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8 **Attorney for Debtor**

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

11 **In re:** )  
12 ) **In Proceedings Under Chapter 11**  
13 **POWER EQUIPMENT, LLC.,** )  
14 ) **Case No.: 2:17-bk-02136**  
15 )  
16 **Debtor(s).** )  
17 )

18 **DEBTOR'S DISCLOSURE STATEMENT**  
19 **OF JUNE 30, 2017**

20 **ARTICLE I**

21 **INTRODUCTION AND REPRESENTATIONS**

22 **1.1 INTRODUCTION.**

23 Debtor, POWER EQUIPMENT, L.L.C., ("Debtor"), has prepared and is disseminating this  
24 Disclosure Statement (the "Disclosure Statement") in accordance with Section 1125 of the Bankruptcy Code to  
25 holders of Claims against Debtor for the purpose of soliciting acceptances of Debtor's Plan of  
26 Reorganization (the "Plan").

27 Debtor believes this Disclosure Statement contains adequate information for its creditors to  
28 arrive at an informed decision in exercising their right to vote for acceptance of the Plan. A copy of the Plan  
29 accompanies this Disclosure Statement, and is attached hereto and incorporated herein.

30 **THE DISCLOSURE STATEMENT IS NOT THE PLAN. THIS DISCLOSURE STATEMENT,**  
31 **TOGETHER WITH THE PLAN ATTACHED HERETO, SHOULD BE READ IN ITS ENTIRETY, FOR**  
32 **THE CONVENIENCE OF CREDITORS AND PARTIES-IN-INTEREST. THE TERMS OF THE PLAN**

1 ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT. BUT ALL SUMMARIES ARE QUALIFIED IN  
2 THEIR ENTIRETY BY THE PLAN ITSELF, WHICH IS CONTROLLING IN THE EVENT OF ANY  
3 INCONSISTENCIES.

4 The United States Bankruptcy Court for the District of Arizona will set a hearing on confirmation of the  
5 Plan in the United States Federal Courthouse, 230 N. First Avenue, Suite 101, Phoenix, Arizona.

#### 6 1.2 VOTING ON PLAN

7 Creditors may vote on the Plan by completing and delivering the ballot form to the Court and to the  
8 counsel listed below at least five business days prior to the hearing date. EXECUTED BALLOTS MUST BE  
9 RECEIVED NO LATER THAN 5:00 P.M., MOUNTAIN STANDARD TIME, ON THE DUE DATE. SINCE  
10 MAIL DELAYS MAY OCCUR, IT IS IMPORTANT THAT BALLOTS BE MAILED OR DELIVERED  
11 WELL IN ADVANCE OF THE SPECIFIED DATE. ANY BALLOTS RECEIVED AFTER THE DUE DAY  
12 MAY NOT BE INCLUDED IN ANY CALCULATION TO DETERMINE WHETHER DEBTORS'  
13 CREDITORS HAVE VOTED TO ACCEPT OR REJECT THE PLAN.

14 Ballots should be mailed as follows:

15 Clerk of the United States Bankruptcy Court  
16 230 N. First Avenue  
17 Phoenix, Arizona 85003

18 With a copy mailed to:

19 Bert L. Roos, Esq.  
20 Bert L. Roos, PLLC  
21 5045 N. 12<sup>th</sup> Street, Ste. B  
22 Phoenix, Arizona 85014

23 The votes of creditor are important. For a Class of Claims to accept the Plan, acceptances must  
24 be filed by at least two-thirds in the amount and more than one-half in number of the Allowed Claims of  
25 such Class that actually vote on the Plan.

26 If the requisite acceptance of each Class of Claims are obtained and the Plan is confirmed, the  
27 Plan will be binding with respect to all holders of Claims of each Class, including members who did not  
28 vote or who voted to reject the Plan.

Acceptance of the Plan is sought only from holders of Claims which Claims are impaired by the  
Plan; that is, acceptance is solicited only from those creditors and parties-in-interest whose legal,

1 equitable or contractual rights are altered by the Plan, or who will not receive under the Plan, the  
2 amount of their allowed claims. Holders of Claims, which are not impaired under the Plan, are deemed  
3 to have accepted the Plan. 11 U.S.C. § 1126.

