

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
www.flsb.uscourts.gov**

IN RE:

CASE NO.: 15-28924-PGH  
CHAPTER 11

ALEXANDER TORRES,

Debtor.

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**AMENDED DISCLOSURE STATEMENT FOR  
ALEXANDER TORRES**

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EXHIBITS:

- EXHIBIT “A” List of Creditors for Alex Torres
- EXHIBIT “B” Liquidation Analysis
- EXHIBIT “C” Schedule “B” of Petition
- EXHIBIT “D” Monthly DIP Reports Summaries
- EXHIBIT “E” Cash Flow Projections

The Debtor in Possession, **Alexander Torres** (hereinafter "Torres" or "Debtor") submit his Amended Disclosure Statement (hereinafter referred to as "Disclosure Statement") to his Creditors and other parties in interest. A hearing on confirmation of the attached Plan is scheduled before the Court on \_\_\_\_\_. The approval of the Disclosure Statement is not tantamount to a decision by the Court on the merits of the Plan.

### INTRODUCTION

This Amended Disclosure Statement is submitted pursuant to the requirement imposed on the proponent of a Plan of Reorganization by 11 U.S.C. Section 1125. The purpose is to disclose information deemed to be material, important, and necessary for the Creditors to arrive at a reasonably informed decision in exercising their right, or to vote for acceptance or rejection of the Plan of Reorganization (hereinafter referred to as "the Plan"). This Amended Disclosure Statement should be read in conjunction with the accompanying Plan of Reorganization. The Plan is a legally binding document once it is approved by the Court, and should be read in its entirety. Accordingly, creditors may wish to consult with their own attorney to understand the Plan more fully.

On October 26, 2015, the Debtor in Possession, **Alexander Torres** filed a voluntary Petition for Reorganization under Chapter 11 in the United States Bankruptcy Code, 11 U.S.C., Section 101 *et seq.*, ("the Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court"). **Alexander Torres** has continued to operate their personal and the business affairs as the Debtor in Possession pursuant to Section 1108 of the Bankruptcy Code.

THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE

STATEMENT WAS PREPARED BY THE DEBTOR, UNLESS SPECIFICALLY STATED TO BE FROM OTHER SOURCES. NO REPRESENTATIONS, OTHER THAN THOSE SET FORTH HEREIN, CONCERNING THE DEBTOR, PARTICULARLY AS TO FUTURE BUSINESS OPERATIONS OR VALUE OF THEIR PROPERTY, IS AUTHORIZED OR WARRANTED BY THE DEBTOR. THE READER SHOULD NOT RELY ON ANY ORAL OR OUTSIDE REPRESENTATION BY ANY AGENT OF THE DEBTOR IN DECIDING TO VOTE FOR OR AGAINST THE PLAN. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN THOSE CONTAINED IN THIS STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH OTHER ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE UNITED STATES TRUSTEE FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.

Projections or results of future operations are based on the Debtor's best estimates in light of current market conditions, past experience, analysis of general economic conditions, and other estimates which will bear on the results.

You are urged to carefully read the contents of this statement before making your decision to accept or reject the Plan. Particular attention should be directed to the provisions of the Plan affecting or impairing your rights as they presently exist. The terms used herein have the same meaning as in the Plan unless the context hereof requires otherwise.

Creditors may vote on the Plan by filling out and mailing the accompanying ballot form to the Bankruptcy Court. Your ballot must be filed on or before \_\_\_\_\_, in order to be considered and counted. As a Creditor, your vote is very important. *In order for the Plan to be accepted, of the ballots or votes cast, Creditors that hold at least 2/3's in amount and more than 1/2 in number of the allowed claims of impaired classes must accept the Plan.* You are, therefore, urged to fill in, date, sign and promptly mail the enclosed ballot which has been furnished to you. Please be sure to properly complete the form and legibly identify the name of the Claimant or interest holder. You are advised that the Debtor may be afforded the right under the Bankruptcy Code to have the Plan confirmed over the objections of dissenting Creditors consistent with the limitations set forth in the Bankruptcy Code, as further discussed below.

## I. DEFINITIONS

The following phrases, as used hereinafter, shall have the following meanings:

All definitions in the Plan of Reorganization are incorporated herein.

Court - Shall mean the United States Bankruptcy Court or the United States District Court, which ever is appropriate, implementing the provisions of the Bankruptcy Code in these proceedings.

