

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CHRIS D. KUHNER, ESQ. (Bar No. 173291)
SARAH L. LITTLE, ESQ. (Bar No. 215635)
KORNFIELD, NYBERG, BENDES, KUHNER & LITTLE P.C.
1970 Broadway, Suite 225
Oakland, California 94612
Telephone: (510) 763-1000
Facsimile: (510) 273-8669
Email: c.kuhner@kornfielddlaw.com
Email: s.little@kornfielddlaw.com

Attorneys for Pacheco Brothers Gardening. Inc., Debtor

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re
PACHECO BROTHERS GARDENING, INC.,

Debtor.

Case No. 17-40403 WJL
Chapter 11

**COMBINED PLAN OF
REORGANIZATION AND
DISCLOSURE STATEMENT**

TABLE OF CONTENTS

	<u>PAGE</u>
1	
2	
3	I. INTRODUCTION.....1
4	II. DISCLAIMERS1
5	III. DEFINITIONS, INTERPRETATION, COMPUTATION OF TIME
6	AND RULES OF CONSTRUCTION3
7	A. Definitions3
8	B. Rules of Interpretation7
9	C. Computation of Time8
10	D. Section Numbers8
11	IV. DISCLOSURE STATEMENT SECTION8
12	A. Purpose of the Disclosure Statement Section 8
13	B. Deadlines for Voting and Objection;
14	Date of Plan Confirmation Hearing9
15	C. Time and Place of the Combined Hearing on
16	Approval of Disclosure Statement and Confirmation Hearing9
17	D. Deadline for Voting For or Against the Plan9
18	E. Deadline for Objecting to the Disclosure Statement
19	and Confirmation of the Plan10
20	F. Identity of Person to Contact for More Information
21	Regarding the Plan10
22	G. General Factual Overview of the Debtor
23	and Summary of Plan10
24	V. THE GLOBAL SETTLEMENT WHICH PROVIDES THE BASIS
25	FOR THE PLAN IS IN THE BEST INTEREST OF THE ESTATE15
26	VI. PLAN OF REORGANIZATION17
27	A. General Overview17
28	B. Unclassified Claims18

1 1. Administrative Expenses18

2 2. Priority Tax Claims19

3 C. Classified Claims and Interests19

4 VII. EXECUTORY CONTRACTS21

5 VIII. MEANS OF PERFORMING THE PLAN22

6 A. Funding for the Plan22

7 B. Corporate Action22

8 C. Avoidance Claims22

9 D. Set-Offs22

10 E. Waiver and/or Release23

11 F. Late Claims Void23

12 G. Allowed and Disputed Claims23

13

14 IX. CONFIRMATION REQUIREMENTS AND PROCEDURES23

15 X. DISTRIBUTIONS28

16 A. Distributions on Account of Allowed Administrative,
 17 Allowed Priority Tax Claims and U.S. Trustee Fees28

18 B. Distribution for Class 1 Claim29

19 C. Distribution for Class 2 Claim29

20 D. Distribution for Class 3 Claim29

21 E. Distribution for Class 4 Claim29

22 F. Distribution for Class 5 Claim29

23 G. Distribution for Class 6 Claim29

24 H. Distribution for Class 7 Claim29

25 I. Distribution for Class 8 Claim29

26 J. Distribution for Class 9 Claim29

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- K. Distribution on Account of Class 10 Claims.....30
- L. Interest on Allowed Claims30
- M. No Distributions on Disputed or Disallowed Claims30
- N. Effectuation of Distributions30
- O. Manner of Payments; Delivery of Distributions30
- P. Undeliverable Distributions30
 - 1. Holding of Undeliverable Distributions30
 - 2. Failure to Claim Undeliverable Distributions31
 - 3. Uncashed Checks31
 - 4. Fractional Amounts31
 - 5. De Minimis Distributions32
- Q. Compliance with Tax Requirements/Allocation32
- XI. EFFECT OF CONFIRMATION OF PLAN32
 - A. Discharge32
 - B. Modification of Plan32
 - C. Post-Confirmation Conversion/Dismissal33
 - D. Final Decree 33

1 **I. INTRODUCTION**

2 On February 13, 2017, Pacheco Brothers Gardening, Inc. (the “Debtor”) filed a voluntary
3 petition under Chapter 11 of the United States Bankruptcy Code 11 U.S.C. § 101 et seq. (the
4 “Bankruptcy Code”).

5 THE DOCUMENT YOU ARE READING IS A COMBINED DISCLOSURE
6 STATEMENT AND PLAN OF REORGANIZATION. THERE WILL BE A COMBINED
7 HEARING ON APPROVAL OF THIS DISCLOSURE STATEMENT AND CONFIRMATION
8 OF THE PLAN ON [TO BE DETERMINED].

9 The timing and amounts of Plan payments to particular creditor groups will depend upon
10 their classification under the Plan. The Effective Date of the Plan shall be the first Business Day
11 that is fifteen (15) calendar days after the Confirmation Date, unless the Bankruptcy Court
12 otherwise determines a different Effective Date for the Plan.

13 **II. DISCLAIMERS**

14 THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT SECTION
15 IS INCLUDED TO SOLICIT ACCEPTANCES OF THE PLAN. THE INFORMATION IN THIS
16 DISCLOSURE STATEMENT SECTION SHOULD NOT BE RELIED UPON FOR ANY
17 PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.

18 ANY PARTY WHO DOES NOT OBJECT TO THE DISCLOSURE STATEMENT
19 SECTION DOES NOT WAIVE ANY RIGHTS TO OBJECT TO THE CONFIRMATION OF
20 THE PLAN.

21 ALL CREDITORS SHOULD READ THE DISCLOSURE STATEMENT SECTION
22 AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. STATEMENTS
23 MADE IN THE DISCLOSURE STATEMENT SECTION ARE QUALIFIED IN THEIR
24 ENTIRETY BY REFERENCE TO THE PLAN.

25 THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT SECTION
26 ARE MADE BY THE PLAN PROPONENTS AS OF THE DATE HEREOF UNLESS
27 OTHERWISE SPECIFIED. THE DELIVERY OF THE DISCLOSURE STATEMENT
28 SECTION DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE

1 INFORMATION SET FORTH HEREIN SINCE SUCH DATE. HOLDERS OF CLAIMS
2 ENTITLED TO VOTE ON THE PLAN SHOULD READ THE DISCLOSURE STATEMENT
3 SECTION AND THE PLAN AND CONSULT WITH COUNSEL OR OTHER ADVISORS
4 PRIOR TO VOTING ON THE PLAN.

5 THE DISCLOSURE STATEMENT SECTION HAS BEEN PREPARED IN
6 ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE
7 AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT
8 NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR
9 OTHER NON-BANKRUPTCY LAW. THE DISCLOSURE STATEMENT SECTION HAS
10 BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SEC, NOR HAS THE SEC
11 PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED
12 HEREIN. ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR
13 TRANSFERRING SECURITIES OF OR CLAIMS AGAINST THE DEBTOR SHOULD
14 EVALUATE THE DISCLOSURE STATEMENT SECTION AND THE PLAN IN LIGHT OF
15 THE PURPOSE FOR WHICH THEY WERE PREPARED.

16 NOTHING IN THE DISCLOSURE STATEMENT SECTION IS AN ADMISSION OF
17 ANY FACT OR LIABILITY BY THE PLAN PROPONENTS AND IS NOT ADMISSIBLE
18 AGAINST THE PLAN PROPONENTS OR OTHER PARTY IN ANY PROCEEDING, NOR
19 DOES THE DISCLOSURE STATEMENT SECTION PROVIDE ADVICE ON THE TAX OR
20 OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS OR INTERESTS.
21 YOU SHOULD CONSULT YOUR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS
22 RESPECTING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

23 **IRS CIRCULAR 230 NOTICE**

24 TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS
25 AND INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL
26 TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS
27 NOT INTENDED TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR
28 INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED

1 ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS
2 WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN AND
3 OTHER MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND
4 INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR
5 CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

6 **III. DEFINITIONS, INTERPRETATION, COMPUTATION OF TIME AND RULES**
7 **OF CONSTRUCTION**

8 **A. Definitions**

9 The following terms (which appear in this Combined Plan and the Disclosure Statement as
10 capitalized terms) have the following meaning as used in the Plan and Disclosure Statement:

11 1. "Administrative Claim" means a Claim for costs and expenses of administration
12 allowed under Section 503(b) of the Bankruptcy Code and referred to in Section 507(a)(1) of the
13 Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses
14 incurred after the Petition Date of preserving the Estate and operating the business of the Debtor
15 (such as wages, salaries or commissions for services); (b) compensation for legal, financial
16 advisory, accounting and other services and reimbursement of expenses awarded or allowed under
17 Sections 330(a) or 331 of the Bankruptcy Code; and (c) all fees and charges assessed against the
18 Estate under 28 U.S.C. § 123.

