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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 FIRST AMENDED DISCLOSURE STATEMENT**
19 **OF NOVEMBER 28, 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 First
24 Amended Disclosure Statement (the "Disclosure Statement") in accordance with Section 1125 of the
25 Bankruptcy Code to holders of Claims against Debtor for the purpose of soliciting acceptances of
26 Debtor's Amended Plan of Reorganization (the "Plan").

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

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

1 TERMS OF THE PLAN ARE SUMMARIZED IN THIS AMENDED DISCLOSURE STATEMENT. BUT
2 ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF, WHICH IS
3 CONTROLLING IN THE EVENT OF ANY 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 First Amended Plan by completing and delivering the ballot form to the Court
8 and to the counsel listed below at least five business days prior to the hearing date. EXECUTED BALLOTS
9 MUST BE RECEIVED NO LATER THAN 5:00 P.M., MOUNTAIN STANDARD TIME, ON THE DUE
10 DATE. SINCE MAIL DELAYS MAY OCCUR, IT IS IMPORTANT THAT BALLOTS BE MAILED OR
11 DELIVERED WELL IN ADVANCE OF THE SPECIFIED DATE. ANY BALLOTS RECEIVED AFTER
12 THE DUE DAY MAY NOT BE INCLUDED IN ANY CALCULATION TO DETERMINE WHETHER
13 DEBTORS' 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. 12th 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 Amended Disclosure Statement shall have their usual and customary
28 meanings. Some words or phrases with initial capital letters shall have the definitions set forth in the First Amended

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

3 1.5 OVERVIEW OF THE PLAN.

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

6 There are three (3) debts: The first debt is a secured debt pursuant to a Promissory Note on behalf of
7 Compass Bank, and is secured by a Deed of Trust With Security Agreement and Assignment of Rents for the
8 Debtor's commercial property located at 2305 E. Jefferson Street, Phoenix, Arizona. Compass Bank is also further
9 secured by a Commercial Security Agreement, in second position, by a UCC-1 Financing Statement against certain
10 equipment located at the Debtor's location at 2305 E. Jefferson Street, Phoenix, Arizona. The outstanding principal
11 balance on the loan at the time of filing was approximately \$1,464,120.82 as stated by Compass Bank in their
12 pleadings. The non-default rate of interest on the loan is 8.5% per annum.

13 The Debtor is currently paying Adequate Protection payments of \$10,371.00 per month to Compass, which
14 began on June 16, 2017, pursuant to Debtor's Plan. The Debtor and Compass Bank have entered into a Stipulation
15 For Plan Support Agreement, Compromise of Claim of Compass Bank, And For Relief From The Automatic Stay
16 entered on November 6, 2017 Doc 73 (see attached Exhibit 1) Pursuant to the Stipulation Debtor will continue to
17 make adequate protection payments until January of 2018.

18 Pursuant to the Stipulation Compass shall have a secured claim as of August 1, 2017 in the amount of
19 \$1,639,775.33 consisting of:

20	Principal:	\$1,464,120.82
21	Interest:	\$114,705.04
22	Expenses	\$60,890.47
23	Misc. fees	\$59.00

24 Pursuant to the Stipulation Debtor shall:

25 Commence making regular monthly principal and interest payments on January 1, 2018.

26 Commence making additional monthly payments on January 15, 2018 of \$11,000.00 per month to cure the
27 principal and interest default of \$198,000.00.

1 Commence making additional monthly payments on July 15, 2019 of \$9,600.00 per month to pay
2 \$48,000.00 of the expenses and fees stated above.

3 For the additional terms and conditions of the Stipulation between Debtor and Compass Bank (Exhibit 1).
4 The Debtor's Plan pays 100% to this creditor over the life of the loan and pays the arrearages, and a portion of the
5 expenses and fees incurred by Compass over a two year period from January 15, 2018.

6 The Debtor owes the United States Small Business Administration "SBA" an estimated balance of
7 \$1,146,481.73 in principal as of the date of filing and \$41,577.95 in interest as of November 1, 2017. The SBA's
8 Note bears interest at 3.344 percent per annum. The SBA's debt is also secured by a Deed of Trust, second position
9 lien, on the Debtor's real property located at 2305 E. Jefferson Street, Phoenix, Arizona, and a first position
10 Commercial Security Agreement and a UCC-1 Financing Statement against the equipment located at the Debtor's
11 location at 2305 E. Jefferson Street, Phoenix, Arizona.