Creditor - Shall mean the holder of an Allowed Claim.

Debtor's Property - Shall mean all of the Debtor' property, as defined in Section 541 of the Bankruptcy Code.

Plan - Shall mean the Chapter 11 Plan and any other subsequent amendments or modifications.

## II. PRE-PETITION EVENTS CAUSING NEED FOR REORGANIZATION

The Debtor is a physician who owns and operates a small business in Sebring, Florida, known as Highlands Advanced Rheumatology and Arthritis, P.L. (“Highlands”). Highlands filed for relief under Chapter 11 of the Bankruptcy Code on March 12, 2013, case number 13–15576–PGH in the Southern District of Florida. Highlands’ Plan of Reorganization was confirmed by this Court on January 30, 2015.

The pre-petition events leading to Dr. Torres’ personal bankruptcy filing are directly related to the events leading to Highlands’ Chapter 11 bankruptcy filing.

Dr. Torres opened Highlands in August of 2009 after receiving a salary guaranty from Sebring Hospital Management Associates, Inc. d/b/a/ Highlands Regional Medical Center (“Hospital”) and, in 2010, Highlands began providing rheumatology services. The Debtor also opened an infusion center as part of the services offered since infusion services are a necessary component to providing quality and comprehensive patient care in this field.

The medications used in infusion services are very expensive. Therefore, Highlands had to obtain and open lines of credit, known in the industry as “buy and bill,” credit with various vendors to obtain the medications necessary to facilitate the infusions at the Debtor’s infusion center. The Debtor intended to pay down the various lines of credit once it received reimbursement for the medications from the patients’ insurance companies. In an effort to streamline its practice, in mid-2010, Highlands outsourced its billing to a local billing company.

In early 2011, Dr. Torres and his staff realized that the cash flow was significantly less than anticipated and the staff conducted an audit of the billing, which identified that

the billing company had been billing the “buy and bill” infusion medications inaccurately, which led to either significantly less reimbursement or no reimbursement for infusion services and the very expensive medications that Highlands was purchasing on the lines of credit.

Although the billing company took quick steps to rectify the billing errors, insurance companies can take up to ninety (90) days to reprocess corrected claims. Unfortunately, unbeknownst to the Debtor, the billing company did not submit the supporting medical records with the corrected claims, so instead of reimbursement, which would have increased cash flow and assisted with paying down the lines of creditor, the Debtor began receiving denial letters from the insurance companies. The billing company was subsequently terminated for failing to file proper claims and the resulting loss of revenues.

In the middle of 2011, Highlands began submitting appeals for the claims that were processed inaccurately. Due to the large number of claims that were billed inaccurately, and then re-billed again inaccurately, many of the claims were denied as untimely filed.

In an effort to continue to provide the much needed infusion services to its patients, Highlands applied for additional credit with several biologic vendors. The Debtor did not have funds available to front the high costs of the infusion medications and then wait for reimbursement.

In an effort to keep Highlands afloat during this financially difficult time, Dr. Torres was forced to stop making payments to his personal creditors to ensure as much money

was available as was possible in Highlands to keep the business operating.

By early 2012, Highlands' patient census had grown exponentially from when it opened in 2009 with over 2,500 patients in the first 2 years of practice. As a result, the Debtor decided to expand its office space to include a "state of the art" infusion center. This new center would facilitate more infusions and included seven (7) chairs. The additional office space would allow for the addition of a nurse practitioner to assist with patient care and would provide an office space to include clinical trials on-site. Upon completion of the office addition, recruitment began for a nurse practitioner. Unfortunately, recruitment proved to be difficult due to the rural community in which the practice operates and, ultimately, unsuccessful.

Unfortunately, also during early 2012, the above-mentioned credit lines had been exhausted. Plus, reimbursement was extremely slow for at least one very expensive biologic medication used for infusions, taking about 6 to 9 months per claim to receive reimbursement from the insurance carriers. This caused the Highlands to be slow in repaying its credit lines and the lines were exhausted before they could be repaid.

To add to both Highlands' and the Debtor's financial issues, on July 23, 2012, Mr. Torres and his wife, Kelly Torres separated and filed for divorce. On December 21, 2012, Alexander Torres was court ordered by the family court to limit his salary to \$12,000 per month from the Debtor and to pay Kelly Torres support in the amount of \$7,830.00 monthly, which sum was to be deducted from his \$12,000 of allowed monthly income, which left Dr. Torres with \$154 net monthly income after taxes. On January 10, 2013, the Divorce Court issued an order which had a provision to pay all non-covered



medical expenses from Debtor funds for the couples' special needs minor child, which caused the Debtor's expenses to significantly increase.