19 2. "Allowed Claim" means a Claim against the Debtor to the extent that -

20 a. a Proof of Claim

21 (1) was timely filed; or

22 (2) is deemed filed under applicable law or by reason of
23 an order of the Bankruptcy Court; and

24 b. (1) Any Interested Party or Debtor does not file an objection within a
25 time fixed by the Bankruptcy Court and the Claim is not otherwise a Disputed Claim (but only to
26 the extent that such Claim is not a Disputed Claim);

27 (2) the Claim is allowed (and only to the extent allowed)
28 by a Final Order; or

- 1 (3) the Claim is allowed under the Plan.
- 2 3. "Allowed Amount" means the amount of any Claim against the Debtor determined
3 in accordance with Sections 502 and 506(a) of the Bankruptcy Code and any other applicable
4 section of the Bankruptcy Code, and recognized by the Debtor as valid or allowed by Final Order
5 of the Court, except to the extent described or defined otherwise herein.
- 6 4. "Allowed Priority Claim" means an Allowed Claim entitled to priority pursuant to
7 Sections 507(a)(4), (5) or (8) of the Bankruptcy Code.
- 8 5. "Allowed Secured Claim" means an Allowed Claim secured by a lien, security
9 interest or other charge against the property in which the Estate has an interest, or which is subject
10 to set-off under Section 553 of the Bankruptcy Code, to the extent of the value, determined in
11 accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of such
12 secured Claim in the Estate's interest in such property, or to the extent of the amount subject to any
13 setoff, as the case may be.
- 14 6. "Avoidance Claims" means claims of the Debtor arising under 11 U.S.C. § 544,
15 548, 547 and 550.
- 16 7. "Bankruptcy Code" or "Code" means Title 11 of the United States Code, as now in
17 effect or hereafter amended. All citations in the Plan to section numbers are to the Code unless
18 otherwise expressly indicated.
- 19 8. "Bar Date" means the last date for filing unscheduled claims, claims that differ
20 from the scheduled claims, or claims scheduled as disputed, contingent, or unliquidated. The Bar
21 Date in this case set by the Bankruptcy Court for non-governmental units is June 19, 2017.
- 22 9. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday"
23 (as defined in Bankruptcy Rule 9006(a)).
- 24 10. "Case" means the within Chapter 11 proceeding known as Pacheco Brothers
25 Gardening, Inc., Case No. 17-40403 pending before the Bankruptcy Court.
- 26 11. "Claim" means any right to payment, whether or not such right is reduced to
27 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, legal,
28 equitable, secured or unsecured; or, a right to an equitable remedy for breach of performance if

1 such breach gives rise to a right to payment, whether or not such right is an equitable remedy or is
2 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
3 undisputed, secured or unsecured.

4 12. "Claimants" or "Creditors" means persons or entities holding unsecured, secured or
5 equity Claims.

6 13. "Class" means any grouping into which Allowed Claims and interests are classified
7 pursuant to the Plan.

8 14. "Confirmation" means the entry by the Bankruptcy Court of the Confirmation
9 Order.

10 15. "Confirmation Date" means the date on which the Bankruptcy Court enters the
11 Confirmation Order on the Court docket.

12 16. "Confirmation Order" means the Order of the Bankruptcy Court confirming the
13 Plan under Section 1129 of the Bankruptcy Code.

14 17. "Debtor" means Pacheco Brothers Gardening, Inc., the debtor and debtor-in-
15 possession in this Chapter 11 Case.

16 18. "Del Conte Parties" means Tom Del Conte, TDDC Ventures LLC and/or Vison
17 Recycling, Inc., or any related affiliates.

18 19. "Disclosure Statement" means the Disclosure Statement Section prepared by the
19 Debtor as required by Section 1125 of the Bankruptcy Code and approved by an Order of the
20 Bankruptcy Court.

21 20. "Disputed Claim" means a Claim against the Debtor (a) which has been included in
22 the Debtor's Schedules as disputed, contingent, or unliquidated, or (b) as to which an objection
23 has been timely filed and which objection is not the subject of a Final Order and has not been
24 withdrawn.

25 21. "Effective Date" means the first Business Day that is fifteen (15) calendar days
26 after the Confirmation Date, unless the Bankruptcy Court otherwise determines a different
27 Effective Date for the Plan.

28

1 22. "Estate" means the estate created in the Chapter 11 Case for the Debtor under
2 Section 541 of the Bankruptcy Code.

3 23. "File" or "Filed" means filed with the Bankruptcy Court in the Chapter 11 Case.

4 24. "Final Order" means an order or judgment of the Bankruptcy Court, or other court
5 of competent jurisdiction, as entered on the Court's docket, which has not been reversed, stayed,
6 modified or amended, and as to which (i) the time to appeal or seek certiorari has expired and no
7 appeal or petition for certiorari has been timely filed, or (ii) any appeal that has been or may be
8 taken or any petition for certiorari that has been or may be filed has been resolved by the highest
9 court to which the order or judgment was appealed or from which certiorari was sought.

10 25. "Order" means an order or judgment of the Bankruptcy Court as entered on its
11 docket.

12 26. "The Pachecos" means George Pacheco, Lynn Pacheco and/or Gary Pacheco.

13 27. "Person" means any individual, corporation, general partnership, limited liability
14 company, limited partnership, association, joint stock company, joint venture, estate, trust,
15 government or any political subdivision, governmental unit (as defined in the Bankruptcy Code)
16 or official committee appointed by the United States Trustee.

17 28. "Petition Date" means February 13, 2017, the date upon which this Case was filed.

18 29. "Plan" means the Chapter 11 Plan in this Case and all exhibits and schedules
19 annexed thereto or referred to therein, as the same may be amended, modified, or supplemented
20 from time to time and any amendment or modification thereof.

21 30. "Post-Confirmation Notice Parties" means counsel for the Reorganized Debtor, the
22 United States Trustee, and any creditor or party in interest who delivers a notice to counsel for the
23 Reorganized Debtor requesting to be added as a Post-Confirmation Notice Party (so as to receive
24 notice of post-Confirmation events).

25 31. "Reorganized Debtor" means the Debtor from and after the Effective Date.

26 32. "Schedules" or "Schedules of Assets and Liabilities" means the Schedules of
27 Assets and Liabilities filed by the Debtor with the Bankruptcy Court, as the same have been or
28 may be amended from time to time prior to the Effective Date.

1 33. "Secured Claim" means any Claim that is secured by a lien on property in which
2 the Estate has an interest or that is subject to set off under Section 553 of the Bankruptcy Code.

3 34. "Secured Creditor" means the holder of an Allowed Secured Claim.

4 35. "Unclassified Claims" means the Allowed Amount of (i) all administrative
5 expenses of the Debtor's Chapter 11 Case, allowed pursuant to Section 503(b) of the Bankruptcy
6 Code, and (ii) all allowed, unsecured Claims entitled to priority pursuant to Section 507(a)(1), (2),
7 (3), (4) and (6) of the Bankruptcy Code for wages, salaries, vacation, severance, sick pay or
8 commissions.

9 36. "Unsecured Claims" means the Allowed Amounts of those Claims against the
10 Debtor for which there are no assets of the Debtor serving as security, but not including any
11 priority Claims.

12 37. "Unsecured Creditor" means the holder of an Unsecured Claim.

