpetual Grant of Easement to Crown Castle contemplates the  
25          assignment of the Debtor's rights in the AT&T Lease to Crown Castle. Put another way,  
26          the future rents payable to Debtor under the AT&T Lease are going to be assigned to Crown  
27  
28

1 Castle and the Perpetual Grant of Easement purchase shall render any issue relating to the  
2 AT&T Lease moot.

3 Debtor holds a claim for unpaid rent against the named tenant of the Pet Lease and  
4 against the current occupant. The current occupant is allegedly the former franchisor to the  
5 named tenant. Debtor has approximately \$8,000.00 in cash in its debtor in possession  
6 accounts, having received rent in the approximate amount of \$3,800.00 each month since  
7 the Order for Relief. This unpaid rent/CAM claim could become part of the sale of the Two  
8 Bar Property.  
9

10  
11 **B. Accounts Receivable and Affiliates**

12 Debtor has no accounts receivable. Debtor has no affiliates.

13 **C. Preference/Fraudulent Transfer Causes of Actions**

14  
15 The Debtor is not aware of any preference or fraudulent transfer claims. At this time  
16 Debtor does not anticipate the filing of any avoidance actions or other litigation relating to  
17 such claims.

18 **VII. Summary of the Plan**

19 **THE FOLLOWING IS ONLY A SUMMARY OF THE PLAN OF**  
20 **REORGANIZATION. IN THE EVENT OF ANY INCONSISTENCY, THE**  
21 **EXPRESS TERMS OF THE PLAN ITSELF SHALL GOVERN.**

22  
23 **A. Overview**

24 The goal of the Plan is to provide for repayment of all claims against the Debtor to  
25 the extent repayment is required under the Bankruptcy Code. Based on the liquidated assets  
26 currently held by the estate, the Debtor shall be able to repay all allowed Claims in full.  
27

1

2

3

4

5



	School of Real Estate PSP		
4	Sweet Rosie Investments, LP	Impaired	Yes
5	General Unsecured Claims	Impaired	Yes
6	Contingent, Disputed, Unliquidated	Impaired	Yes
7	Debtor's Interest	Unimpaired	No

## **1. Unclassified Claims**

Pursuant to 11 U.S.C. § 1123(a)(1), Administrative Expense Claims pursuant to section 507(a)(2) and (a)(4)(A) of the Bankruptcy Code are not classified under the Plan. These Claims are not considered impaired and holders of such Claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code.

### **i. Administrative Expenses**

**Generally.** Except to the extent that a Holder of an Administrative Expense Claim agrees to different treatment, or as otherwise provided for in the Plan, the Holders of Administrative Expense Claims will receive cash on account of and in the amount of such Administrative Expenses. Payment of Administrative Expenses will be made: (a) on the Effective Date; or (b) or as otherwise provided for in the Plan. A notice setting forth the Administrative Expense Bar Date will be filed on the Bankruptcy Court's docket.

1           **Professional Compensation.** Professionals employed at the expense of the Estates  
2 and entities who may be entitled to reimbursement or the allowance of fees and expenses  
3 from the Estates pursuant to section 503(b)(2)-(6) of the Bankruptcy Code shall receive cash  
4 in the amount awarded to such professionals and entities at such times and only in  
5 accordance with a Final Order entered pursuant to section 330 or 503(b)(2)-(6) of the  
6 Bankruptcy Code.  
7

8           Any application for payment of an Administrative Expense must be filed within sixty  
9 days of the Effective Date (the “**Administrative Expenses Bar Date**”), or such other date  
10 as may be fixed by the Bankruptcy Court. The application for payment of an  
11 Administrative Expense will be paid by or on behalf of the Debtor or Reorganized Debtor  
12 on the (i) date of the order granting such award becomes a Final Order, (ii) or as soon  
13 thereafter as is practicable, (iii) or such other terms as may be mutually agreed upon by the  
14 Professional and the Debtor or Reorganized Debtor.  
15  
16