4 If the Plan is rejected by one or more impaired Classes of Claims held by Debtor's creditors, the  
5 Plan or a modification thereof may still be confirmed by the Court at the request of Debtor if the Court  
6 determines, among other things, that the Plan does not discriminate unfairly and is "fair and equitable"  
7 with respect to such rejection Class or Classes of Claims impaired by the Plan. Debtor has requested  
8 such a determination if the Plan or a modification thereof is not accepted by one or more of the impaired  
9 Classes of Claims.

10 The Plan must be affirmatively accepted by at least one of the impaired classes of Claims.  
11 DEBTOR RECOMMENDS THAT ALL CREDITORS VOTE TO ACCEPT THE PLAN.

### 12 1.3 REPRESENTATIONS.

13 NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED  
14 OTHER THAN AS SET FORTH HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS TO SECURE  
15 YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED  
16 UPON BY YOU.

17 THE INFORMATION CONTAINED HEREIN HAS NOT BEEN REVIEWED OR PASSED UPON BY  
18 AN ACCOUNTANT. DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION  
19 CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH ALL SUCH INFORMATION IS  
20 ACCURATE TO DEBTORS' BEST KNOWLEDGE, INFORMATION AND BELIEF.

21 THE COURT HAS NOT VERIFIED THE ACCURACY OF THE INFORMATION CONTAINED  
22 HEREIN, AND THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT  
23 THE COURT ENDORSES OR APPROVES THE PLAN. BUT ONLY THAT IF THE INFORMATION IS  
24 ACCURATE, IT IS SUFFICIENT TO PROVIDE AN ADEQUATE BASIS FOR CREDITORS TO MAKE  
25 INFORMED DECISIONS WHETHER TO APPROVE OR REJECT THE PLAN.

### 26 1.4 DEFINITIONS.

27 Most words or phrases used in this Disclosure Statement shall have their usual and customary meanings.  
28 Some words or phrases with initial capital letters shall have the definitions set forth in the Plan. Unless otherwise

1 defined, the terms used in this Disclosure Statement shall have the same meaning as in the Bankruptcy Code or  
2 Bankruptcy Rules.

3 1.5 OVERVIEW OF THE PLAN.

4 Debtor Power Equipment, L.L.C., proposes under their Plan of Reorganization to pay the following:

5 There are three (3) debts: The first debt is a secured debt pursuant to a Promissory Note on behalf of  
6 Compass Bank, and is secured by a Deed of Trust With Security Agreement and Assignment of Rents for the  
7 Debtor's commercial property located at 2305 E. Jefferson Street, Phoenix, Arizona. Compass Bank is also further  
8 secured by a Commercial Security Agreement, in second position, by a UCC-1 Financing Statement against certain  
9 equipment located at the Debtor's location at 2305 E. Jefferson Street, Phoenix, Arizona. The outstanding principal  
10 balance on the loan at the time of filing was approximately \$1,464,120.82 as stated by Compass Bank in their  
11 pleadings, but no claim has been filed. The non-default rate of interest on the loan is 8.5% per annum.

12 The Debtor is currently paying Adequate Protection payments of \$10,371.00 per month to Compass, which  
13 began on June 16, 2017, pursuant to Debtor's Plan. The Debtor would commence making their regular monthly  
14 payments on November 1, 2017.

15 The Debtor's Plan would pay 100% to this creditor over the life of the loan and would pay any valid  
16 arrearages, approximate amount \$140,000.00, owed to Compass over a 24 month period with arrearage payments to  
17 commence February 1, 2018.