12 The Debtor and the SBA have reached agreements with regards to this debt as set forth in the Stipulation to
13 Modify Treatment of SBA Claim entered on November 3, 2017 Doc 72 (see attached Exhibit 2). The Debtor's Plan
14 would pay a renegotiated principal balance in the amount of \$700,000.00 at 3.344% per annum to the SBA over 72
15 months, as follows. Commencing 30 days after confirmation of the Plan Debtor shall make monthly payments of
16 \$5,000.00 per month for 24 months then Debtor shall make monthly payments of \$13,916.30 per month for the
17 remainder of the repayment period (48 months). After completion of the 72 months the debt owed by Debtor to the
18 SBA shall be paid in full and the SBA shall release all liens upon Debtor's real property and personal property.

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

25 The Maricopa County Treasurer is owed an estimated \$73,833.22 with accumulated interest through July
26 31, 2017 in property taxes for 2015 and 2016 tax years. Those taxes and the 2017 taxes would be paid 100% over a
27 period of 48 months commencing 30 days after confirmation of the Plan. Any current property taxes that become
28 due for 2018 would be paid in full upon the due date.

1 **ARTICLE II**

2 **HISTORY AND BUSINESS OF DEBTOR**

3 2.1 NATURE OF DEBTORS BUSINESS.

4 Debtor, Power Equipment, LLC owns the real estate, land and commercial building located at 2305 E.
5 Jefferson Street, Phoenix, Arizona and certain equipment used in the repair, maintenance, and manufacture of parts
6 used in the power industry. The company was established for the primary purpose of providing a facility for a sister
7 and symbiotic company, Fajon Machining, LLC (Fajon), who operates a machine shop from the facility. Fajon is
8 also a co-signer on the note with Compass and on the note with the SBA. The Debtor has been operating in
9 Arizona since 2007 and was established specifically for the purpose of renting this property to Fajon and
10 potentially another tenant in the same industry and which is complimentary to Fajon. Power Equipment,
11 LLC under the primary management of Gerald Booden and James Booden. The land was obtained by the Booden's
12 and the building constructed for the primary purpose of operating a machine shop. The land was purchased for
13 approximately \$475,000.00, construction costs were approximately \$1,625,000.00 and the original cost of the
14 equipment was approximately \$580,000.00 (some of the equipment is owned by Fajon). The building was constructed
15 based upon specifications needed for Fajon to operate their machine shop. When the facility was built it was
16 anticipated that an additional heat treating facility, nitriding equipment, would be installed on the premises that could be
17 used by the tenant. The funds were not available to accomplish this. In July of 2016 Fajon decided to relocate a large
18 portion of their operations closer to their vendor in Virginia that provided the nitriding service in an effort to save the
19 expensive costs of shipping the large parts there to do the heat treating. They continued to operate in the Debtor's
20 facility on a smaller scale until they resumed their main operations in Phoenix in May of 2017. The move by the tenant
21 Fajon of part of its operations to Virginia was not successful due to electrical problems in that location that caused
22 production delays. Thus their costs actually went up (additional rent in Virginia) and their productivity went down due
23 to delays. Debtors tenant, Fajon, did not make any payments to the Debtor for use of the facility from November 1,
24 2016 until the Debtor received the Adequate Protection payments from Fajon, which were paid to Compass on June
25 16, 2017. The Debtor did receive \$8,894.91 per month from Fajon from July 1, 2016 until October 1, 2016 via
26 payments to the SBA. Debtor did not receive any payments from Fajon from July 1, 2016 for the benefit of Compass
27 from July 1, 2016 until it received a partial payment in April 2017 and June 15, 2017 which were paid to Compass as
28 adequate protection payments on June 16, 2017. Adequate protection payments are continuing since June 16, 2017.

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

3 2.2 OWNERSHIP OF BUSINESS.

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

6 2.3 ASSETS OF THE ESTATE.

7 A. Real Property.

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

14 B. Personal Property.

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

16 The value of the Equipment is estimated by the Debtor's management to be between \$200,000.00 to
17 \$300,000.00 (Schedule B, Item 29 and see itemization provided in Exhibit 1.

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

20 After the filing of the Petition Debtor has generated Revenue of \$10,321.00 from April 1, 2017 to present
21 from its tenant Fajon. Fajon will be paying rent of \$10,321.00 per month until December 1, 2017. Fajon will
22 commence paying rent of \$15,000.00 per month on January 1, 2018 and will commence paying back rent
23 accumulated from July 2016 through May 2017 by January 15, 2018. Additionally, Fajon will commence making
24 increased/back rent payments which will be used to service a revised SBA loan of \$700,000.00 and the Maricopa
25 County Treasurer commencing 30 days after the Plan is approved.