17           The anticipated Administrative Expenses on the Effective Date include (1) Debtor's  
18 counsel's outstanding fees in the approximate amount of \$30,000.00; however, this amount  
19 may vary depending on the plan confirmation process and related proceedings; (2) Debtor's  
20 accountant's outstanding fees in the approximate amount of \$10,000.00; however, this  
21 amount may vary depending on the extent of the work necessary to prepare prior unfiled tax  
22 returns of the Debtor; (3) Post-petition rental tax returns in the amount of UNKNOWN.  
23 The anticipated Administrative Expenses are an estimate and the Debtor reserves all rights  
24 to submit additional Administrative Expenses to the Bankruptcy Court for approval. Post-  
25 confirmation, the Debtor and their counsel will continue to incur fees, and it is anticipated  
26  
27  
28

1 the accountant will continue to be employed and incur fees. Notwithstanding any of the  
2 foregoing, the applicable Debtor or Reorganized Debtor shall assume all post-petition  
3 liabilities, fees and expenses for, and make payment in the ordinary course to any  
4 Professional retained by the applicable Debtor or Reorganized Debtor as an ordinary course  
5 professional pursuant to that certain order of the Bankruptcy Court.  
6

7 **U.S. Trustee's Fees.** All fees and charges assessed against the Estates pursuant to  
8 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Debtors will file with  
9 the Court and serve on the U.S. Trustee a quarterly financial report for each quarter that the  
10 Case remains open in the format prescribed by the U.S. Trustee, and the Debtors will pay  
11 such quarterly fees as due for each post-confirmation quarter the case remains open.  
12  
13

## 14 **2. Classified Claims**

15 Claims against the Debtor, are classified for all purposes, including voting (unless  
16 otherwise specified), confirmation, and distribution pursuant to the Plan, as follows:  
17

### 18 **Class 1 – Secured Tax Claims**

19 (a) **Impairment and Voting.** Class 1 is unimpaired under the Plan. Class 1 is not  
20 entitled to vote to accept or reject the Plan.  
21

22 (b) **Class Members.** Class 1 consists of real property taxes and the transaction  
23 privilege tax claims of the State of Arizona.  
24

25 (c) **Distributions.** The holders of Class 1 Claims shall be paid in full through the net  
26 sale proceeds of either the Two Bar property or the Perpetual Grant of Easement directly  
27  
28

1 from the close of escrow, which ever sale closes first.

2 **Class 2 – Priority Tax Claims**

3 (a) **Impairment and Voting.** Class 2 is unimpaired under the Plan. Class 2 is not  
4 entitled to vote to accept or reject the Plan.  
5

6 (b) **Class Members.** Class 2 includes the Internal Revenue Service (Proof of Claim  
7 #1) and the Arizona Department of Revenue (Proofs of Claim #2).

8 (c) **Distributions.** Class 2 Claims shall be paid in full out of the later of the sale of  
9 the Two Bar Property or the Perpetual Grant of Easement directly direct from the close of  
10 escrow.  
11

12 **Class 3 – Secured Claim of the Hogan School of Real Estate, Inc. Profit Sharing**  
13 **Plan**

14 (a) **Impairment and Voting.** Class 3 is unimpaired under the Plan. Class 3 is not  
15 entitled to vote to accept or reject the Plan.  
16

17 (b) **Class Members.** Class 3 the secured claim of the Hogan School of Real Estate  
18 Profit Sharing Plan.

19 (c) **Distributions.** Class 3 Claim shall be paid in full through the net proceeds from  
20 the sale of the Two Bar Property and the sale of the Perpetual Grant of Easement. Given its  
21 lien priority it is likely that the sale of the first asset will not satisfy Class 3 in full.  
22

23 **Class 4 - Sweet Rosie Investments, LP**

24 (a) **Impairment and Voting.** Class 4 is impaired under the Plan. Class 4 is entitled  
25 to vote to accept or reject the Plan.  
26  
27

1 (b) **Class Members.** Class 4 includes the future liquidated, undisputed Claim of  
2 Sweet Rosie Investments, LP.