18 The Debtor owes the United States Small Business Administration "SBA" an approximate estimated  
19 balance of \$1,146,481.73 as of the date of filing. Debtor also owes unpaid interest on the principal balance of  
20 \$28,448.38 from November 1, 2016 to June 29, 2017. The SBA's Note bears interest at 3.344 percent per annum.  
21 The SBA has not filed a claim as of this date. The SBA's debt is also secured by a Deed of Trust, second position  
22 lien, on the Debtor's real property located at 2305 E. Jefferson Street, Phoenix, Arizona, and a first position  
23 Commercial Security Agreement and a UCC-1 Financing Statement against the equipment located at the Debtor's  
24 location at 2305 E. Jefferson Street, Phoenix, Arizona. The Debtor's Plan would pay a renegotiated principal  
25 balance in the amount of \$600,000.00 at 3.344% per annum to the SBA over the life of the loan. Interest only  
26 payments would commence on November 1, 2017, pursuant to the Plan. Principal and interest payments on a  
27 restructured loan would commence on February 1, 2018.

1 The Debtor estimates the value of the equipment secured by these Creditors at the time of the filing of the  
2 bankruptcy to be between \$200,000.00.00 to \$300,000.00 (see Schedule B). This estimated value was based upon  
3 information obtained by the Debtor from the management's experience and from checking the current values of  
4 similar used equipment through trade publications. Debtor believes that Compass has obtained an appraisal of the  
5 equipment but has not made the Debtor privy thereto. There would be some difficulty in removing one of the  
6 primary pieces of equipment, the overhead crane, from the building if the equipment had to be sold.

7 The Maricopa County Treasurer is owed an estimated \$70,000.00 in back property taxes. Those taxes  
8 would be paid 100% over a period of 48 months commencing February 1, 2018. Any current property taxes that  
9 become due prior to February 1, 2018 would be paid in full upon the due date.

## 10 11 **ARTICLE II**

### 12 **HISTORY AND BUSINESS OF DEBTOR**

#### 13 **2.1 NATURE OF DEBTORS BUSINESS.**

14 Debtor, Power Equipment, LLC owns the real estate, land and commercial building located at 2305 E.  
15 Jefferson Street, Phoenix, Arizona and certain equipment used in the repair, maintenance, and manufacture of parts  
16 used in the power industry. The company was established for the primary purpose of providing a facility for a sister  
17 and symbiotic company, Fajon Machining, LLC (Fajon), who operates a machine shop from the facility. Fajon is  
18 also a co-signer on the note with Compass and on the note with the SBA. The Debtor has been operating in  
19 Arizona since 2007 and was established specifically for the purpose of renting this property to Fajon and  
20 potentially another tenant in the same industry and which is complimentary to Fajon. Power Equipment,  
21 LLC under the primary management of Gerald Booden and James Booden. The land was obtained by the Booden's  
22 and the building constructed for the primary purpose of operating a machine shop. The land was purchased for  
23 approximately \$475,000.00, construction costs were approximately \$1,625,000.00 and the original cost of the  
24 equipment was approximately \$580,000.00 (some of the equipment is owned by Fajon). The building was constructed  
25 based upon specifications needed for Fajon to operate their machine shop. When the facility was built it was  
26 anticipated that an additional heat treating facility, nitriding equipment, would be installed on the premises that could be  
27 used by the tenant. The funds were not available to accomplish this. In July of 2016 Fajon decided to relocate a large  
28 portion of their operations closer to their vendor in Virginia that provided the nitriding service in an effort to save the

1 expensive costs of shipping the large parts there to do the heat treating. They continued to operate in the Debtor's  
2 facility on a smaller scale until they resumed their main operations in Phoenix in May of 2017. The move by the tenant  
3 Fajon of part of its operations to Virginia was not successful due to electrical problems in that location that caused  
4 production delays. Thus their costs actually went up (additional rent in Virginia) and their productivity went down due  
5 to delays. Debtors tenant, Fajon, did not make any payments to the Debtor for use of the facility from November 1,  
6 2016 until the Debtor received the Adequate Protection payments from Fajon, which were paid to Compass on June  
7 16, 2017. The Debtor did receive \$8,894.91 per month from Fajon from July 1, 2016 until October 1, 2016 via  
8 payments to the SBA. Debtor did not receive any payments from Fajon from July 1, 2016 for the benefit of Compass  
9 from July 1, 2016 until it received a partial payment in April 2017 and June 15, 2017 which were paid to Compass as  
10 adequate protection payments on June 16, 2017.

11 The Debtor is also evaluating looking at renting some of the space to an additional tenant that would be  
12 complimentary to the interests of Fajon, as well as the possibility of building additional space on the remaining acreage.