13 **B. Rules of Interpretation**

14 For purposes of the Disclosure Statement: (a) whenever from the context it is appropriate,
15 each term, whether stated in the singular or the plural, shall include both the singular and the
16 plural; (b) any reference in the Disclosure Statement to a contract, instrument, release or other
17 agreement or document being in a particular form or on particular terms and conditions means that
18 such document shall be substantially in such form or substantially on such terms and conditions;
19 (c) any references in the Disclosure Statement to an existing document or Exhibit Filed or to be
20 Filed means such document or Exhibit, as it may have been or may be amended, modified or
21 supplemented; (d) unless otherwise specified in a particular reference, all references in the
22 Disclosure Statement to Sections, Articles and Exhibits are references to Sections, Articles and
23 Exhibits of or to the Disclosure Statement; (e) the words "herein," "hereof," "hereto," "hereunder"
24 and others of similar import refer to the Disclosure Statement in its entirety rather than to only a
25 particular section of the Disclosure Statement; (f) captions and headings to Articles and Sections
26 are inserted for convenience of reference only and are not intended to be a part of or to affect the
27 interpretation of the Disclosure Statement; and (g) the rules of construction set forth in Section
28 102 of the Bankruptcy Code shall apply.

1 The Code requires a Disclosure Statement to contain “adequate information” concerning
2 the Plan. At the combined hearing on the approval of the Disclosure Statement and confirmation
3 of the Plan, the Bankruptcy Court (the “Court”) will determine whether this document is an
4 adequate Disclosure Statement, containing enough information to enable parties affected by the
5 Plan to have made an informed judgment about the Plan. Any party can now solicit votes for or
6 against the Plan.

7 **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

8 THE COURT HAS NOT YET APPROVED THE DISCLOSURE STATEMENT
9 SECTION NOR CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE
10 STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING
11 ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE
12 PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST
13 HOLDERS IN THIS CASE.

14 **C. Time and Place of the Combined Hearing on Approval of Disclosure**
15 **Statement and Confirmation Hearing**

16 The hearing where the Court will approve or disapprove the disclosure statement and
17 determine whether or not to confirm the Plan will take place on August *TBD* 2017, at *TBD*, United
18 States Bankruptcy Court, Courtroom 220, 1300 Clay Street, Oakland, California 94612.

19 **D. Deadline For Voting For or Against the Plan**

20 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot
21 and return the ballot to counsel for the Debtor at the following address:

22 Chris D. Kuhner, Esq.
23 Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.
24 1970 Broadway, Suite 225
25 Oakland, CA 94612
26 Facsimile: (510) 273-8669
27 Email: c.kuhner@kornfieldlaw.com

28 Your ballot must be received by 5:00 p.m. PST on *TBD*, 2017 or it will not be counted.

1 **E. Deadline For Objecting to the Disclosure Statement and Confirmation of the**
2 **Plan**

3 Objections to the Disclosure Statement and/or the Confirmation of the Plan must be filed
4 with the Court and served so that any objections are actually received by counsel for the Debtor by
5 5:00 p.m. PST on *TBD*, 2017. Objections must be filed with the Bankruptcy Court and served on
6 counsel for the Debtor at the following addresses:

7 **Counsel for the Debtor:**

8 Chris D. Kuhner, Esq.
9 Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.
10 1970 Broadway, Suite 225
11 Oakland, CA 94612
12 Facsimile: (510) 273-8669
13 Email: c.kuhner@kornfieldlaw.com

14 **F. Identity of Person to Contact for More Information Regarding the Plan**

15 Any interested party desiring further information about the Plan should contact counsel for
16 the Debtor, Chris D. Kuhner, Kornfield, Nyberg, Bendes, Kuhner & Little, P.C., 1970 Broadway,
17 Suite 225, Oakland, CA 94612, (510) 763-1000 or c.kuhner@kornfieldlaw.com.

18 **G. General Factual Overview of the Debtor and Summary of Plan**

19 The Debtor was established in 1979 by Gary Pacheco and George Pacheco. George
20 Pacheco is the President and 25% owner of the Debtor. His wife, Lynn Pacheco, is the Secretary
21 and 25% owner of the Debtor. Lynn Pacheco is also the Natural Responsible Person for the Debtor
22 in this Chapter 11 bankruptcy case. Gary Pacheco is the Vice President of the Debtor and 50%
23 owner of the Debtor.

24 The Debtor is a full service landscape company providing commercial landscape
25 maintenance, landscape installation, turf renovation and irrigation projects. The Debtor operates
26 three main divisions. Those divisions are comprised of (1) the Maintenance Division
27 (“Maintenance Division”); (2) the Landscape Installation and Construction Division (“Landscape
28 Division”); and (3) the Turf Renovation and Irrigation Projects (“Tractor Division”).

 The Maintenance Division performs under ongoing monthly/annual contracts at least one
year or longer to manage property, roadways or parks for mowing, edging, hedging, trimming of

1 shrubbery, light trimming, fertilization application, pre-emergent weed control and irrigation
2 repair.

3 The Tractor Division performs one-time contracts to turf seed, install sod, oversee or to
4 add/install/renovate with decomposed granite or cinder fines to property including parks,
5 roadways, forts, ports, sports fields and tracks. This also includes synthetic cleaning and field
6 repair, putting down clay, slit seeding and one time weed abatement.

7 The Landscape Division performs one-time contracts to do design, install and/or construct
8 new landscape, new hardscape, new irrigation system, new shrub and new tree planting, new
9 arbors, new concrete, new sod and/or ground cover, including any maintenance/upkeep required
10 per contract for up to ninety (90) days.

11 The Company operates out of three offices in Hayward, Oakley and Dublin, California.
12 The Debtor is well diversified with the majority of its business coming from its Maintenance
13 Division providing a wide variety of services for clients such as Municipal and Public Agency
14 accounts, as well as a mix of homeowner's association, commercial building and school districts.

15 In 2014, the Company was experiencing a significant cash flow problem that had its roots
16 in the great recession of 2008. Initially, the down turn of the economy did not severely impact the
17 Company, but eventually business started to suffer. Instead of giving substantial consideration to
18 a contractor's qualifications, experience and non-price factors in determining what bids and
19 proposal to accept, the Debtor's customers began to base their criteria primarily on price. At the
20 same time, there was a flood of increased competition from contractors who sought to enter this
21 specialty area, because traditional work and new building of construction projects had dried up,
22 and who offered to do work at lower prices than the Debtor offered. As a result, the Debtor began
23 to get outbid on jobs and contracts it normally would win.

24 In order to offset this lost revenue, the shareholders infused approximately one and a half
25 million dollars into the company through personal loans from individual shareholder 401k
26 retirement plans, from Pacheco Investments, LLC, an affiliate company which owned the building
27 in which the Debtor was then situated, and from friends and family. The Debtor was also forced to
28 factor its invoices which resulted in paying approximately 20% interest for any borrowed funds

1 under the terms of the factoring agreement.

2 In December of 2014, the Debtor was running out of cash and had few or no invoices to
3 factor because the weather had been inclement and the maintenance work could not be performed.
4 The Debtor reached out to Tom Del Conte, a long-term friend of the Pachecos. Ultimately, on
5 December 23rd and 24th of 2014, the Debtor and Del Conte entered into two (2) agreements. One
6 was a document entitled “Option to Acquire PBG by TDDC With Conditions and Term” (“Option
7 Agreement”) and one labeled “Lending/Factoring Loan to PBG” (“Lending Agreement”). The
8 Option Agreement provided Del Conte and/or his company TDDC with the option to purchase the
9 shares of the Company pursuant to the terms of the Option Agreement. The Lending Agreement
10 generally provided that TDDC or any of Del Conte’s affiliated entities would loan the Company
11 money and the Del Conte Parties believed the Debtor would repay the loan which the Del Conte
12 Parties’ contended was secured by a lien on the Debtor’s assets, to the extent funds were loaned.
13 Additionally, the Del Conte Parties allege they paid the Pachecos money for the right to exercise
14 an option to purchase their shares, or by the assets of the Debtor. During 2015, TDDC and its
15 affiliate entities loaned the Debtor funds. At the time of the filing as set forth in their filed Proof
16 of claim, they contend they are owed \$780,000 on the note. The Debtor concedes that loan balance
17 is at least \$374,704 plus interest owed by the Company to the Del Conte Parties. In addition, the
18 Debtor utilized the services of Del Conte’s controlled entity including Vision Recycling Inc.
19 which filed a claim in this bankruptcy estate.

20 During 2015, Del Conte was installed as a Chief Executive Officer of the Debtor. By
21 November 2015, the Debtor, through its board, concluded that the Company could not function
22 any longer with Del Conte as CEO and he was terminated and the Agreements were not performed
23 due to certain disputes On December 22, 2015, Del Conte Parties filed a Complaint in the
24 Alameda County Superior Court for specific performance, breach of contract, intentional and
25 negligent misrepresentation, common counts and appointment of receiver and injunction of relief
26 against the Debtor and the Pachecos (“State Court Action”).