On March 13, 2013, the family court ordered that Alexander Torres salary from the Debtor was to be increased to \$34,000 per month, less federal withholding tax of \$19,253.00 and FICA/Medicare of \$2,601.00, netting Dr. Torres \$11,746.00 per month. Unfortunately, the new court Order did not affect or alter the January 10, 2013 order which awarded \$7,830.00 per month to the estranged wife as support. This caused a significant strain on Highlands and left Dr. Torres with little funds available to pay Highlands' expenses or his personal debt obligations.

The divorce case between Dr. Torres and Kelly Torres significantly hampered the progress in the ability of Highlands to file a Plan of Reorganization. In fact, because of the divorce case, almost twenty-two (22) months elapsed between the filing of Highlands' Chapter 11 case and confirmation of the Plan of Reorganization. The Final Judgment was finally entered by the divorce court on August 27, 2014 and the court ordered that Dr. Torres pay to Kelly Torres \$1,400.00 per month as child support and no alimony; a significant reduction from the \$7,830.00 per month that Dr. Torres was initially required to pay. Dr. Torres is required to pay 90% of the minor child's unreimbursed medical expenses as well as the health insurance premium. The divorce court did not require Dr. Torres to pay any alimony to Kelly Torres and no portion of Highlands was awarded to Kelly Torres. This was a significant victory, but it took its toll on Highlands and Dr. Torres from a financial standpoint.

Obviously, the above events caused a significant financial strain on Dr. Torres,

which caused the need for him to file individual relief under Chapter 11 of the Bankruptcy Code.

### **III. POST-PETITION EVENTS**

Since the filing of his individual case, the Debtor has been focused on rebuilding Highlands, his sole source of income so he can repay his creditors. The Debtor's accountant is in the process of completing Dr. Torres' individual 2014 tax return to obtain a clearer picture of Dr. Torres' individual income tax due for that year. The Debtor has been diligently working to increase his business income and decreasing his business and personal expenses to set forth a Plan of Reorganization that is feasible.

### **IV. FINANCIAL INFORMATION**

The source of the financial information for this Disclosure Statement and accompanying Plan is from reports and financial statements of the Debtor, Debtor in Possession Reports, the Debtor and the Debtor's accountants and agents. The aforementioned information has been compiled through the present.

### **V. VOIDABLE TRANSFERS AND PREFERENCE ANALYSIS**

There are currently no known or existing voidable transfers that the Debtor have been a party to within the year prior to Bankruptcy. Any other payments made during the preference period were made in the ordinary course of the Debtor' operations.

### **VI. OBJECTIONS TO CLAIMS**

Pursuant to the Plan, the Debtor may object to any scheduled claim or Proof of Claim filed against the Debtor. Such an objection shall preclude the consideration of any claim as "allowed" for the purposes of timely distribution in accordance with the Plan. Any objections by the Debtor have been, or will be, filed with the Bankruptcy

Court under separate pleading.

The Debtor is presently reviewing Proofs of Claims that have been filed to determine the propriety of filing claims objections, and has determined that some objections will be filed during the Disclosure Statement approval and/or Plan confirmation process. A list of all creditors and claims, including claims that are indicated as disputed, is attached hereto and made a part hereof as **Exhibit "A"**. The List of Creditors attached as **Exhibit "A"** sets forth the nature and grounds for any disputed claims. The timing of the Objections will not harm or prejudice any interested parties, nor will it delay the administration of this case.

#### **VII. MEANS OF EFFECTUATING PLAN AND RISK ANALYSIS**

The Debtor believes that the Plan of Reorganization provides the best value for the creditors' claims and is in their best interest. Attached hereto as **Exhibit "A"**, is a table showing the claims against the Debtor in each classification. Attached hereto as **Exhibit "E"** are cash flow Projections setting forth a projected budget of the Debtor for the five (5) year term of the Plan.

The Debtor believes that the risk of non-payment of the percentage distribution to the unsecured creditors in the Chapter 11 is greatly outweighed by the more substantial risk of non-payment should this Bankruptcy be converted to a Chapter 7 Liquidation, wherein the unsecured creditors would receive a distribution of 0%.