3 (c) **Distributions.** To the extent the holder of a Class 4 Claim has its claim  
4 liquidated, and that claim is not in dispute, it shall be paid in full from the net proceeds from  
5 sale of the Two Bar Property and/or the sale of the Perpetual Grant of Easement. To the  
6 extent it is determined that it is secured, it shall be entitled to post-petition interest on its  
7 claim.  
8

9  
10 **Class 5 – General Unsecured Claims**

11 (a) **Impairment and Voting.** Class 5 is impaired by the Plan. Each Holder of an  
12 Impaired Allowed General Unsecured Claim is entitled to accept or reject the Plan.

13 (b) **Class Members.** Class 5 includes all Allowed Claims in the Debtor that are not  
14 entitled to priority, are not secured by an interest in the Debtor's property, and are not  
15 contingent, unliquidated or disputed. A complete list of all Class 5 claims is set forth in the  
16 Disclosure Statement at Section VII.C.  
17

18 (c) **Treatment.** All allowed Class 5 claims shall be paid no less than thirty (30) days  
19 after all administrative claims and creditor classes are paid in full, but in no event no longer  
20 than sixty (60) days from the close of escrow of the Two Bar Property sale or the Perpetual  
21 Grant of Easement, whichever is later.  
22

23 **Class 6 – Contingent, Unliquidated, and Disputed Claims**

24 (a) **Impairment and Voting.** Class 6 is impaired by the Plan. Class 6 is entitled to  
25 vote to accept or reject the Plan.  
26  
27

1 (b) **Class Members.** Class 6 consists of claims that are either contingent,  
2 unliquidated, disputed, or any combination of the foregoing claims in the Debtor.

3 (c) **Treatment.** Class 6 shall receive no distribution under the Plan. In the event that  
4 any claims in Class 6 become liquidated, noncontingent or undisputed they shall be entitled  
5 to treatment as Class 5 claims, unless a separate class has been identified for the holder of a  
6 disputed, unliquidated and/or contingent claim.  
7

8 **Class 7 – Debtor's Interest**

9  
10 (a) **Impairment and Voting.** Class 6 is unimpaired by the Plan. The Debtor is not  
11 entitled to vote to accept or reject the Plan.

12 (b) **Treatment.** On the Effective Date, all estate property shall vest in the Debtor.

13 **C. General Unsecured Claims**

14  
15 To date, the following claims and amounts have either been scheduled by the Debtor  
16 or filed as a proof of claim in this case and are not disputed or contingent but may be  
17 unknown or unliquidated in amount:

- 18 • Arizona Department of Revenue.....UNKNOWN  
19 • Internal Revenue Service (POC#2)..... \$2,983.00  
20 • Cilanoco, LLC ..... \$ 0.00  
21  
22

23 **VIII. Executory Contracts and Unexpired Leases**

24 The Debtor shall assume as of the Effective Date each Executory Contract and  
25 Unexpired Lease listed in Schedule G, as amended, whether written or oral, except as  
26 otherwise provided for in the Plan by the time of the Court's entry of a Confirmation Order.  
27

1 Assumption means that the Debtor has elected to continue to perform obligations under  
2 such contracts and leases, and to cure defaults of the type that must be cured under the  
3 Code, if any. Entry of the Confirmation Order shall constitute approval of such assumption  
4 pursuant to sections 365 and 1123 of the Bankruptcy Code. After the Effective Date, the  
5 Debtors may enter into new leases of Property without approval by the Court in the ordinary  
6 course of business as is necessary and proper to bring additional income into the Estates.  
7 Such new leases will be in writing, and pre-petition leases may be formalized in new written  
8 leases.  
9