27 The Debtor, Pachecos and Del Conte Parties litigated the State Court Action for most of
28 2016. However, due to the prohibitive costs of the ongoing litigation as well as the various past

1 due vendor accounts and difficulty operating an existing debt structure, the Debtor filed for
2 Chapter 11 bankruptcy. In addition, the Pachecos have filed personal Chapter 13 bankruptcy cases
3 which are currently pending in the Northern District of California in front of the Honorable
4 William J. Lafferty.

5 **DEL CONTE AND FREMONT BANK CLAIMS**

6 TDDC Ventures, LLC and Vision Recycling, Inc. have documents evidencing the debt
7 owed by the Debtor to them. TDDC Ventures, LLC loaned the Debtor money (through various
8 entities and Mr. Del Conte) with a current balance of \$374,104, plus interest. The Del Conte
9 Parties contend that the amount outstanding is in excess of \$780,000. The Debtor disputes that this
10 claim is secured and it may be subject to equitable subordination based on affirmative claims the
11 Debtor has against Del Conte. Vision Recycling is an entity controlled by Del Conte and it has a
12 current claim against the estate in the amount of \$24,611.24 that is a trade debt.

13 Del Conte Parties also believe they have substantial damage claims in addition to the
14 claims listed above against both the Debtor and the Pachecos, which increases their claims to
15 \$3,500,000, for specific performance, breach of contract, intentional and negligent
16 misrepresentation. The cost of litigating the claims could easily exceed \$200,000, and if the Del
17 Conte Parties are successful, their claims will dilute the distribution under this case since their
18 claims will exceed the value of all of the remaining claims together.

19 Fremont Bank is the Debtor's largest unsecured creditor holding a filed claim of
20 approximately \$711,000, plus interest and attorney's fees. Fremont Bank is unsecured as to the
21 Debtor, but Fremont Bank has a secured claim against Gary Pacheco and George and Lynn
22 Pacheco evidenced by deeds of trust against their respective residences in the amount of
23 \$400,000each. Each of the Pachecos has personally guaranteed the full amount of the
24 indebtedness.

25 **DEL CONTE SETTLEMENT AND PLAN SUMMARY**

26 Over a three lengthy days, including April, 3, 7 and 24 of 2017, and subsequent telephonic
27 meetings, the Debtor, the Pachecos and Del Conte Parties participated in a settlement conference
28 with the Honorable Dennis Montali, United States Bankruptcy Court Judge for the Northern

1 District of California, San Francisco Division. The settlement conference was comprehensive and
2 hard fought, and ultimately resulted in a global settlement between the Debtor, Del Conte Parties
3 and the Pachecos. Subsequent to the Settlement Conference, Fremont Bank has also agreed to
4 certain provisions as described in more detail below which was a condition of the settlement. The
5 Settlement Agreement between the Debtor, Del Conte Parties and the Pachecos is set forth in the
6 Settlement Agreement attached as **Exhibit A**. The basic terms of the Agreement are as follows:

7 • The Parties use their best efforts to file, prosecute a plan of reorganization which
8 provides for payment to unsecured creditors of thirty (30) cents on the dollar.

9 • The Pachecos will waive any claims that they have against the Bankruptcy Estate
10 which include approximately \$390,239 in unsecured loans made to the Debtor that remain unpaid,
11 and the Bankruptcy Estate will waive claims against the Pachecos, including possible preference
12 avoidance actions. Del Conte Parties will release their claims against the Bankruptcy Estate which
13 includes claims for money lent, monies due Vision Recycling, any claims for damages as set forth
14 in the State Court Action, any claims that Del Conte believes he is owed under a consulting and/or
15 wage agreement. Del Conte contends their claims totals in the aggregate of \$3,500,000.

16 • On the Effective Date of the Plan, conditioned upon receiving a payment of
17 \$300,000, Fremont Bank will release the Pachecos and reconvey the existing deeds of trust against
18 their homes. Fremont Bank will be paid an additional \$300,000 in equal monthly installments
19 over 4 years commencing two months after the effective date. The \$300,000 balance will be
20 secured by the assets of the Reorganized Debtor.

21 • Del Conte has deposited \$72,500 into Debtor's counsels' trust account to be used to
22 pay any non-operational administrative claims subject to the terms of the Settlement Agreement to
23 confirm the Plan. The balance of any unused funds from the \$72,500 will then be paid to a new
24 entity called Pacheco Landscape Company ("PLC"), which is owned 100% by the Pachecos. The
25 Debtor will pay up to \$30,000 (as set forth in the Settlement Agreement) for additional
26 administrative fees not related to ordinary operations after all retainers are depleted, before the
27 \$72,500 is applied to the administrative expenses. In addition, the Debtor will transfer certain
28 assets as described in the agreement to PLC necessary to operate this new entity. Del Conte Parties

1 will receive the shares of the Debtor whose operations continue to include the Maintenance
2 Division and the Tractor Division. The Reorganized Debtor owned by the Del Conte Parties will
3 continue to operate going forward and perform the terms of this Plan.

4 • The Parties have entered into a covenant not to compete as set forth in the
5 Settlement Agreement. This covenant has certain exceptions for certain clients that PLC will be
6 able to do business with, but also sets forth certain existing clients of the Debtor that PLC cannot
7 solicit work from.

8 • Beginning on the tenth day from the Effective Date of the plan, the Debtor shall
9 pay George and Lynn Pacheco \$10,000 monthly payments for six (6) months for a total of
10 \$60,000.

11 • As part of the Agreement, while the parties are attempting to confirm this Plan, and
12 subject to Court approval, Del Conte Parties will manage and operate the Maintenance Division
13 and Tractor Division until the Effective Date of the Plan.

14 • All existing shares of the Debtor shall be cancelled and new shares will be issued to
15 the Del Conte Parties who shall own 100% of the Reorganized Debtor.

16 • Upon the Effective Date of the Plan, the Pachecos and Del Conte will mutually
17 release each other from any and all claims.

18 **V. THE GLOBAL SETTLEMENT WHICH PROVIDES THE BASIS FOR THE PLAN**
19 **IS IN THE BEST INTEREST OF THE ESTATE**

20 The Debtor believes that the proposed Plan, which includes the global settlement of claims
21 between the Debtor, the Pachecos and Del Conte, is in the best interest of the Estate. This global
22 compromise of controversies satisfies the factors set forth in *Martin v. Kane (In re A&C*
23 *Properties)*, 784 F. 2d. 1377, 1381 (9th Cir. 1986). Those factors include (a) the probability of
24 success in litigation; (b) the difficulties, if any, to be encountered in the matter of collections; (c)
25 the complexity of the litigation involved and the expense, inconvenience and delay necessary
26 tending to it; and (d) the paramount interest of creditors and proper deference to their reasonable
27 views in the premises. In re *A&C Properties*, 784 F.2d. at 1381. In addition to the four-prong test
28 set forth in *A&C Properties*, it is also well established that the “law favors compromise and not

1 litigation for its sake.” See *Port O’Call Investment, Co. v. Blair (In re Blair)* 538 F.2d. 849, 851
2 (9th Cir. 1976). The Debtor believes that the resolution with Del Conte Parties meets these factors.

3 First, the probability of success in litigation favors resolution. Although the Debtor has
4 affirmative claims against Del Conte, the probability of obtaining a successful outcome is
5 speculative. In addition, Del Conte has significant claims alleging substantial damages against the
6 Debtor which he contends total \$3,500,000. Although the Debtor has defenses to these claims, it is
7 very likely that Mr. Del Conte will have some claim in some amount that most likely totals the
8 amount of the money that TDDC lent in the amount of \$374,104 plus interest, plus the claims of
9 Vision Recycling in the amount of \$24,611.24 and a claim under the consulting agreement in the
10 maximum amount of \$55,000.

11 Second, the difficulty, if any to be encountered in the matter of collection. To the extent
12 the Debtor is successful in any of its affirmative claims against Del Conte, an offset would be
13 available against any monies he claims owed, therefore collection against Mr. Del Conte is not an
14 issue.