#### **VIII. CLAIMS AND THEIR TREATMENT UNDER THE PLAN:**

A. **Administrative Claims:** The administrative claimants include the Debtor's attorney and the Office of the U.S. Trustee. Payment of the administrative claims for the Debtor' counsel is subject to set off for pre and post petition retainers, as

well as approval by the Court of very detailed fee applications. The scheduling Order for Confirmation will set forth a deadline for the filing of all administrative claims, which will be paid on or before confirmation.

B. **Tax Claims:**

1. **Internal Revenue Service:** The Internal Revenue Service's priority claim in the amount of \$318,521.25 (which represents the priority amount set forth in the Proof of Claim in the amount of \$236,564.25 plus 2015 taxes due in the amount of \$81,957.00) shall be paid with 4% interest at \$7,634.15 per month beginning in January 2017 and continuing until September 2020 pursuant to Section 1129(a)(9). The Internal Revenue Service filed a Proof of Claim in this matter. This claim is unimpaired.

C. **Other Claims:**

1. **Class One (Carmax):** The claim of Carmax in the amount of \$24,793.00 shall be paid at the contract rate of interest at \$569.00 per month. Carmax has not filed a Proof of Claim in this matter. This claim is unimpaired.

2. **Class Two (Volkswagon Credit):** The claim of Volkswagon Credit, which was listed on Schedule D as a secured claim, in the amount of \$7,758.00 shall not be paid as the collateral has been surrendered in full and final satisfaction of the claim. Volkswagon Credit has filed an unsecured Proof of Claim in this matter and said claim shall be treated in Class Four. This claim is unimpaired.

3. **Class Three (General Unsecured Student Loans):** The nondischargeable student loan claims of Navient and National Collegiate Student Loan Trust 2004-1 shall be paid as a separate class of creditor. These claims shall be paid

by the Debtor pursuant to the contract terms or modified terms as the Debtor may negotiate. These claims are unimpaired.

4. **Class Four (Convenience Class of Unsecured Creditors)**: General unsecured creditors that have claims of \$5,000.00 or less shall be paid ten percent (10%) of their claim on the Effective Date. These creditors are listed on Exhibit "A" to the Amended Disclosure Statement. These claims are impaired.

5. **Class Five (General Unsecured Creditors)**: The remaining General Unsecured claims include all other allowed claims of Unsecured Creditors, subject to any Objections that are filed and sustained by the Court. These claims shall be repaid over the five (5) year term of the Plan at the rate of **\$750.00** per month, on a pro-rata basis, which payment will commence on the Effective Date of the Plan. To the extent that the Debtors are successful or unsuccessful in any or all of the proposed Objections, the dividend and distribution to each individual creditor will be adjusted accordingly. These claims are impaired. It is submitted that there is no unfair discrimination in the payment to this class of creditors. These claims are impaired.

#### **IX. POST-CONFIRMATION CONTROL OF THE DEBTOR**

9.1 **ALEXANDER TORRES** is an individual who has a principal place of business in Sebring, Florida. The Debtor shall continue to manage his personal and business affairs post-confirmation as reorganized Debtor.

#### **X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

10.1 The Debtor is currently a party to Lease for his current residence located at 629 Carriage Lake Way, Vero Beach, Florida. The Debtor shall assume this Lease.

10.2 Any and all Executory Contracts and unexpired leases of the Debtor not

expressly assumed within the Plan, not assumed prior to the Confirmation Date, or as of the Confirmation Date, or the subject of pending applications to assume, shall be deemed rejected.

10.3 Any claim for a rejected contract or lease shall be paid as a General Unsecured Claim by agreement, or upon determination by the Court, to the extent that such claims are allowed.

## **XI. LIQUIDATION ANALYSIS**

11.1 As with any Plan, an alternative would be a conversion of the Chapter 11 case to a Chapter 7 case, and subsequent liquidation of the Debtor' non-exempt assets by a duly appointed or elected Trustee. In the event of a liquidation under Chapter 7, the following is likely to occur: (a) an additional tier of administrative expenses entitled to priority over general Unsecured Claims under Section 507(a)(1) of the Bankruptcy Code would be incurred. Such administrative expenses would include, Trustee's commissions and fees to the Trustee's accountant, attorney's fees and other professionals likely to be retained for the purposes of liquidating the assets of the Debtor; and (b) Substantially less than market value will be realized for the Debtor' property, as set forth in Schedule B of the Bankruptcy Petition filed in this case, a copy of which is attached hereto and made a part hereof as Composite **Exhibit "C"**. A Liquidation Analysis is attached hereto as **Exhibit "B"**.