## 13 2.2 OWNERSHIP OF BUSINESS.

14 Gerald Booden and James Booden are the equal owners and managing members of Power Equipment,  
15 LLC., an Arizona Limited Liability Corporation.

## 16 2.3 ASSETS OF THE ESTATE.

### 17 A. Real Property.

18 The Debtor owns certain real property, land and commercial building, located at 2305 E. Jefferson Street,  
19 Phoenix, Arizona. The Debtor originally estimated the value of the real property to be \$1,700,000.00. There have  
20 been some changes in the zoning to the property that may have impacted the value of the property. Debtor believes  
21 that this may have increased the value of the property but a recent appraisal has not been performed. Upon  
22 information and belief Compass has had an appraisal performed but the appraisal is months old at this time and  
23 Debtor is not privy to that appraisal.

### 24 B. Personal Property.

25 An itemized list of Debtor's personal property, equipment, is filed with the Bankruptcy Court.

26 The value of the Equipment is estimated by the Debtor's management to be between \$200,000.00 to  
27 \$300,000.00 (Schedule B, Item 29 and see itemization provided in Exhibit 1.  
28

1 All of the personal property listed is available for the reorganization of Debtor subject to the liens of SBA  
2 and Compass.

3 After the filing of the Petition Debtor has generated Revenue of \$10,321.00 from April 1, 2017 through  
4 June 16, 2017 from its tenant Fajon. Fajon will be paying rent of \$10,321.00 per month until October 1, 2017. Fajon  
5 will commence paying rent of \$15,000.00 per month in November 2017 and will commence paying back rent from  
6 July 2016 through May 2017 by February 1, 2018. Additionally, Fajon will be commence making increased rent  
7 payments to pay towards debt service on a renegotiated principal balance that would be used to service a revised  
8 SBA loan of \$600,000.00 commencing by February 1, 2018.

#### 9 2.4 EVENTS PROMPTING BANKRUPTCY FILING.

10 The bankruptcy filing was occasioned by the tenant Fajon moving a large portion of their machining operations  
11 to Virginia in order to try and save costs and the resulting failure of Fajon to pay the full amount of rent from July 2016  
12 through October 2016 and no payments from November 2016 to March of 2017. In the past, and currently, the Debtor's  
13 primary source of funds is the revenue provided by Fajon's occupation of the building to operate its machine shop.

### 14 **ARTICLE III**

#### 15 **DEVELOPMENTS FOLLOWING FILING OF BANKRUPTCY PETITION**

##### 16 3.1 POST PETITION DEVELOPMENTS AND ANTICIPATED FUTURE.

17 Debtor's tenant and co-borrower, Fajon, has given up its Virginia operations and moved all of its  
18 operations back to Phoenix. Power's equipment that had also been relocated to Virginia has also been  
19 returned to the Phoenix location. Fajon has recommenced its full operations from Debtors property. The  
20 tenant has started receiving income from its operations and has commenced making payments to Debtor.  
21 Further, the Debtor has been discussing the addition of another tenant in the building that would work along  
22 with its current tenant and whom would also provide additional revenue, rental income, to the Debtor.  
23

24 Also the Debtor is exploring the potential of developing the remaining to generate additional  
25 income in the future.

##### 26 3.2 FINANCIAL HISTORY

27 For the financial history of Debtor, Debtor has attached its 2015 and 2016 profit and loss statements  
28 and Federal tax returns are available upon request.

1 Debtor had made all of its monthly payments to the creditors herein for a period of over 8 years  
2 until July of 2016 when Fajon temporarily relocated some of its operations to Virginia. Debtor was able to  
3 service the debts and reduce the principal balances on the loans for both Compass and the SBA for 8 years  
4 and pay the county property taxes until July of 2016.

## 6 ARTICLE IV

### 7 **PLAN OF REORGANIZATION**

#### 8 4.1 CLASSIFICATION OF CLAIMS AND INTERESTS

9 A copy of the Debtor's Plan of Reorganization is attached and incorporated herein. Under the Debtor's  
10 Plan of Reorganization, all allowed claims and allowed interests are placed in the following Classes.