15 Third, the complexity of litigation involved, the expense, the inconvenience and delay
16 necessary to tend to it weigh heavily in favor of settlement. Del Conte and the Debtor have been
17 engaged in a protracted litigation since late 2015. The costs to defend this litigation as well as
18 pursue affirmative claims is not affordable to the Debtor. The Debtor’s limited resources would be
19 exhausted and the likely result of expending these resources on litigation would result in
20 significantly less money paid to creditors or cause the Company to shut down and convert its case
21 to Chapter 7 in which case creditors would receive a significantly smaller distribution. Even if the
22 Debtor was able to fund defense, the cost to do so and the likely ultimate result of the. Del Conte
23 Parties being owed some money would be a hollow victory and the Debtor would be saddled with
24 this debt going forward.

25 Furthermore, Fremont Bank has agreed to reduce its Allowed Claim to \$600,000 with the
26 payment of \$300,000 on the effective date of the plan and \$300,000 over three years. This is a
27 significant reduction to the expense to the Debtor going forward.

28

1 Finally, the paramount interest of the creditors clearly favors settlement. The settlement
2 and proposed Plan result in the Class 9 unsecured creditors being paid 30% of their Allowed
3 Claims. Under the Plan, the Pachecos (\$390,239) and the Del Conte Parties (\$3,500,000) are
4 releasing their claims and Fremont Bank (\$711,000) is separately classified and not part of Class
5 9, the general unsecured creditors. As a result, there is approximately \$560,000 in non Fremont
6 Bank unsecured creditors to paid 30% of their claims through the Plan.

7 However, if the settlement is not approved and the Plan not confirmed, the claims of the
8 Pachecos, Fremont Bank and the Del Conte Parties, to the extent valid, will be included in
9 calculating any distribution to unsecured creditors. This increases the unsecured creditor pool
10 from \$560,000 to \$5,330,820 in filed claims. As set forth in **Exhibit B**, the liquidation value of the
11 Debtor's assets, after deducting the administrative costs of a chapter 7 bankruptcy and the
12 estimated chapter 11 administrative costs, is \$626,863. This equates to a 12% distribution to
13 general unsecured creditors in a hypothetical chapter 7 bankruptcy.

14 The Pachecos claims may be subject to an objection to the extent they are subject to
15 avoidance claim that remain unpaid.

16 This distribution analysis also assumes the Del Conte Parties claim is allowed in the full
17 amount of the filed claim. A chapter 7 trustee may object to Del Conte's claim and it is possible
18 that the amount of the claim be reduced. However, any claim objection would be contested and
19 consume significant fees and cost, all of which would increase the administrative costs reducing
20 the available funds for creditors. Even assuming the Del Conte claim was reduced by 50%, the
21 resulting distribution to Class 9 unsecured creditors would only increase to 18% without taking
22 into consideration the increase administrative cost associated with litigating the claim.

23 **VI. PLAN OF REORGANIZATION**

24 **A. General Overview**

25 As required by the Bankruptcy Code, the Plan separates claims and interests into various
26 categories and classes according to the nature and legal rights associated with such claims and
27 interests. The Plan designates which classes are impaired and which classes are unimpaired. The
28 Plan also describes the treatment each class will receive under the Plan. The Proponents will ask

1 the Bankruptcy Court to confirm this Plan pursuant to 11 U.S.C. §1129(b) with respect to any
 2 impaired classes if any of these classes do not vote to accept the Plan and if the Plan can otherwise
 3 be confirmed. The Settlement Agreement attached to the Disclosure Statement is incorporated
 4 herein to the extent this Plan is silent on a specific term. If terms conflict then the Settlement
 5 Agreement controls.

6 **B. Unclassified Claims**

7 Certain types of Claims are not placed into voting classes; instead, they are unclassified.
 8 Holders of Unclassified Claims are not considered impaired and are not entitled to vote on the
 9 Plan; rather the holders of unclassified, unimpaired Claims and interests are automatically entitled
 10 to specific treatment provided for them in the Bankruptcy Code.

11 The following categories of Claims are neither classified nor impaired under the Plan and
 12 are not entitled to vote on the Plan.

13 **1. Administrative Expenses**

14 Administrative expenses are Claims for costs or expenses of administering the Debtor's
 15 Chapter 11 Case that are allowed under Bankruptcy Code Section 507(a)(2). The Bankruptcy
 16 Code requires that all Administrative Claims be paid on the Effective Date of the Plan, unless a
 17 particular claimant agrees to a different treatment except ordinary business expenses which are
 18 paid according to the contract terms.

Name	Amount (estimated)	Treatment
Kornfield, Nyberg, Bendes, Kuhner & Little, P.C., Attorneys for the Debtor	\$80,000 (Debtor's counsel is holding a pre-petition retainer in the amount of \$37,427, leaving a balance of \$42,573)	Paid in full upon Court approval of requested fees subject to the terms of the Settlement Agreement subject to the terms set forth herein.
Office of the U.S. Trustee Fees	\$5,000	Quarterly fees, as required by 28 U.S.C. § 1930(a)(6), shall be paid until a final decree is entered or the case is dismissed or converted.
TOTAL:	\$47,573	

1 **Court Approval of Fees Required:**

2 Requests by professionals for payment of fees and costs are generally subject to review and
3 approval by the Court. Fees of the Court Clerk and the Office of the United States Trustee are not
4 subject to Court approval and may be paid in the ordinary course of business when due.

5 **2. Priority Tax Claims**

6 Priority tax claims are certain unsecured income, employment and other taxes described by
7 Code Section 507(a)(8). The Code requires that each holder of such a 507(a)(8) priority tax claim
8 receive the present value of such claim in deferred cash payments, over a period not exceeding
9 five (5) years from the date of the assessment of such tax.

10 In this case, there is a priority tax claim that has been filed by the Internal Revenue Service
11 in the amount of \$100.00. The IRS claim will be paid in full on the Effective Date.

12 **C. Classified Claims And Interests**

13 **Class 1 – Secured Claim of Direct Capital**

14 Claim: \$64,000 Allowed Claim of Direct Capital secured by the assets of the Debtor.

15 Impaired/Not Impaired: Class 1 Claim is not impaired.

16 Treatment: Holder of Class 1 Claim will retain its lien and be paid pursuant to the
17 underlying loan agreement.

18 **Class 2 – Secured Claim of Ally Bank**

19 Claim: \$25,703 Allowed Claim of Ally Bank secured by 2016 Dodge 1500, VIN No.
20 3C65126DG866239636.

21 Impaired/Not Impaired: Class 2 is not impaired.

22 Treatment: Holder of Class 2 will retain its lien and be paid pursuant to the underlying
23 loan agreement.

24 **Class 3 – Secured Claim of Deere & Company dba John Deere Financial**

25 Claim: \$19,112 Allowed Claim of Deere & Company secured by Z-Trak Discharge Deck
26 Model 997S #090966.

27 Impaired/Not Impaired: Class 3 is not impaired.

28 Treatment: Holder of Class 3 will retain its lien and be paid pursuant to the underlying

1 loan agreement.

2 **Class 4 – Secured Claim of Deere & Company dba John Deere Financial**

3 Claim: \$19,112 Allowed Claim of Deere & Company secured by Z-Trak Discharge Deck
4 Model 997S #090968.

5 Impaired/Not Impaired: Class 4 is not impaired.

6 Treatment: Holder of Class 4 will retain its lien and be paid pursuant to the underlying
7 loan agreement.

8 **Class 5 – Secured Claim of Deere & Company dba John Deere Financial**

9 Allowed Claim: \$5,542 secured by Z-Trak Model 997S #081936.

10 Impaired/Not Impaired: Class 5 is not impaired.

11 Treatment: Holder of Class 5 will retain its lien and be paid pursuant to the underlying
12 loan agreement.

13 **Class 6 – Secured Claim of Deere & Company dba John Deere Financial**

14 Allowed Claim: \$5,542 secured by Z-Trak Model 997S #010677.

15 Impaired/Not Impaired: Class 6 is not impaired.

16 Treatment: Holder of Class 6 will retain its lien and be paid pursuant to the underlying
17 loan agreement.

18 **Class 7 – Secured Claim of Caterpillar Financial Services**

19 Allowed Claim: \$37,308 secured by Skid Loader SN HRD00917

20 Impaired/Not Impaired: Class 7 is impaired.

21 Treatment: This asset is being transferred to PLC who will continue to make payments
22 pursuant to the loan agreement.