In a Chapter 7 liquidation, the secured assets of the Debtor would go back to secured creditors, thus, resulting in substantial unsecured deficiency claims that would be added to the class of General unsecured creditors. The remaining creditors would, therefore, have very limited or no resources from which to receive any payment on their

claims.

Predicated upon the foregoing and under a comparison of Chapter 11 reorganization versus Chapter 7 liquidation, the Debtor believe that the Creditors will receive substantially more money under a Chapter 11 Plan than they would under a Chapter 7 proceeding. As evidenced by the Liquidation Analysis attached hereto as **Exhibit "B"**, the Debtor' net non-exempt assets are insufficient to satisfy the secured claims of the Debtor and there would be no funds available to the general unsecured creditors in the unfortunate event of a conversion to a Chapter 7 Liquidation proceeding.

The Court has previously set March 2, 2016 in this case as the claims bar date. All indebtedness scheduled by the Debtor as not disputed, contingent or unliquidated or any indebtedness set forth in a properly executed and timely filed Proof of Claim shall be deemed an allowed claim unless the same is objected to, and the objection thereto is sustained by the Court.

## **XII. CONFIRMATION REQUEST**

12.1 The Debtor reserve the right, in the event that impaired classes reject the Plan of Reorganization, or any amendments or modifications thereto, to seek confirmation of the Plan pursuant to 11 U.S.C. Section 1129(b), if the Court finds at a hearing on confirmation that the Plan does not discriminate unfairly and is fair and equitable with respect to each dissenting class. Furthermore, in order for the Plan to be confirmed, of the ballots or votes cast, Creditors that hold at least 2/3's in amount and more than 1/2 in number of the allowed claims of impaired classes must accept the Plan.

## **XIII. ARTICLE X - EFFECT OF CONFIRMATION**

Discharge: Pursuant to Section 1141(d)(5)(A) of the Code, the Debtor shall be discharged from any claim included in this proceeding that arose on or prior to the Confirmation Date, and any claim of a kind specified in Section 502(g), (h) or (l) of the Bankruptcy Code whether or not: (i) a proof of the claim is filed or deemed to be filed under Sections 501 and 1111(a) of the Bankruptcy Code; (ii) such claim is allowed under Section 502 of the Bankruptcy Code; or (iii) the holder of such claim has accepted the Plan either (i) after notice and a hearing the court grants a discharge on completion of all payments under the plan or (ii) upon the occurrence of any of the provisions set forth in Sections 1141(d)(5)(B) or 1141(d)(5)(C) of the Code. Furthermore, satisfaction of the requirements of 11 USC 1129 and favorable votes for the Plan shall overcome any impediments to confirmation. The Debtor may seek to administratively close the case after confirmation and reopen the case upon completion of all plan payments to move this Court to enter a discharge.

The payments to be made pursuant to this Plan by the Debtor shall be in full settlement and satisfaction of all claims against the Debtor.

#### **XIV. FEASIBILITY AND BEST INTEREST TEST**

13.1 The Debtor submit that the Plan is fair and reasonable in its treatment of the respective classes of claims in this case, and that it is in the best interests of all affected parties to approve the Plans treatment of the classes of claims.

**CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO READ AND REVIEW THE FULL TEXT OF THE PLAN OF REORGANIZATION, AND ANY AMENDMENTS OR MODIFICATIONS THISETO, PRIOR TO VOTING ON WHETHER TO ACCEPT OR REJECT THE PLAN.**



## **XV. RISK ANALYSIS**

As with any investment, there are risks associated with all Plans of Reorganization, and this matter is no exception. A possible risk includes the possibility of a loss or decrease of employment income. As with any similar situation, there is always the risk that the Debtor may not perform as forecasted, but the Debtor firmly believe that the projections for their future income and expenses are conservative and reasonable.

## **XVI. TAX CONSEQUENCES**

15.1. *In General.* A summary description of certain U.S. federal income tax consequences of the Plan is provided below. The description of tax consequences below is for informational purposes only and is subject to significant uncertainties. Only the principal consequences of the Plan for the Debtor and for the holders of Allowed Claims who are entitled to vote to accept or reject the Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan, and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the IRS or any other taxing authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other authorities.

