

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION  
www.flsb.uscourts.gov

In re:

Case No.: 16-23524-PGH  
Chapter 11

A & ASSOCIATES, INC. dba A & A,

Debtor-in-Possession.

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**DISCLOSURE STATEMENT IN CONNECTION WITH CHAPTER 11 PLAN  
OF A & ASSOCIATES, INC., DBA A & A**

Dated: January 4, 2018

SIMPSON LAW GROUP  
Sherri B. Simpson, Esq.  
1126 S. Federal Highway  
Suite 326  
Fort Lauderdale, FL 33316

Attorney for Debtor

IMPORTANT: THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT  
MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PROPOSED  
CHAPTER 11 PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

**DISCLOSURE STATEMENT IN CONNECTION WITH CHAPTER 11 PLAN  
OF A & ASSOCIATES, INC., DBA A & A**

**INTRODUCTION**

A & Associates, Inc., d/b/a A & A, the above captioned Debtor-in-Possession (herein the "Debtor"), provides this Disclosure Statement to all of the known creditors and parties in interest in order to disclose that information deemed by the Debtor to be necessary to arrive as a reasonably informed decision in exercising a right to vote for acceptance or rejection of the Plan dated January 4, 2018 (the "Plan"). This Disclosure Statement is intended to enable creditors to be able to make an informed judgment whether to accept or reject the Plan. This Disclosure Statement has not yet been approved by the Court, and will be considered for approval at the same hearing to consider confirmation of the Debtor's Plan.

The Disclosure Statement is presented to certain holders of Claims against the Debtor in accordance with the requirements of section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). Section 1125 of the Bankruptcy Code requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor, typical of the Debtor's Creditors and stockholders, to make an informed judgment whether to accept or reject the Plan. The Disclosure Statement may not be relied upon for any purpose other than that described above.

**THIS DISCLOSURE STATEMENT AND THE PLAN ARE AN INTEGRAL PACKAGE, AND THEY MUST BE CONSIDERED TOGETHER FOR THE READER TO BE ADEQUATELY INFORMED. THIS INTRODUCTION IS QUALIFIED IN ITS ENTIRETY BY THE REMAINING PORTIONS OF THIS DISCLOSURE STATEMENT, AND THIS DISCLOSURE STATEMENT IN TURN IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN.**

**NO REPRESENTATIONS CONCERNING THE DEBTOR (PARTICULARLY AS TO THE VALUE OF ITS PROPERTY) ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED IN THE DISCLOSURE STATEMENT AND ITS EXHIBITS SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR DEBTOR, WHO WILL IN TURN DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.**

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING ANY EXHIBITS CONCERNING THE FINANCIAL CONDITION OF THE DEBTOR AND THE OTHER INFORMATION CONTAINED HEREIN, HAS NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW EXCEPT AS EXPRESSLY SET**

**FORTH HEREIN. ACCORDINGLY, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONCERNING THE DEBTOR OR ITS FINANCIAL CONDITIONS IS ACCURATE OR COMPLETE. THE PROJECTED INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PRESENTED FOR ILLUSTRATIVE PURPOSES ONLY, AND, BECAUSE OF THE UNCERTAINTY AND RISK FACTORS INVOLVED, THE DEBTOR'S ACTUAL RESULTS MAY NOT BE AS PROJECTED HEREIN.**

**ALTHOUGH AN EFFORT HAS BEEN MADE TO BE ACCURATE, THE DEBTOR DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND ITS EXHIBITS IS CORRECT. THE DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. EACH CREDITOR IS STRONGLY URGED TO REVIEW THE PLAN PRIOR TO VOTING ON IT.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THE DISCLOSURE STATEMENT UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE FACTS SET FORTH SINCE THE DATE OF THE DISCLOSURE STATEMENT.**

**A STATEMENT OF THE ASSETS AND LIABILITIES OF THE DEBTOR AS OF THE DATE OF THE COMMENCEMENT OF THE CASE IS ON FILE WITH THE CLERK OF THE BANKRUPTCY COURT AND MAY BE INSPECTED BY INTERESTED PARTIES DURING REGULAR BUSINESS HOURS.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NONBANKRUPTCY LAW.**

**THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN. EACH CREDITOR SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISERS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN OR THE TRANSACTIONS CONTEMPLATED THEREBY.**

**Pursuant to the Bankruptcy Code, the Plan was filed with the Bankruptcy Court and this Disclosure Statement was filed thereafter. The Bankruptcy Court will schedule a hearing to consider the approval of this Disclosure Statement, and if approved, this Court will schedule a hearing on confirmation of the Plan (the "Confirmation Hearing") to be held at the United States Bankruptcy Court for the**

**Southern District of Florida, Flagler Waterview Building, 1515 North Flagler Drive, 8th Floor, Courtroom A, West Palm Beach, Florida 33401. At the Confirmation Hearing, the Bankruptcy Court will consider whether this Disclosure Statement and the Plan satisfy the requirements of the Bankruptcy Code, including whether the Plan is in the best interests of the claimants.**

**To obtain, at your cost, additional copies of this Disclosure Statement or of the Plan, please contact Simpson Law Group, Sherri B. Simpson, Esq., 1126 S. Federal Highway, Ste 326, Fort Lauderdale, FL 33316, Phone: (954) 524-4141, Facsimile: (954) 763-5117.**

**This Disclosure Statement contains only a summary of the Plan. Each Creditor is urged to review the Plan in its entirety prior to voting. In the event of any inconsistency between the Plan and the Disclosure Statement, the provisions of the Plan will control.**

**The legal, contractual and equitable rights of certain Creditors are altered, modified or changed by the proposed treatment under the Plan and are therefore considered “Impaired.” Creditors with Claims that are “Impaired” are entitled to vote to accept or reject the Plan, and may vote on the Plan by completing the Ballot which is enclosed.**

## **I. BRIEF OVERVIEW OF CHAPTER 11**

Chapter 11 is the principal reorganization chapter of the Code. Pursuant to Chapter 11, a debtor is authorized to reorganize its financial affairs for its own benefit and that of its creditors. With this purpose in mind, businesses sometimes use chapter 11 as a means to conduct asset sales and other forms of liquidation. Whether the aim is reorganization or liquidation, a chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and stockholders with respect to their claims against and interests in a debtor’s bankruptcy estate.

The commencement of a Chapter 11 case creates an estate comprised of all the legal and equitable interests that a debtor has in property as of the date that the bankruptcy petition is filed. The Code provides that a debtor may continue to manage its financial affairs and remain in possession of its property as a “debtor in possession.”

The Debtor has remained in possession of its property as Debtor-in-Possession. No Trustee or Examiner has been appointed in this Chapter 11 Case.

The filing of a Chapter 11 petition also triggers the “automatic stay” provisions of the Code. Section 362 of the Code provides for a stay or an injunction against any attempt to collect a pre-petition debt, claim or obligation from a debtor or to otherwise interfere with the debtor’s property or business. Unless the Bankruptcy Court orders otherwise, the automatic stay remains in full force and effect until the plan is confirmed.

The formulation of a plan of reorganization is the primary purpose of a Chapter 11 case. A plan sets forth the means by which a debtor will satisfy creditors who hold claims against a debtor. Although it is referred to as a plan of reorganization, it may also provide for the orderly liquidation or transfer of the debtor's assets.

After a plan is filed, the holders of claims against or interests in a debtor are requested to vote to accept or reject the plan. Before soliciting acceptances of a proposed plan, Section 1125 of the Code requires that a debtor prepare a disclosure statement which contains adequate information about a debtor, its assets and its liabilities that will enable a hypothetical, reasonable investor to make an informed decision about the plan.

Chapter 11 does not require that each holder of a claim against or an equity interest in a debtor vote in favor of a plan for the Bankruptcy Court to confirm the plan. The Code defines acceptance of a plan of reorganization by a given class of creditors holding claims against a debtor as acceptance by at least two-thirds in amount and more than one-half of the number of the holders of allowed claims in that class actually voting. The Code also defines acceptance of a plan by a class of equity interests as acceptance by holders of two-thirds of the number of interests actually voting. Holders of claims or interests who fail to vote will not be counted as having either accepted or rejected the plan.