26 2.4 EVENTS PROMPTING BANKRUPTCY FILING.

27 The bankruptcy filing was occasioned by the tenant Fajon moving a large portion of their machining operations
28 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

1 through October 2016 and no payments from November 2016 to March of 2017. In the past, and currently, the Debtor's
2 primary source of funds is the revenue provided by Fajon's occupation of the building to operate its machine shop.

3 4 ARTICLE III

5 **DEVELOPMENTS FOLLOWING FILING OF BANKRUPTCY PETITION**

6 3.1 POST PETITION DEVELOPMENTS AND ANTICIPATED FUTURE.

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

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

15 3.2 FINANCIAL HISTORY

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

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

22 23 ARTICLE IV

24 **FIRST AMENDED PLAN OF REORGANIZATION**

25 4.1 CLASSIFICATION OF CLAIMS AND INTERESTS

26 A copy of the Debtor's First Amended Plan of Reorganization is attached and incorporated herein.
27 Under the Debtor's First Amended Plan of Reorganization, all allowed claims and allowed interests are placed
28 in the following Classes.

1 A. PRIORITY CLAIMS.

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

5 2. Class A2: Allowed Tax Claims. Class A2 consists of all Allowed Tax Claims of governmental
6 units of the kind specified in Section 507(a)(8) of the Code. The Debtor owes real property taxes to Maricopa
7 County estimated to be \$73,833.82 with accumulated interest through July 31, 2017 for tax years 2015 and
8 2016.

9 B. SECURED CLAIMS.

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

12 1. Class B1: COMPASS BANK, NA. Class B1 consists of that portion of the Allowed Secured
13 Claim of COMPASS BANK, NA in the approximate amount of \$1,464,120.82 in principal and arrearages
14 of \$114,705.04 through August 1, 2017, which is secured by a Promissory Note and first position Deed
15 of Trust on the real property located at 2305 E. Jefferson Street, Phoenix, Arizona and a second position lien in
16 certain equipment located on the premises. Debtor believes that this loan is fully secured by the real property.

17 2. Class B2: The UNITED STATES SMALL BUSINESS ADMINISTRATION, Class B2
18 consists of that portion of the Allowed Secured Claim of the UNITED STATES SMALL
19 BUSINESS ADMINISTRATION with the approximate principal amount of \$1,146,481.73 and interest
20 through June 29, 2017 of \$28,448.38 which is secured in first position, by certain equipment located on
21 the premises. The equipment has an estimated value between \$200,000.00 to \$300,000.00 and is further
22 secured by a second position, Promissory Note and Deed of Trust in the real property on Jefferson Street
23 in Phoenix, Arizona. Debtor believes that approximately \$700,000.00 is unsecured

24 3. Class B3: consists of Maricopa County property taxes estimated to be \$73,833.22 in taxes plus
25 interest as of July 31, 2017 for the 2015 and 2016 property taxes.

26 C. UNSECURED CLAIMS.

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

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

3 4.2 TREATMENT OF NON-CLASSIFIED CLAIMS ADMINISTRATIVE EXPENSES.

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

10 4.3 TREATMENT OF CLASSIFIED CLAIMS.

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

13 A. Priority Claims.

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

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

20 B. Secured Claims.

21 1. Class B1: COMPASS BANK, NA. Class B1 shall be paid the full amount of their
22 remaining principal balance plus interest over the life of the loan commencing January 1, 2018. The
23 Holder of the Class B1 Claim shall retain its lien securing such claim, All agreed upon arrearages,
24 expenses and fees shall be paid over a 24 month period with payments commencing January 15, 2018
25 pursuant to the Stipulation for Plan Support filed with the Court on November 6, 2017 Doc 73.

26 2. Class B2: The UNITED STATES SMALL BUSINESS ADMINISTRATION. Class B2
27 shall be paid the amount of \$700,000.00 plus interest at the current rate of 3.344% per annum as and for
28

1 its claim pursuant to the Stipulation to Modify Treatment of SBA Claim with the Court on November 3,
2 2017 Doc 72. Payments to commence pursuant to the Stipulation 30 days after Plan confirmation.

3 3. Class B3: Maricopa County treasurer shall be paid the full amount of the back property
4 taxes over a 48 month period commencing 30 days after Plan confirmation.