The following discussion of U.S. federal income tax consequences is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), regulations promulgated and proposed thereunder, and judicial decisions and administrative rulings and pronouncements of the IRS as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could

alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to Holders. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

This discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the U.S. federal tax consequences of the Plan to special classes of taxpayers (such as foreign entities, nonresident alien individuals, Pass-through entities such as partnerships and holders through such pass-through entities, S corporations, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, certain securities traders, broker-dealers and tax-exempt organizations). Furthermore, estate and gift tax issues are not addressed herein and tax consequences relating to the alternative minimum tax are generally not discussed herein.

No representations are made regarding the particular tax consequences of the Plan to any Holder of a Claim. Each Holder of a Claim is strongly urged to consult its own tax advisor regarding the federal, state, local and foreign tax consequences of the transactions described herein and in the Plan.

15.2. *Federal Income Tax Consequences to the Debtor* Generally, the discharge of a debt obligation by a Debtor for an amount less than the adjusted issue price (in most cases, the amount the Debtor received on incurring the obligation, with certain adjustments) gives rise to cancellation of debt ("COD") income, which must be included

in the Debtor' taxable income. The Debtor will have COD income as a result of the Plan; however, the Debtor should be able to utilize a special tax provision which excludes from taxable income debts discharged in a Chapter 11 proceeding. If debts are discharged in a Chapter 11 case, however, certain tax attributes otherwise available must be reduced by the amount of COD income that is excludable from income. Tax attributes subject to reduction generally include net operating losses and net operating loss carryovers (collectively, "NOLs").

Any NOLs would be reduced (assuming the Debtor do not make an election pursuant to section 108(b)(5) of the Internal Revenue Code (title 26 of the United States Code) to first reduce the tax basis of depreciable property) to the extent of the COD income exclusion. The Proponent believes it is likely that the COD income generated by the debt cancellation occurring pursuant to the Plan will offset the available NOLs generated prior to the Effective Date (although such NOLs, which may be subject to usage limitations under section 382 of the Tax Code, would first be permitted to offset any taxable income generated in the tax year that includes the Effective Date).

Federal income taxes generally must be satisfied before most other claims may be paid. To the extent the Debtor have taxable income after the Effective Date, the Debtor may have NOLs to offset such income.

15.3. *Federal Income Tax Consequences to Creditors.* Creditors should generally recognize gain (or loss) to the extent the amount realized under the Plan (generally the amount of cash received) in respect of their Claims exceeds (or is exceeded by) their respective tax bases in their Claims. The tax treatment of holders of

Claims and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan will depend upon, among other things, (i) the nature and origin of the Claim, (ii) the manner in which a Creditor acquired a Claim, (iii) the length of time a Claim has been held, (iv) whether the Claim was acquired at a discount, (v) whether the Creditor has taken a bad debt deduction in the current or prior years, (vi) whether the Creditor has previously included in income accrued but unpaid interest with respect to a Claim, (vii) the method of tax accounting of a Creditor; and (viii) whether a Claim is an installment obligation for U.S. federal income tax purposes. Therefore, Creditors should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequence to such Creditors as a result thereof.

The tax treatment of a Creditor that receives distributions in different taxable years is uncertain. If such a Creditor treats the transaction as closed in the taxable year that it first receives (or is deemed to have received) a distribution of cash and/or other property, it should recognize gain or loss for such tax year in an amount equal to the cash and the value of other property actually (and deemed) received in such tax year (other than that received in respect of accrued interest) with respect to its Claim (other than any portion of the Claim that is attributable to accrued interest) plus the estimated value of future distributions (if any) less its tax basis in its Claim (except to the extent its Claim is for accrued interest). A Creditor should then subsequently recognize additional income or loss when additional property distributions are actually received in an amount equal to the cash and/or value of such other property (other than that received in

respect of accrued interest) less the Creditor's allocable tax basis in its Claim with respect to such subsequent distribution. A Creditor may have to treat a portion of any such subsequent distribution as imputed interest recognizable as ordinary income in accordance with the Creditor's method of tax accounting. If instead the open transaction doctrine applies as a result of the value of the subsequent Distributions that a Creditor may receive not being ascertainable on the Closing Date or the Effective Date, such Creditor should not recognize gain (except to the extent that the value of the cash and/or other property already received exceeds such Creditor's adjusted tax basis in its Claim (other than any Claim for accrued interest) or loss with respect to its Claim until it receives the final distribution thereon (which may not be until the Final Distribution Date). It is the position of the IRS that the open transaction doctrine only applies in rare and extraordinary cases. The Proponent believes that the open transaction doctrine should not apply and that holders may be entitled to take the position that on the Closing Date and on the Effective Date no value should be assigned to the right to receive any subsequent Distributions. Creditors are urged to consult their own tax advisors regarding the application of the open transaction doctrine and how it may apply to their particular situations, whether any gain recognition may be deferred under the installment method, whether any loss may be disallowed or deferred under the related party rules and the tax treatment of amounts that certain Creditors may be treated as paying to other Creditors.