10  
11 To the extent Cilanoco, LLC asserts an interest that is executory in nature or asserts a  
12 claim against the estate, Debtor asserts that such claim or interest is offset by Debtor's  
13 claims against Cilanoco, LLC.. Debtor also asserts that Cilanoco, LLC and Debtors claims  
14 are time barred under state law.  
15

16 To the extent that Cilanoco, LLC, an entity identified on schedule F, asserts a claim against  
17 the estate, or asserts an interest in the AT&T Lease, Debtor might elect to reject the underlying  
18 AT&T Lease and therefore the disputed Cilanoco, LLC assignment. Such rejection is conditioned  
19 upon the Courts approval of the Sale of the Perpetual Grant of Easement and the purchaser's consent  
20 to rejection. The Sale of the Perpetual Grant of Easement shall take place prior to or at the same  
21 time as the entry of a Confirmation Order in this matter. Also conditional upon the approval of the  
22 Perpetual Grant of Easement, Debtor shall also forever release Cilanoco, LLC of any claim it may  
23 hold against it. See 11 U.S.C. 1123(b)(3)(A).  
24  
25  
26  
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1 Unless a rejection motion is filed prior to the Confirmation Hearing, no executory  
2 contracts or unexpired leases will be rejected unless such executory contract is rejected  
3 within the Plan.

4  
5 Any individual or entity that is a party to an executory contract or unexpired lease  
6 assumed pursuant to the Plan who objects to such assumption must file with the Court a  
7 written statement stating the basis for the objection. This statement must be filed and  
8 served within the deadline for objecting to the confirmation of the Plan, unless the Court has  
9 set an earlier time. Any individual or entity that fails to file timely and serve such a  
10 statement will be deemed to have waived any objection to the proposed assumption.  
11

12 The Pet Lease has expired and there exists no executory contract relating to the real  
13 property of the estate that has not been addressed here.

14  
15 **IX. Means for Executing and Implementing the Plan**

16 **A. Means of Funding the Plan**

17 The Plan will be funded from the Debtor's sale of the Two Bar Property and the sale  
18 of the Perpetual Grant of Easement pursuant to 11 U.S.C. § 363(f), and cash on hand or to  
19 be received from the Pet Lease rents.  
20

21 **B. Causes of Action**

22 Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtor shall  
23 retain all of the Debtor's causes action pursuant to applicable local, state or federal law. In  
24 particular, but not exclusively, Debtor holds a lease damages claim against the named tenant  
25 of the now-expired Two Bar Property Lease and a contract or quantum meruit claim against  
26 the occupant who alleges to be the successor in interest to the named tenant of the Two Bar  
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28



1 Property Lease. The causes of action identified are not meant to limit the Debtor's theories  
2 of recovery.

3 Based on the validity of the Pet Lease, the holdover language in particular, in  
4 addition to the commercial reasonableness of the monetary obligations contained in that Pet  
5 Lease, a damages award would be entered in Debtor's favor against the current occupant for  
6 unpaid CAM charges dating back to at least July 2017.

8 Debtor is equally confident that a lease damages judgment against the named tenant  
9 would be entered for unpaid CAMs through June 2017, the month that the named tenant  
10 was succeeded by its successor/affiliate/franchisor. Debtor is less confident that the cost of  
11 seeking lease damages against the current occupant for for pre-July 2017 lease damages  
12 would prove beneficial because the question of liability is less clear, let alone the  
13 collectability of any damages claim. As to the named tenant, the current occupant, and  
14 guarantor(s), Debtor lacks insufficient information to determine whether any future  
15 judgment would have a strong collection value.

18 Debtor does not see any claims litigation at this time. The solvency of the Debtor  
19 probably moots any lien priority litigation.