#### 11 A. PRIORITY CLAIMS.

12 1. Class A1 Allowed Wage Claims. Class A1 consists of all Allowed Wage Claims which are for  
13 wages, salaries, commissions, including vacation pay, severance and sick leave pay of the kind and in the  
14 amount specified in §507(a)(3) of the Code. **No such claims exist.**

15 2. Class A2: Allowed Tax Claims. Class A2 consists of all Allowed Tax Claims of governmental  
16 units of the kind specified in Section 507(a)(8) of the Code. The Debtor owes real property taxes to Maricopa  
17 County estimated to be \$70,000.00 at this time although a claim has not been filed by the County.

#### 18 B. SECURED CLAIMS.

19 The following classes of claims include only claims to the extent allowable as secured claims against  
20 property of the Debtor under §506 of the Bankruptcy Code or by Court Order.

21 1. Class B1: COMPASS BANK, NA. Class B1 consists of that portion of the Allowed Secured  
22 Claim of COMPASS BANK, NA in the approximate principal amount of \$1,464,120.82 and arrearages of  
23 approximately \$140,000.00 which is secured by a Promissory Note and first position Deed of Trust on the  
24 real property located at 2305 E. Jefferson Street, Phoenix, Arizona and a second position lien in certain equipment  
25 located on the premises. Debtor believes that this loan is fully secured by the real property.

26 2. Class B2: The UNITED STATES SMALL BUSINESS ADMINISTRATION, Class B2  
27 consists of that portion of the Allowed Secured Claim of the UNITED STATES SMALL  
28 BUSINESS ADMINISTRATION with the approximate principal amount of \$1,146,481.73 and interest



1 through June 29, 2017 of \$28,448.38 which is secured in first position, by certain equipment located on  
2 the premises. The equipment has an estimated value between \$200,000.00 to \$300,000.00 and is further  
3 secured by a second position, Promissory Note and Deed of Trust in the real property on Jefferson Street  
4 in Phoenix, Arizona. Debtor believes that approximately \$700,000.00 is unsecured

5 3. Class B3: consists of Maricopa County property taxes owed at this time estimated to be  
6 approximately \$70,000.00. No Claim has been filed.

7 C. UNSECURED CLAIMS.

8 1. Class C1: That portion of the UNITED STATES SMALL BUSINESS ADMINISTRATION  
9 listed above that is not secured by the equipment or real property as stated above..

10 2. Class C2: General Unsecured Claims. Class C2 consists of all general unsecured claims  
11 against the Debtor not included in Class C1. None at this time.

12 4.2 TREATMENT OF NON-CLASSIFIED CLAIMS ADMINISTRATIVE EXPENSES.

13 The holders of Claims entitled to priority under §507(1) of the Bankruptcy Code, including entities  
14 entitled to payment pursuant to Bankruptcy Code §503, and professionals employed by the Debtor prior to or  
15 after the entry of the Confirmation Order, shall receive cash in the amount of such claim (i) within three  
16 months after the Effective Date, (ii) at the option of Debtor, in accordance with the ordinary business terms  
17 of payment of such Claims, or (iii) at such time and/or in such amounts as the Debtor and the holders of  
18 such Allowed Claims shall agree. Debtor's counsel shall file an application for fees through confirmation.

19 4.3 TREATMENT OF CLASSIFIED CLAIMS.

20 All claims shall be treated, settled, satisfied, discharged and resolved in accordance with the following  
21 provisions:

22 A. Priority Claims.

23 1. Class A1: Priority - Wages. Class A1 consists of all Allowed Wage Claims, which are for  
24 wages, salaries, commissions, including vacation pay, severance and sick leave pay of the kind and in the  
25 amount specified in §507(a)(3) of the Code. No such claims exist.

26 2. Class A2: Allowed Tax Claims. Class A2 consists of all Allowed Tax Claims of  
27 governmental unit of the kind specified in Section 507(a)(8) of the Code. Maricopa County property  
28 taxes shall be treated herein as Class B3.