Holders of Allowed Claims will be treated as receiving a payment of interest (in addition to any imputed interest as discussed in the preceding paragraph) includible in

income in accordance with the Holder's method of accounting for tax purposes, to the extent that any cash and/or other property received pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash and/or other property should be attributable to accrued but unpaid interest is unclear. The Plan provides, and the Proponent intends to take the position, that such cash and/or other property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each Creditor should consult its own tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any) and whether any such interest may be considered to be foreign source income. A Creditor generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

#### **XVII. MISCELLANEOUS PROVISIONS**

A. Notwithstanding any other provisions of the Plan of Reorganization, and any amendments or modifications thereto, any claim which is scheduled as disputed, contingent, or unliquidated, or which is objected in whole or in part on or before the date for distribution on account of such claim, shall not be paid in accordance with the provisions of the Plan of Reorganization until such claim has become Allowed Claim by a final Order. If allowed, the Claim shall be paid on the same terms as if there has been no dispute.

B. At any time before the confirmation date, the Debtor may amend the Plan so long as the Plan as amended meets the requirements of Sections 1122, 1123 and

1127 of the Bankruptcy Code. After the Debtor file a amendment with the Bankruptcy Court, the Plan, as amended, shall become the final Plan of Reorganization.

C. At any time after the confirmation date, and before substantial confirmation of the Plan, and any amendments or modifications thereto, the Debtor or the reorganized Debtor may modify the Plan so long as the Plan, as modified, meets the requirements of Sections 1122, 1123 and 1127 of the Bankruptcy Code. The Plan, as modified under this paragraph, shall become the final Plan of Reorganization subject to and upon approval by the Court.

D. After the confirmation date, the Debtor may, with approval of the Bankruptcy Court, and so long as it does not materially and adversely affect the interest of creditors, remedy any defect or omission, or reconcile any inconsistencies in the final Plan of Reorganization or in the Order of Confirmation, in such manner as may be necessary to carry out the purposes and effect of the final Plan of Reorganization.

E. Except as otherwise provided in the accompanying Plan, confirmation of the Plan shall be deemed to have discharged the Debtor pursuant to Section 1141(d)(1) of the Code, from any claim included in this proceeding that arose on or prior to the Confirmation Date, and any claim of a kind specified in Section 502(g), (h) or (l) of the Bankruptcy Code whether or not: (i) a proof of the claim is filed or deemed to be filed under Sections 501 and 1111(a) of the Bankruptcy Code; (ii) such claim is allowed under Section 502 of the Bankruptcy Code; or (iii) the holder of such claim has accepted the Plan. The payments to be made pursuant to This Plan by the Debtor that have provided post-petition new value contributions and will continue to do so as set forth

within the Plan and as necessary to fund their expenses, which shall be in full settlement and satisfaction of all claims against the Debtor.

F. Quarterly Trustee Fees - The Debtor is current in the payment of all quarterly fees to the U.S. Trustee to date. Pursuant to 28 U.S.C. Section 1930(a)(6), the Debtor shall pay to the U.S. Trustee's office all appropriate quarterly fees based upon post-petition disbursements until This case is closed by the entry of a final decree on the confirmed Plan.

### **XVIII. CONCLUSION**

Under the Debtor' Plan of Reorganization, and any amendments or modifications thereto, all claimants of the Debtor will participate in some manner in the distribution to be made thereunder. The Debtor believe that the distributions contemplated in its Plan are fair and afford all Claimants and interest holders equitable treatment. Accordingly, the Debtor recommend that all claimants vote to **Accept** the Plan of Reorganization.

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This Amended Disclosure Statement has been executed this 3rd day of October, 2016.

ALEXANDER TORRES

**DEBTOR IN POSSESSION**



By: \_\_\_\_\_

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By: /s/ Craig I. Kelley

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