21 The only other non-monetary litigation that could arise relates to Cilanoco, LLC,  
22 who was assigned those rights under the AT&T Lease in combination with the sale of the  
23 Two Bar Property on a seller "carry-back" basis. Debtor believes that Cilanoco, LLC was  
24 divested of the rights it was assigned under the AT&T Lease at the time the Debtor  
25 exercised its rights under the Deed of Trust, foreclosing its lien interest in the Two Bar  
26 Property. Time will only tell, as Cilanoco, LLC has been noticed throughout these  
27

1 proceedings and they will be notified of the Section 363 sale of the Perpetual Grant of  
2 Easement. The entry of an Order permitting the Section 363 sale of the Perpetual Grant of  
3 Easement shall moot any litigation by or between Debtor and Cilanoco, LLC because  
4 Debtor and Crown Castle intend that the Order approving the sale will assign all landlord  
5 rights under the AT&T Lease to Crown Castle.  
6

7 **C. Objections to Claims and Estimates of Claims**

8 **Objections.** The Reorganized Debtor or any other party in interest shall serve a copy  
9 of an objection upon the Holder of the Claim that was not scheduled, or was scheduled as  
10 disputed, contingent, or unliquidated, that has not been allowed by a Final Order of the  
11 Bankruptcy Court, as soon as is practicable. Any Claim that was not scheduled and for  
12 which no Proof of Claim was filed will be disallowed.  
13

14  
15 There shall be no distribution to the holder of a Disputed Claim until the Objection to  
16 the Claim has been resolved by a Final Order of the Bankruptcy Court and the Claim has  
17 become an Allowed Claim. Payments and distributions on account of each Disputed Claim  
18 that is allowed shall be made in accordance with the provisions of the Plan relating to the  
19 class of creditors to which the holder belongs.  
20

21 **Estimations.** The Debtor or Reorganized Debtor may, at any time, request the  
22 Bankruptcy Court to estimate any Claim, under section 502(c) of the Bankruptcy Code,  
23 regardless of whether the Debtor or Reorganized Debtor previously have objected to such  
24 Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim, at any time,  
25 including during litigation concerning any objection to such Claim.  
26  
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1           **D.     Tax Compliance**

2           The Reorganized Debtor will comply with all tax withholding and reporting  
3 requirements, including in regards to all distributions and receipts pursuant to this Plan, as  
4 applicable. All Holders of Allowed Claims and Interests shall have sole responsibility for  
5 any tax obligation imposed by any Governmental Unit pursuant to a distribution received  
6 under the Plan.  
7

8           **E.     Vesting**

9           Except as provided for in the Plan or Confirmation Order, on the Effective Date, the  
10 Debtor shall be vested with the remaining property or assets from the Estate, free and clear  
11 of all claims, liens, charges, and other interests of creditors arising prior to the filing date,  
12 except as provided by the Plan.  
13

14           **X.     Distributions Under the Plan**

15           **A.     Manner of Payments**

16           All distributions will be made in the form of cash payments to entities holding  
17 Claims at the addresses listed on the Proof of Claim filed by such entity as the address  
18 where payments are to be sent, unless other instructions are received in writing by the  
19 Debtor. Payments will be made by check, cashier's check, or wire transfer at the option of  
20 the Debtor. Some creditors will be satisfied in part or in full directly from the close of  
21 escrow from the Two Bar Property Sale or the Perpetual Grant of Easement Sale.  
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1 holders of Claims will be forever enjoined from taking any action against the Debtor or its  
2 property on account of such claim; including the commencement or continuation of any  
3 proceeding; enforcing any judgment or award; creating, perfecting, or enforcing any lien; or  
4 any other action inconsistent with the terms of the Plan.  
5

6 The Reorganized Debtor will move the Court to enter a Final Decree once the Plan  
7 has been substantially consummated and all claims contemplated under the Plan have been  
8 made in full. Until substantial consummation, the Reorganized Debtors will be responsible  
9 for filing pre- and post-confirmation reports required by the United States Trustee and  
10 paying the quarterly post-confirmation fees of the United States Trustee. Alternatively, the  
11 Court may enter a final decree closing the case on its own motion.  
12

13 **B. The Debtor's Authority to Compromise and Settle**  
14

15 Pursuant to Bankruptcy Rule 9019(a), the Debtor may compromise or settle any  
16 Claim or Interest, or any cause of action against a Debtor or brought by a Debtor upon  
17 notice and a hearing.