1 B. Secured Claims.

2 1. Class B1: COMPASS BANK, NA. Class B1 shall be paid the full amount of their secured  
3 claim over the life of the loan. The Holder of the Class B1 Claim shall retain its lien securing such  
4 claim, All arrearages shall be paid over a 24 month period with payments commencing February 1,  
5 2018.

6 2. Class B2: The UNITED STATES SMALL BUSINESS ADMINISTRATION. Class B2  
7 shall be paid the amount of \$600,000.00 plus interest at the current rate of 3.344% per annum as and for  
8 its secured claim and that portion of its claim that is not secured over the life of the loan. Payments to  
9 commence not later than February 1, 2018.

10 3. Class B3: Maricopa County treasurer shall be paid the full amount of the property taxes  
11 over a 48 month period commencing February 1, 2018.

12 C. Unsecured Claims.

13 1. Class C1: The UNITED STATES SMALL BUSINESS ADMINISTRATION. Class C1 that  
14 portion of the SBA's loan that is deemed to be unsecured shall be paid as stated herein in Class B2. That  
15 portion will be decided upon, either in potential litigation or by agreement of the parties.

16 2. Class C2: General Unsecured Claims. The holders of Class C2  
17 Debtor is not aware of any.

18 D. Treatment of Executory Contracts and Unexpired Leases.

19 Debtor is not aware of any. No claims have been filed.

20 E. Penalties and Other Charges.

21 No portion of an allowed claim shall include, and no distribution shall be made on account of any fines,  
22 penalties, exemplary or punitive damages, late charges or other monetary charge relating to or arising from any default  
23 or breach by the Debtor. An objection shall be deemed to have been filed by Debtor to any claim for such an amount.

24 F. Controlling Effect

25 The provisions of this Plan shall modify and supersede the terms of any promissory notes, deeds of trust,  
26 security agreements and other documents relating to any Allowed Claim. The Debtor shall not be deemed to have  
27 assumed any obligations specified in any promissory notes, deed of trust, security agreement or other document  
28

1 relating to an Allowed Claim except as specifically provided by the Plan. All Allowed Claims maybe prepaid  
2 at any time without penalty or premium.

3 G. Prepayment of Claims.

4 The Debtor reserves the right to prepay any class of Claims in full at any time without prepayment penalties.

5 **ARTICLE V**

6 **MEANS FOR EXECUTION OF THE PLAN**

7 5.1 SOURCE OF PLAN FUNDS

8 The primary means for effectuating the plan shall be the Debtor's net income from the use of the space by  
9 Fajon and any additional tenant.

10 5.2 PROJECTION OF INCOME AND EXPENSES.

11 The Debtor projects it will receive sufficient income to make all payments called for under the Plan of  
12 Reorganization. Debtor anticipates that the Plan will be funded with future income of the Debtor's business. For  
13 the period from July 1, 2017 through October 31, 2017 Debtor will receive \$10,371.00 per month from Fajon.  
14 From November 1, 2017 through January 31, 2018 Debtor will receive \$15,000.00 per month from Fajon. From  
15 February 1, 2018 forward Debtor will receive \$19,000.00 per month plus an extra \$7,500.00 per month for 24  
16 months to cure the arrearages owed to Compass and make payments to Maricopa County Treasurer, and \$1500.00  
17 per month from February 1, 2020 for 24 additional months to cure the balance of the back property taxes.

18 Debtor has started to receive monthly payments for the use of the building from Fajon and will receive  
19 enough income to fund the Plan from Fajon. Additionally, Debtor is attempting to lease additional space in the  
20 building to another company that would co-exist with Fajon in the building.

21 5.3 RETENTION OF CLAIMS

22 The Plan provides that pursuant to 11 U. S. C. § 1123 (b)(3), the Debtors shall retain and may enforce the  
23 claims they held pre-petition, if any.

24 **ARTICLE VI**

25 **ACCEPTANCE AND CONFIRMATION OF PLAN**

26 6.1 CONFIRMATION POSSIBLE WHERE CLASS DOES NOT ACCEPT.