5 C. Unsecured Claims.

6 1. Class C1: The UNITED STATES SMALL BUSINESS ADMINISTRATION. Class C1 that
7 portion of the SBA's loan that is unsecured has been resolved pursuant to the Stipulation to Modify Treatment
8 of SBA Claim filed on November 3, 2017 Doc 72.

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

11 D. Treatment of Executory Contracts and Unexpired Leases.

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

13 E. Penalties and Other Charges.

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

17 F. Controlling Effect

18 The provisions of this Plan shall modify and supersede the terms of any promissory notes, deeds of trust,
19 security agreements and other documents relating to any Allowed Claim. The Debtor shall not be deemed to have
20 assumed any obligations specified in any promissory notes, deed of trust, security agreement or other document
21 relating to an Allowed Claim except as specifically provided by the Plan. All Allowed Claims maybe prepaid
22 at any time without penalty or premium.

23 G. Prepayment of Claims.

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

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26 /////

27 /////

1 ARTICLE V

2 **MEANS FOR EXECUTION OF THE FIRST AMENDED PLAN**

3 5.1 SOURCE OF PLAN FUNDS

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

6 5.2 PROJECTION OF INCOME AND EXPENSES.

7 The Debtor projects it will receive sufficient income to make all payments called for under the First
8 Amended Plan of Reorganization. Debtor anticipates that the Plan will be funded with future income of the
9 Debtor's business. For the period from July 1, 2017 through December 31, 2017 Debtor will receive \$10,371.00
10 per month from Fajon. From January 1, 2018 Debtor will receive \$15,000.00 per month from rent from Fajon . In
11 addition commencing January 15, 2018 Debtor will receive \$10 ,000.00 per month extra from Fajon to pay
12 towards the arrearages. Commencing 30 days after Plan Confirmation the additional monthly payment from Fajon
13 shall increase to \$15,000.00 per month until December 15, 2019, in order to pay Compass, and make the
14 restructured payments to the SBA and the payments to the Maricopa County Treasurer. Fajon will continue to
15 make additional payments to Debtor to pay any balance remaining to the Maricopa County Treasurer, of \$1500.00
16 per month from January 1, 2020 for 24 additional months to cure the back property taxes.

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

20 5.3 RETENTION OF CLAIMS

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

23 ARTICLE VI

24 **ACCEPTANCE AND CONFIRMATION OF PLAN**

25 6.1 CONFIRMATION POSSIBLE WHERE CLASS DOES NOT ACCEPT.

26 The Court will be asked to confirm as to any Class of claims that does not accept the Plan. To do so, the
27 Court must find that the Plan: (1) is fair and equitable with respect to each Class of claims that is impaired and has
28 not accepted the Plan; and (2) that each holder of a claim receives or retains under the Plan, on account of such

1 Claim, property of a value, as of the Effective date of the Plan, that is not less than the amount that would be received
2 or retained if the Debtor's property were liquidated under Chapter 7 of Title 11 of the Bankruptcy Code.

3 6.2 BEST INTEREST TEST.

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

7 6.3 FAIR AND EQUITABLE TEST.

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

13
14 **ARTICLE VII**

15 **TAX CONSEQUENCES**

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

21 **ARTICLE VIII**

22 **LIQUIDATION ANALYSIS**

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

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

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 is attached to this First Amended 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.

14 ARTICLE IX

15 **REQUIREMENTS RESPECTING U.S. TRUSTEE**

- 16 1. All quarterly fees owing to the United States Trustee and/or other administrative expenses will
17 be paid in a timely manner as of the effective date of the Plan.
- 18 2. All quarterly fees to the United States Trustee, post-confirmation, pursuant to 28 U.S.C. § 1930, as
19 amended, will be paid in a timely manner.
- 20 3. Post-confirmation financial reports on a quarterly basis, with a copy to the Office of the
21 United States Trustee, will be filed in a timely manner.

23 ARTICLE X

24 **RECOMMENDATION OF PLAN PROPONENT**

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

1 RESPECTFULLY SUBMITTED this 28th day of November 2017.

2
3 /s/ Jerry Booden _____
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 28th day of November 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 Maricopa County Treasurer
27 Lori A. Lewis, Esq.
28 Deputy County Attorney
Civil Services Division
222N. Central Ave. Ste. 1100
Phoenix, AZ 85004

1 Copy of the foregoing delivered via electronic
2 mail this 28th day of November 2017 to:

3 U.S TRUSTEE

4 **OFFICE OF THE U.S. TRUSTEE**

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28 By /s/Theresa Bailey