18 **C. Right of Setoff**  
19

20 The Debtor may set off against any payment or distribution made pursuant to a  
21 Claim of any kind that Debtor may have against the Holder of such a Claim, Guarantor or  
22 Beneficiary of a Guaranty, but the Debtor will not be required to do so. The failure to  
23 utilize the right of setoff does not constitute a waiver or release of any claim the Debtor  
24 have against a Holder of an Allowed Claim.  
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1           **XII.      Liquidation Analysis**

2           Pursuant to 11 U.S.C. § 1129(a)(7), the Plan must provide that Creditors not  
3 accepting the Plan will receive at least as much under the Plan as they would receive in a  
4 hypothetical liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. Attached is  
5 such a liquidation analysis for the Debtor (**Exhibit B**).  
6

7           **XIII.     Risk Analysis**

8           **A.      General**

9           The Debtor's substantial assets in relation to its outstanding secured and unsecured  
10 claims indicate there will be sufficient assets to satisfy all Allowed Claims. Consequently,  
11 the Debtor believes there is little to no risk associated with this Plan. Any risk that may  
12 exist is not any greater under this Plan than it would be in a Chapter 7 liquidation or if the  
13 Cases were dismissed and Creditors were forced to collect through state law procedures.  
14  
15

16           **B.      Financial Projections**

17           Because the Plan proposes a liquidation of the two assets, and because the liquidation  
18 of the Main Street Property has already occurred, the Debtor does not believe that Financial  
19 Projections are relevant or helpful to those determining whether to accept or reject the Plan.  
20

21           **C.      Alternatives to the Confirmation of the Plan**

22           If the Plan is not confirmed, there are several possible alternatives. First is to convert  
23 the Chapter 11 case to a Chapter 7 cases, have Chapter 7 Trustees appointed, and the  
24 Debtor's estate liquidated. The Debtor does not believe this is a suitable alternative.  
25 Considerable investigation, time, and effort have been put into evaluating the assets of the  
26 Debtor and determining the best course of action. It would be time-intensive for Chapter 7  
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28

1 Trustees to become familiar with the case, causing substantial delay and expense in the  
2 payment of Creditors. The second alternative is to dismiss the case, leaving Creditors to  
3 resort to state law collection procedures, which is not a viable option for many of Unsecured  
4 Creditors.  
5

#### 6 **XIV. Tax Consequences**

7 Pursuant to § 1125(a)(1) of the Bankruptcy Code, the Disclosure Statement is to  
8 provide a discussion of the possible material tax consequences of the Plan to the Debtor,  
9 any successor to the Debtor and a hypothetical investor typical of the Holders of Claims or  
10 Interests in the cases, such that would enable such investor to make an informed judgment  
11 about the Plan. The Debtor has not obtained a tax opinion and does not express any opinion  
12 as to the tax consequences to the Creditors or equity security Holders. Interested parties are  
13 encouraged to obtain their own professional counsel to determine the tax consequences of  
14 the Plan. In particular, to the extent any Creditor is not paid in full on its Allowed Claim,  
15 such Creditor should consult with a tax advisor concerning the potential for any write off of  
16 such Claim. It is generally anticipated that any discharge of debt will not have to be  
17 recognized as income for the Debtor for income tax purposes. It is anticipated that all  
18 Allowed Claims will be paid in full and thus no debts will be discharged.  
19  
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21