23 **Class 8 – Fremont Bank**

24 Claim: \$711,000 Allowed Unsecured claim of Fremont Bank.

25 Impaired/Not Impaired: Class 8 is impaired under the Plan.

26 Treatment: The Holder of Class 8 Claim will be paid \$300,000 on the Effective Date of the
27 Plan and an additional \$300,000 paid monthly in equal installments over four (4) years, secured by
28 the assets of the Reorganized Debtor commencing 60 days after the Effective Date, and will

1 receive a lien on the Reorganized Debtor’s assets. Upon receipt of the first \$300,000 payment on
2 the Effective Date, Fremont Bank will release the Pachecos from liability as guarantors of this
3 Class 2 Claim, and Fremont Bank shall release the deeds of trust securing the Pachecos’
4 guarantees of this obligation. Nothing in this Plan shall be interpreted as requiring Fremont Bank
5 to release any other obligation that the Pachecos may owe Fremont Bank on any other debt.

6 **Class 9 – General Unsecured Claims**

7 Claim: General unsecured claims are Allowed Unsecured Claims not entitled to priority
8 under Code Section 507(a).

9 Impaired/Not Impaired: Class 9 General Unsecured Claims are impaired under the Plan.

10 Treatment: Holders of General Unsecured Claims will be paid 30% of their Allowed
11 claims, paid over 60 months in quarterly payments commencing 90 days after the Effective Date,
12 and continuing every 90 days thereafter for a total period of 60 months.

13 **Class 10 – Equity Holders**

14 Claim: Those holders who own equity in the Debtor which include the Pachecos.

15 Impaired/Not Impaired: This Class is impaired under the Plan.

16 Treatment: The Holder of Class 10 Claims will have their shares canceled and Del Conte
17 Parties (to be specified before the Confirmation Hearing) shall own 100% of the Reorganized
18 Debtor. The Pachecos’ new company, Pacheco Landscape Company (“PLC”), will receive the
19 balance of the \$72,500, less any payments to satisfy unpaid administrative claims pursuant to the
20 terms of the Settlement Agreement, from the Del Conte Parties. George and Lynn Pacheco will be
21 paid \$60,000 by the Reorganized Debtor over a 6-month period beginning, ten (10) days after the
22 Effective Date. PLC will also receive certain other assets as set forth in the Settlement Agreement,
23 such as equipment and vehicles valued at approximately \$90,000, and certain proceeds related to
24 contracts that are in the middle of being performed related to the Landscape/Construction Business
25 that PLC will operate. The Pachecos and the Del Conte Parties will also release each other.

26 **VII. EXECUTORY CONTRACTS**

27 The Debtor will be assuming the executory contracts listed on Exhibit C to this Combined
28 Plan and Disclosure Statement, this List may be amended at any time prior to the Confirmation of

1 the Plan. If it is amended, any party impacted by the amendment will receive notice. The vehicle
2 lease with Ford Motor Credit Company on a 2013 F-350, VIN No. 1FD8X3ETXDEA17573 shall
3 be assumed by the Debtor **and** assigned to PLC, and PLC will be liable for all amounts owed
4 under the lease, and the Debtor will have no liability for said lease.

5 **VIII. MEANS OF PERFORMING THE PLAN**

6 **A. Funding for the Plan**

7 This Plan will be funded through capital infusion by Del Conte Parties, accumulated cash
8 reserves of the Debtor and the continued operation of the Reorganized Debtor.

9 **B. Corporate Action**

10 Each of the matters provided for under the Plan involving any corporate action to be taken
11 or required by the Debtor will, as of the Effective Date, have occurred and be effective, and will
12 be authorized and approved in all respects without any further action by the Debtor.

13 **C. Avoidance Claims:** Any Avoidance Claims against the Pachecos are being
14 released under the terms of the Plan. Any other Avoidance Claims will be prosecuted at the
15 discretion of the Reorganized Debtor. A list of creditors who were paid within ninety (90) days of
16 the Petition Date and amounts paid is set forth in **Exhibit D**, which exhibit the Debtor reserves
17 the right to amend prior to confirmation of the Plan, and may be amended after confirmation if it is
18 determined that there are additional Avoidance Claims after further review.

19 **D. Set-Offs**

20 The Debtor may set-off against any Allowed Claim (and distributions to be made thereto),
21 the claims, rights and causes of action of any nature (regardless of whether such claims, rights, or
22 causes of action are reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,
23 unmatured, disputed, undisputed, legal, equitable, secured or unsecured) that the Debtor or the
24 Estate may hold under applicable non-bankruptcy law (and notwithstanding any limitations or
25 restrictions placed on such rights under the Bankruptcy Code) against the holder of such Allowed
26 Claim or any recipient of any distribution in respect of an Allowed Claim.

27 The holder of a Claim may, pursuant to Bankruptcy Code Section 553 or applicable non-
28 bankruptcy law, set-off any Allowed Claim such holder possesses against any claim, rights or

1 causes of action of any nature that the Debtor or the Estate may hold against such holder.

2 Neither the failure to effect such a set-off nor the Allowance of any Claim under this Plan
3 will waive or release any such Claims, rights and causes of action that any Person may possess
4 under Bankruptcy Code Section 553 or applicable non-bankruptcy law.

5 **E. Waiver and/or Release**

6 Pursuant to the terms of the Plan and Settlement Agreement: (i) the Debtor waives all
7 claims it has against the Del Conte Parties and the Pachecos, except for obligations set forth in
8 this Plan; (ii) the Pachecos waive all claims against the Debtor, the Bankruptcy Estate, and Del
9 Conte Parties; and (iii) the Pachecos and Del Conte Parties waive any claims they have against the
10 Bankruptcy Estate, the Debtor and against each other .

11 **F. Late Claims Void**

12 Unless otherwise expressly ordered by the Bankruptcy Court or otherwise provided by this
13 Plan, any Claim filed after the applicable Bar Date will be void and of no force or effect, and will
14 receive no distributions under this Plan.

15 **G. Allowed and Disputed Claims**

16 A Claim that is an Allowed Claim by operation of law under Section 502 of the
17 Bankruptcy Code because no objection has been filed to such Claim may become a Disputed
18 Claim upon the filing of an objection to that Claim or a motion or adversary proceeding which
19 seeks to estimate, disallow, or subordinate the Claim. The distributions to any Disputed Claim
20 shall be held by the Debtor pending a resolution of the dispute through the written agreement of
21 the parties or the entry of an order of the Bankruptcy Court resolving the Disputed Claim.

22 **IX. CONFIRMATION REQUIREMENTS AND PROCEDURES**

23 PERSONS CONCERNED WITH CONFIRMATION OF THE PLAN SHOULD
24 CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A
25 PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended
26 solely for the purpose of alerting readers about basic confirmation issues, which they may wish to
27 consider. The Proponents CANNOT and DO NOT represent that the discussion contained below
28 is a complete summary of the law on this topic. Many requirements must be met before the Court

1 can confirm a Plan. Some of the requirements include that (i) the Plan must be proposed in good
2 faith; (ii) the Plan must be accepted by at least one class of creditors; (iii) the Plan pays creditors
3 more than they would receive in Chapter 7 liquidation, and (iv) the Plan must be feasible. These
4 requirements are not the only requirements for Plan confirmation.

5 **Who May Vote or Object**

6 **Who May Object to Confirmation of the Plan**

7 Any party in interest may object to the confirmation of the Plan, but as explained below
8 not everyone is entitled to vote to accept or reject the Plan.

9 **Who May Vote to Accept/Reject the Plan**

10 A creditor or interest holder has a right to vote for or against the Plan if that creditor or
11 interest holder has a claim which is both (1) allowed or allowed for voting purposes and (2)
12 classified in an impaired class. While interest holders will not get to vote on the Plan, they may
13 object to the Plan.

14 **What Is an Allowed Claim/Interest**

15 As noted above, a creditor or interest holder must first have an Allowed Claim or interest
16 to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in
17 interest brings a motion objecting to the claim. When an objection to a Claim or interest is filed,
18 the creditor or interest holder holding the claim or interest cannot vote unless the Court, after
19 notice and hearing, either overrules the objection or allows the claim or interest for voting
20 purposes.

21 **THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS JUNE**
22 **19, 2017.**

23 A creditor or interest holder may have an Allowed Claim or interest even if a proof of
24 claim or interest was not timely filed. A Claim is deemed allowed if (1) it is scheduled on the
25 Debtor's Schedules and such Claim is not scheduled as disputed, contingent or unliquidated, and
26 (2) no party in interest has objected to the Claim. An interest is deemed allowed if it is scheduled
27 and no party in interest has objected to the interest. All objections to disputed Claims must be
28 timely filed within ninety (90) days following the Effective Date or such objections shall be

1 waived and forever barred and the Claim shall be allowed as an Allowed Claim.