27 The Court will be asked to confirm as to any Class of claims that does not accept the Plan. To do so, the  
28 Court must find that the Plan: (1) is fair and equitable with respect to each Class of claims that is impaired and has

1 not accepted the Plan; and (2) that each holder of a claim receives or retains under the Plan, on account of such  
2 Claim, property of a value, as of the Effective date of the Plan, that is not less than the amount that would be received  
3 or retained if the Debtor's property were liquidated under Chapter 7 of Title 11 of the Bankruptcy Code.

4 6.2 BEST INTEREST TEST.

5 The Debtor believes that the "Best Interest Test" imposed by 11 U.S.C. § 1129(a)(7) is satisfied by the  
6 Plan. That is, each holder of a claim will receive at least as much as such holder would receive in a  
7 Chapter 7 liquidation.

8 6.3 FAIR AND EQUITABLE TEST.

9 If a class of Secured claims does not accept the Plan, the Bankruptcy Code provides that the fair and  
10 equitable requirement of 11 U.S.C. § 1129(b) is satisfied if the Class retains its lien and receives deferred cash  
11 payments of a present value equal to the value of the claimant's secured interest in Debtor's property. Debtor  
12 believes this requirement is satisfied as to each class of Secured Claims, because the Plan provides for each holder  
13 to receive the value of its interest in its collateral together with interest at the existing rate.

14  
15 **ARTICLE VII**

16 **TAX CONSEQUENCES**

17 IN NO EVENT WILL THE DEBTOR OR ANY AFFILIATES OR PROFESSIONAL ADVISORS  
18 ENGAGED BY ANY OF HIM BE LIABLE IF, FOR ANY REASON, THE TAX CONSEQUENCES OF THE  
19 PLAN ARE OTHER THAN AS ANTICIPATED. CREDITORS MUST LOOK SOLELY TO AND RELY UPON  
20 THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES OF THIS PLAN.

21  
22 **ARTICLE VIII**

23 **LIQUIDATION ANALYSIS**

24 **"BEST INTEREST" TEST AND LIQUIDATION ANALYSIS.**

25 Unless all impaired creditors or interest holders accept, in order to confirm the Plan of Reorganization  
26 the Bankruptcy Court must independently determine that the Plan is in the best interest of all creditors or interest  
27 holders which do not accept the Plan. The "best interest" test requires that the Plan provide to each member of each  
28 class of unsecured claims recovery that has a present value at least equal to the present value of the Distribution,

1 which each such claimant would receive if the Debtor was instead liquidated under Chapter 7 of the Bankruptcy  
2 Code.

3 In other words, the issue is whether the creditors and equity interest holders will receive as much  
4 under the Plan as they would from a Trustee's liquidation pursuant to Chapter 7.

5 A Liquidation Analysis will be attached to this Disclosure Statement as Exhibit 3 .

6 In performing this analysis, the Bankruptcy Court must first determine the dollar amount that would be  
7 generated from a Chapter 7 liquidation of Debtor's assets, add this amount to cash held by the Debtor and to be  
8 recovered on actions against third parties, then deduct the costs of liquidation.

9 Under the Plan of Reorganization, all of the Debtor's creditors will be paid pursuant to the value  
10 of the secured claim. Obviously, creditors would not receive more than this amount under a liquidation.  
11 Moreover, if the Debtor was to be liquidated in a Chapter 7 case, the Debtor believes that the chances of  
12 creditors receiving full payment are remote. A court-appointed trustee with no prior knowledge of the  
13 Debtor, his business operations (or transactions which would fund the Distributions to creditors) would  
14 liquidate the assets of Debtor and Distribute the proceeds in accordance with the legal priorities established  
15 under the Bankruptcy Code. All expenses of the Chapter 7 case, including fees of the Trustee, his or her  
16 counsel, accountants and any other professionals appointed in the Chapter 7 case must be paid in full before any  
17 Distribution is made on account of expenses and claims in the Chapter 11 case, which in turn must be paid  
18 before any Distribution is made to pre-petition creditors.