#### 22 **XV. Confirmation Process**

23 The Plan may be corrected or modified, prior or subsequent to Confirmation, or prior  
24 to consummation, after notice to interested parties and by Court order as provided by law.  
25 The Trustee further retains all rights to modify the Plan prior to Confirmation as permitted  
26 by 11 U.S.C. § 1127. The Plan may be amended or modified prior to Confirmation without  
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1 leave of Court, so long as notice is provided to Creditors. After Confirmation and with  
2 approval of the Court and upon notice to creditors, the Reorganized Debtors may remedy  
3 any defect or omission, or may reconcile any inconsistencies in the Plan or Confirmation  
4 Order, so long as such modification does not materially alter or adversely affect the interests  
5 of Creditors, to the extent it may be necessary to carry out the purposes and intent of the  
6 Plan.  
7

8 The Court will be asked to confirm the Plan as to any Class of Claims or Interests  
9 that does not accept the Plan. In order to do so, the Court must find (1) that the Plan is fair  
10 and equitable to each class of Claims or Interests that is impaired and has not accepted the  
11 Plan and that the classification of claims is not discriminatory; and (2) that each claimant or  
12 interest-holder receives, under the Plan, property of a value as of the Effective Date that is  
13 not less than what would be received or retained if the Property were liquidated pursuant to  
14 Chapter 7 of the Bankruptcy Code.  
15  
16

17 The first requirement is satisfied with respect to any class that might not accept the  
18 Plan because the classification has not been designed in a discriminatory manner and any  
19 similar claims classified separately have been treated in this manner because they are either  
20 an administrative classification or arise from a substantially different economic basis. The  
21 second requirement is satisfied as demonstrated by the Liquidation Analysis provided.  
22

23 If a Class of Secured Claims does not accept the Plan, the Bankruptcy Code provides  
24 that the fair and equitable requirement is satisfied if the class retains its lien and receives  
25 deferred cash payments of a present value equal to the value of the claimant's secured  
26 interest in the collateral. This requirement may be satisfied as to each class treated as a  
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28



1 Secured Claim because the Plan provides for them to receive the value of their interest in  
2 their collateral together with interest.

3 If a Class of unsecured Claims does not accept the Plan, the fair and equitable rule  
4 requires that (1) each impaired Unsecured Creditor receives or retains, under the Plan,  
5 Property of a value equal to the amount of its allowed Claim; or (2) the Holders of Claims  
6 and Interests that are junior to the Claims of the dissenting Class will not receive any  
7 Property under the Plan if Claims in the dissenting Class are not paid in full.  
8

9 The Debtor recommends that the Plan and Disclosure Statement be approved as it is  
10 in the best interests of the Estate and all creditors. The alternatives to confirmation of the  
11 Plan include dismissal or conversion to Chapter 7 liquidation. Dismissal would result in  
12 creditors having to resort to other legal proceedings to collect debts, and Chapter 7  
13 liquidation would delay distributions and result in a slower and possibly lower recovery for  
14 unsecured creditors. For these reasons, the Debtor recommends all Creditors accept the  
15 Plan and return ballots timely so that the votes can be counted.  
16  
17

## 18 **XVI. Future Operations of Debtor**

19 Upon the disposition of the Perpetual Grant of Easement and the Two Bar Property  
20 debtor will be devoid of non-cash assets. Debtor has no present designs on the  
21 operation of any commercial endeavors. Much of the Debtor's future depends on the  
22 sale price of the Two Bar O Property. Debtor does not doubt that it will satisfy any  
23 claims that could remain after the sale of the Perpetual Grant of Easement. It is  
24 possible purchase offers are unsatisfactory in which case the Debtor might be inclined  
25 to borrow those monies necessary to complete its Plan payments. In that case Debtor  
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1 might be inclined to see the listing expire and lease the Two Bar Property and/or  
2 redevelop it in some manner.

3 RESPECTFULLY SUBMITTED this August 30, 2018  
4

5 The Law Offices of C.R. Hyde, PLC  
6

7 By: /s/ C.R. Hyde  
8 Charles R. Hyde, Attorney for the Debtor  
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