2 **What Is an Impaired Claim/Interest**

3 As noted above, an Allowed Claim or interest only has the right to vote if it is in a class
4 that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or
5 contractual rights of the members of that class. For example, a class comprised of general
6 unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what they
7 are owed.

8 **Who is Not Entitled to Vote**

9 The following four types of Claims are not entitled to vote: (1) Claims that have been
10 disallowed; (2) Claims in unimpaired classes; (3) Claims entitled to priority pursuant to Code
11 sections 507(a)(1), (a)(2), and (a)(8); and (4) Claims in classes that do not receive or retain any
12 value under the Plan. Claims in unimpaired classes are not entitled to vote because such classes
13 are deemed to have accepted the Plan. Claims entitled to priority pursuant to Code sections
14 507(a)(1), (a)(2), and (a)(7) are not entitled to vote because such claims are not placed in classes
15 and they are required to receive certain treatment specified by the Code. Claims in classes that do
16 not receive or retain any value under the Plan do not vote because such classes are deemed to have
17 rejected the Plan. **EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU
18 MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.**

19 **Votes Necessary to Confirm the Plan**

20 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
21 class has accepted the Plan without counting the votes of any insiders within that class, and (2) all
22 impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by
23 “cramdown” on non-accepting classes, as discussed below.

24 **Votes Necessary for a Class to Accept the Plan**

25 A class of claims is considered to have accepted the Plan when more than one-half (1/2) in
26 number and at least two-thirds (2/3) in dollar amount of the Claims which actually voted, voted in
27 favor of the Plan. A class of interests is considered to have accepted the Plan when at least two-
28 thirds (2/3) in amount of the shareholders of such class that actually voted, voted to accept the

1 Plan.

2 **Treatment of Nonaccepting Classes**

3 As noted above, even if all impaired classes do not accept the proposed Plan, the Court
4 may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner required by
5 the Code. The process by which nonaccepting classes are forced to be bound by the terms of the
6 Plan is commonly referred to as “cramdown.” The Code allows the Plan to be “crammed down”
7 on nonaccepting classes of Claims or interests if it meets all consensual requirements except the
8 voting requirements of 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and
9 equitable” toward each impaired class that has not voted to accept the Plan as referred to in 11
10 U.S.C. § 1129(b) and applicable case law.

11 **Request for Confirmation Despite Non-Acceptance by Impaired Classes**

12 The Proponents will ask the Court to confirm this Plan by cramdown on any impaired
13 classes if any of these classes do not vote to accept the Plan.

14 **Liquidation Analysis**

15 Another confirmation requirement is the “Best Interest Test,” which requires a liquidation
16 analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and
17 that claimant or interest holder does not vote to accept the Plan, then that claimant or interest
18 holder must receive or retain under the Plan property of a value not less than the amount that such
19 holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy
20 Code.

21 In a Chapter 7 case, the Debtor’s assets are usually sold by a Chapter 7 trustee. Secured
22 Creditors are paid first from the sales proceeds of properties on which the Secured Creditor has a
23 lien. Administrative Claims are paid next. Next, Unsecured Creditors are paid from any
24 remaining sales proceeds, according to their rights to priority. Unsecured Creditors with the same
25 priority share in pro rata to the amount of their Allowed Claim in relationship to the amount of
26 total allowed Unsecured Claims. Finally, interest holders receive the balance that remains after all
27 creditors are paid, if any.

28

1 Usually, for the Court to be able to confirm a Plan, the Court must find that all creditors
2 and interest holders who do not accept the Plan will receive at least as much under the Plan as
3 such holders would receive in a Chapter 7 liquidation. See **Exhibit B** to the Debtor’s liquidation
4 analysis.

5 **Feasibility**

6 Another requirement for confirmation involves the feasibility of the Plan, which means
7 that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further
8 financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such
9 liquidation or reorganization is proposed in the Plan.

10 There are at least two important aspects of a feasibility analysis. The first aspect considers
11 whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the
12 claims and expenses which are entitled to be paid on such date. The Debtor’s maintain that this
13 aspect of feasibility is satisfied as illustrated here:

14 Cash as of the Effective Date	\$80,000
15 (estimated)	
16 To Pay: Administrative claims	\$47,602
17 Balance after paying these amounts	\$32,398

18
19 Under the terms of the Settlement Agreement, the Debtor is authorized to use \$30,000
20 (\$25,000 on the Effective Date and \$5,000 payable three (3) months after the Effective Date) to
21 pay Administrative Claims with any balance due to be paid by PLC

22 The second aspect is whether the Debtor will be able to meet the requirements to pay
23 creditors under the Plan. First, the Debtor is responsible for the first \$300,000 payment to
24 Fremont Bank. The Del Conte Parties are responsible for paying the sum of \$72,500 to Debtor’s
25 counsel to be used for administrative fees, with the balance paid to PLC (which sum has been paid
26 to Counsel for the Debtor). Therefore those payments are not the responsibility of the Debtor. The
27 Del Conte Parties understand that if there are insufficient assets to pay the first \$300,000 to
28 Fremont Bank, they will have to pay them.

1 Second, the Debtor's operation since filing this bankruptcy case show net income as
2 follows:

3	February	\$19,708
4	March	\$10,800
5	April	\$38,959
6	May	\$28,946
7	June	(\$40,369) ¹

8 Attached as **Exhibit E** is a copy of the Debtor's trend report through June 2017. The
9 revenues generated by the Debtor's operation will be sufficient to make the required payments
10 under the Plan, and to the extent the Del Conte parties need additional funds to pay the first
11 \$300,000 to Fremont Bank, they are agreeable to making that payment. The Reorganized Debtor
12 is paying 30% of the estimated \$560,000 or \$168,000 to unsecured creditor over a five (5) year
13 period. As such, the Reorganized Debtor is obligated to make minimum yearly payments totally
14 \$33,600 which is feasible based on the Debtor's income and expenses to date. YOU ARE
15 ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL ADVISOR IF YOU
16 HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL STATEMENTS OR THE
17 TAX RAMIFICATIONS TO YOU UNDER THIS PLAN.

18 **X. DISTRIBUTIONS**

19 **A. Distributions on Account of Allowed Administrative Claims, Allowed Priority**
20 **Tax Claims, and U.S. Trustee Fees**

21 On the Effective Date, subject to the terms of the Settlement Agreement, the Reorganized
22 Debtor will distribute Cash as required by this Plan to each Holder of an Administrative Claim and
23 a Priority Tax Claim that is Allowed on or prior to the Effective Date. The Reorganized Debtor
24 will distribute Cash as required by this Plan to each Holder of an Administrative Claim and a
25 Priority Tax Claim that is allowed subsequent to the Effective Date on the first Business Day that
26

27 ¹ The reasons for the net loss for June 2017 was the Debtor had to make an extra payroll of approximately \$70,000
28 since June is a five (5) payroll week month. In addition, the Debtor did not book approximately \$42,000 in WIP
adjustments which will be booked in the July 2017 financials.

1 is 14 days after such Administrative Claim, Priority Tax Claim is Allowed, provided that no court
2 has issues a stay enjoining such distribution. The Reorganized Debtor will also pay statutory fees
3 of the U.S. Trustee under 28 U.S.C. § 1930 on the Effective Date.

4 **B. Distribution for Class 1 Claim**

5 Reorganized Debtor will continue to make monthly payments to Class 1 creditor.

6 **C. Distribution for Class 2 Claim**

7 Reorganized Debtor will continue to make payments to Class 2 creditor.

8 **D. Distribution for Class 3 Claim**

9 Reorganized Debtor will continue to make payments to Class 3 creditor.

10 **E. Distribution for Class 4 Claim**

11 Reorganized Debtor will continue to make payments to Class 4 creditor.

12 **F. Distribution for Class 5 Claim**

13 Reorganized Debtor will continue to make payments to Class 5 creditor.

14 **G. Distribution for Class 6 Claim**

15 Reorganized Debtor will continue to make payments to Class 6 creditor.

16 **H. Distribution for Class 7 Claim**

17 This asset is being transferred to PLC.

18 **I. Distribution for Class 8 Claim**

19 Class 8 creditor will be paid \$300,000 on the Effective Date on the Plan and \$300,000
20 thereafter in equal monthly payments over four (4) years, and receive a lien on the Debtor's assets.