19 Debtor believes that the Distributions under a Chapter 7 liquidation would be significantly less than the  
20 Debtor's projected Distributions under the Plan, and that the costs associated with a Chapter 7 liquidation would  
21 be substantially greater than the projected costs of consummating the Plan, primarily because a Chapter 7  
22 liquidation would add another layer of costs and expenses to this one. A Chapter 7 Trustee would have no  
23 familiarity with the Debtor's business operations and would necessarily incur a substantial amount of fees in  
24 becoming educated on the complexities of this business. Moreover, the Chapter 7 Trustee would require as  
25 much assistance, if not more, from outside counsel and other professionals as the Debtor will require to  
26 consummate the Plan. Assuming the Chapter 7 Trustee were to hire different professionals, they would also incur an  
27 exorbitant amount of additional fees in making the transition and familiarizing themselves with the bankruptcy and  
28

1 all related matters. Accordingly, such increased fees and expenses would considerably lower the return to creditors  
2 in a Chapter 7 case as compared with the expected Distributions under the Plan.

3 In addition, a conversion to Chapter 7 would delay Distributions to creditors. The Chapter 7  
4 Trustee, like Debtor, might decide to proceed with litigation against various creditors on preference, fraudulent  
5 conveyance and subordination theories. However, under the Plan, Debtor will make Distributions prior to the  
6 resolution of all such claims. In contrast, no Distributions are generally made in a Chapter 7 case until all of the  
7 assets of and claims against the estate have been liquidated, a process that could take several years. It is unusual for  
8 a Distribution to be made within two years of the appointment of a Chapter 7 Trustee in a case involving substantial  
9 assets or claims. The Plan, on the other hand, provides for immediate Distributions and interim Distributions  
10 thereafter, until the Plan is consummated. In short, the delay posed by a Chapter 7 liquidation would further impair  
11 the value of any Distribution made to secured or unsecured creditors under such liquidation as compared with  
12 Distributions made under Debtor's Chapter 11 Plan of Reorganization.

### 13 **ARTICLE IX**

#### 14 **REQUIREMENTS RESPECTING U.S. TRUSTEE**

15 1. All quarterly fees owing to the United States Trustee and/or other administrative expenses will  
16 be paid in a timely manner as of the effective date of the Plan.

17 2. All quarterly fees to the United States Trustee, post-confirmation, pursuant to 28 U.S.C. § 1930, as  
18 amended, will be paid in a timely manner.

19 3. Post-confirmation financial reports on a quarterly basis, with a copy to the Office of the  
20 United States Trustee, will be filed in a timely manner.

### 21 **ARTICLE X**

#### 22 **RECOMMENDATION OF PLAN PROPONENT**

23 The Debtor recommends that the Plan of Reorganization be approved. Under the Plan, secured  
24 creditors of the estate will be paid the amount of the debtor's property. In light of the alternative of litigation, which  
25 might generate insufficient funds to pay even secured claims, Debtor believes that the Plan is in the best interest  
26 of all creditors and parties-in-interest.

1 RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of June 2017.

2  
3 \_\_\_\_\_  
4 Debtor, by Managing Member

5  
6 /s/Bert L. Roos  
7 Bert L. Roos, Esq.  
8 Attorney for Debtor

9 Copy of the foregoing mailed  
10 this 29<sup>th</sup> day of June 2017 to:

11 United States Bankruptcy Court  
12 District of Arizona

13 Power Equipment, LLC  
14 2305 E. Jefferson Street  
15 Phoenix, AZ 85034  
16 Debtor

17 Small Business Administration  
18 801 R. Street, Ste. #101  
19 Fresno, CA 93721

20 Southwestern Business Financing Corporation  
21 3200 N. Central Avenue, Ste. #1550  
22 Phoenix, AZ 85012

23 Maricopa County Treasurer  
24 P.O. Box 52133  
25 Phoenix, AZ 85072

26 Copy of the foregoing delivered via electronic  
27 mail this 26<sup>th</sup> day of June 2017 to:

28 U.S TRUSTEE  
**OFFICE OF THE U.S. TRUSTEE**  
Christopher J. Pattock, Esq.  
230 N. FIRST AVENUE SUITE 204  
PHOENIX AZ. 85003  
Email: [ustpreion14.px.ecf@usdoj.gov](mailto:ustpreion14.px.ecf@usdoj.gov)  
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By /s/Theresa Bailey