21 **J. Distribution on Account of Class 9 Claims**

22 The Reorganized Debtor will pay Class creditors 30% of their allowed claims over 60
23 months beginning 90 days after the Effective Date of the Plan, and continuing every 90 days
24 thereafter. At the Debtor's discretion, the Reorganized Debtor can expedite the payments. Checks
25 not cashed within 90 days from mailing shall be cancelled, and will not be reissued unless a
26 written request is received by the Reorganized Debtor. On or after 90 days from the mailing of the
27 final checks to creditors in this Class 3, all checks not cashed shall be canceled, and shall not be
28 reissued under any circumstance.

1 **K. Distribution on Account of Class 10 Claims**

2 The shares owned by Class 10 Claims are canceled and new shares shall be issued to the
3 Del Conte Parties as designated on or before confirmation, and they shall own 100% of the
4 Reorganized Debtor.

5 **L. Interest on Allowed Claims**

6 Except as otherwise set forth in this Plan with respect to Classes 1-7, Allowed Claims, no
7 interest will be paid in respect of any Allowed Claim.

8 **M. No Distributions on Disputed or Disallowed Claims**

9 Except as may otherwise be ordered by the Bankruptcy Court, the Reorganized Debtor will
10 make no distribution to the Holder of a Disputed Claim until the Disputed Claim becomes an
11 Allowed Claim. The Reorganized Debtor will not make distributions to Holders of Disallowed
12 Claims.

13 **N. Effectuation of Distributions**

14 The Reorganized Debtor will serve as the disbursing agent and will make all distributions
15 in accordance with the terms of this Plan.

16 **O. Manner of Payments; Delivery of Distributions**

17 The Reorganized Debtor will make all distributions under this Plan in Cash made by check
18 drawn on a domestic bank or by wire transfer from a domestic bank. Subject to the provisions of
19 Bankruptcy Rule 2002(g) and except as otherwise provided under this Plan, the Reorganized
20 Debtor will make distributions to Holders of Allowed Claims at each Holder's address set forth on
21 the Schedules filed with the Bankruptcy Court unless superseded by a different address set forth in
22 a timely filed proof of Claim filed by the Holder or if the Reorganized Debtor has been notified in
23 writing of a change of address.

24 **P. Undeliverable Distributions**

25 **1. Holding of Undeliverable Distributions**

26 If any distribution to any holder of an Allowed Claim is returned as undeliverable, no
27 further distributions will be made to such holder unless and until the Debtor is notified, in writing,
28 of such Holder's then-current address. The Reorganized Debtor will hold undeliverable

1 distributions until the earlier of: (a) the date the distribution becomes deliverable, and (b) the date
2 on which the Reorganized Debtor makes a final distribution to holders of Allowed Claims.
3 Holders ultimately receiving previously undeliverable distributions will not receive interest or
4 other accruals of any kind based upon the delay in receipt. The Reorganized Debtor is not required
5 to locate the holder of an Allowed Claim.

6 **2. Failure to Claim Undeliverable Distributions**

7 The Reorganized Debtor will from time to time provide the Bankruptcy Court a list setting
8 forth the names of those Entities for which distributions have been attempted and have been
9 returned as undeliverable as of the date thereof (which list/notice shall be served on the affected
10 Entities when Filed with the Bankruptcy Court). Any holder of a Claim identified in such list that
11 does not assert its rights pursuant to this Plan to receive a distribution within the earlier of: (a) the
12 date that is one hundred eighty (180) days from and after the Filing of such list, and (b) 5 business
13 days before the final Distribution Date will not be entitled to any distributions on Allowed Claims
14 under this Plan and will be forever barred from asserting any such Claim against the Estate and
15 any right to receive distributions under this Plan. In such case, any consideration held for
16 distribution on account of such Claim will revert to the Reorganized Debtor.

17 **3. Uncashed Checks**

18 The Reorganized Debtor is not required to locate the Holder of an Allowed Claim that does
19 not cash any check representing a distribution payment. If a distribution check has not been cashed
20 for ninety (90) days after the date of mailing of such check to the Creditor, the Debtor may: (a)
21 stop payment on the check, (b) treat the distribution as undeliverable to be treated in accordance
22 with Article IX.J of this Plan, or (c) refuse to reissue the check if the Reorganized Debtor
23 determines that reissuing such check may cause the Reorganized Debtor to incur expense or
24 inconvenience that is unwarranted in light of the amount of the distribution.

25 **4. Fractional Amounts**

26 Payments of fractions of dollars will not be made. Whenever any payment of a fraction of
27 a dollar under this Plan would otherwise be called for, the actual payment made will reflect a
28 rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down.

1 **5. De Minimis Distributions**

2 The Reorganized Debtor will not be required to make a distribution to any Creditor in an
3 amount less than \$25.00.

4 **Q. Compliance with Tax Requirements/Allocation**

5 The Reorganized Debtor will comply with tax withholding and reporting requirements
6 imposed by any governmental unit in making distributions under this Plan, and will be responsible
7 for filing any tax returns relating to the Estate. All distributions pursuant to this Plan will be
8 subject to withholding and reporting requirements. The Reorganized Debtor may withhold
9 distributions due to any holder of an Allowed Claim until the Holder provides the Reorganized
10 Debtor with the necessary information to comply with withholding requirements of any
11 governmental unit. The Reorganized Debtor will pay any withheld distributions to the appropriate
12 authority. If the holder of an Allowed Claim fails to provide to the Reorganized Debtor with the
13 information necessary to comply with withholding requirements of any governmental unit within
14 sixty (60) days after the date of first notification by the Reorganized Debtor to the holder of the
15 need for such information or for the Cash necessary to comply with any applicable withholding
16 requirements, then the holder's distributions will be treated as undeliverable. For tax purposes,
17 distributions received in respect of an Allowed Claim will be allocated first to the principle
18 amount of such Claim, with any excess allocated to unpaid accrued interest.

19 **XI. EFFECT OF CONFIRMATION OF PLAN**

20 **A. Discharge**

21 This Plan provides that upon the Effective Date, the Reorganized Debtor shall be
22 discharged of liability for payments incurred before the Confirmation Date to the extent specified
23 in 11 U.S.C. § 1141. However, any liability imposed by the Plan on the Reorganized Debtor will
24 not be discharged.

25 **B. Modification of Plan**

26 The Reorganized Debtor may modify the Plan at any time before confirmation. However,
27 the Court may require a new disclosure statement and/or re-voting on the Plan if the proponents
28 modify the Plan before confirmation unless certain exceptions apply.

1 The proponent may also seek to modify the Plan at any time after confirmation so long as:
2 (1) the Plan has not been substantially consummated; and (2) if the Court authorizes the proposed
3 modifications after notice and a hearing.

4 **C. Post-Confirmation Conversion/Dismissal**

5 A creditor or party in interest may bring a motion to convert or dismiss the case under §
6 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders
7 the case converted to Chapter 7 after the Plan is confirmed, then all property that had been
8 property of the Chapter 11 estate, and that has not been distributed pursuant to the Plan, will revert
9 in the Chapter 7 estate, and the automatic stay will be reimposed upon the revested property only
10 to the extent that relief from stay was not previously granted by the Court during this case.

11 **D. Final Decree**

12 Once the estate has been fully administered as referred to in Bankruptcy Rule 3022, the
13 Proponent, or such other party as the Court shall designate in the Confirmation Order, shall file a
14 motion with the Court to obtain a final decree to close the case. The Debtor may move to dismiss
15 this case, and then later reopen it to obtain the Final Decree, and such dismissal shall not relieve
16 the Debtor of compliance with the terms of the Plan, nor interfere with the injunction preventing
17 creditors from enforcing the obligations under this Plan.

18 Dated: July 19, 2017

Pacheco Brothers Gardening, Inc.

19
20
21 By: /s/ Lynn Pacheco

Its: Secretary and Responsible Party.

22 APPROVED AS TO FORM AND SUBSTANCE:

23 Dated: July 19, 2017

Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.

24
25
26 By: /s/ Chris D. Kuhner

(Bar No. 173291)

27 Attorneys for Debtor, Pacheco Brothers Gardening,
28 Inc.