Classes of claims or equity interests that are not "impaired" under the plan are conclusively presumed to have accepted the plan, and therefore, are not entitled to vote. Acceptances of the Plan in this Chapter 11 Case are being solicited only from those entities holding Claims in an impaired class.

Even if all of the classes of claims accept a plan of reorganization, the Bankruptcy Court may determine that a plan should not be confirmed if the plan does not meet the requirements of Section 1129 of the Code. Generally, Section 1129 requires, among other provisions, that a plan of reorganization be in the "best interest" of creditors and that it be "feasible" before being confirmed. The "best interest" test generally requires that the value of the consideration to be distributed to the holders of claims under the plan of reorganization is not less than what they would receive if the assets of the debtor were liquidated pursuant to Chapter 7 of the Code. To satisfy the "feasibility" requirement of Section 1129, the Court must also find that there is a reasonable probability that the debtor will be able to perform the obligations set forth in the plan. The Debtor believes that the "best interest" and "feasibility" requirements are satisfied by the Plan.

The Bankruptcy Court may confirm a plan of reorganization even though fewer than all of the classes of impaired claims accept it. For a plan of reorganization to be confirmed despite the rejection of one or more classes of impaired claims, the proponent of the plan must show, among other requirements, that the plan does not discriminate unfairly and that it is fair and equitable with respect to each impaired class of claims that has not accepted the plan. The Bankruptcy Court must also determine, pursuant to Section 1129(b) of the Code, that the economic terms of the plan of reorganization do not unfairly discriminate

with respect to an objecting class. The Debtor believes that the economic terms of the Plan do not unfairly discriminate with respect to any of the impaired classes.

## **II. EVENTS DURING CHAPTER 11**

### **A. The Filing of the Case**

The Debtor, A & Associates, Inc., dba A & A, a Florida corporation, provides temporary staffing primarily to school boards and for security guards. It operates in the state of Florida and has two offices, the main office in West Palm Beach, Florida and a small office in Orlando, Florida. As of the Petition Date, the Petitioner's workforce consisted of approximately 680 temporary employees, and 2 permanent employees. The Debtor's owner as of the Petition Date are Andrew Luchey and the benefits during the one year period prior to the Petition Date were \$54,860.00. The Debtor's year to date gross income for 2016 was \$7,004,032.00 and 2015 income was \$10,712,961.00.

As of the Petition Date, Debtor had a small amount of office equipment and furnishings valued at \$3800, and 2 old vehicles valued at \$800.00. Based upon information provided by its accountant, Debtor believed it had over \$3,000,000.00 in accounts receivable as of the Petition Date, however, after an internal review it was determined that the accounts receivable was actually only \$251,132.00. The Debtor owed very little to creditors other than the Internal Revenue Service. As of the Petition Date<sup>1</sup>, Debtor owed \$2,687,834.50 to the IRS, and about \$38,384.75 to general unsecured creditors.

The Debtor ran into trouble starting in 2011 when it was unable to pay some of its payroll tax obligations as they came due. Over the years it had attempted to negotiate settlements with the IRS but was unable to do so due to a shortfall in regular business income as a result of the depressed economy. Thus, the Debtor filed this case to give it the opportunity to continue operations to allow it to generate enough of a cash flow to restructure its obligations, maximize the value of its Assets, and provide a Distribution to Creditors. In furtherance of this, the Debtor entered into a contract with an employee leasing company in November 2016 and turned all of its employees over to that company to manage payroll and related responsibilities.

### **B. Meeting of Creditors and Monthly Operating Reports**

The 341 meeting of creditors took place on November 21, 2016. See ECF No. 23. The Debtor will file its Monthly Operating Reports throughout the duration of this case. A copy of the Debtor's monthly operating reports can be reviewed at the office of the Clerk, United States Bankruptcy Court, Southern District of Florida or electronically through the Official Court Electronic Document Filing system maintained by PACER at [www.flsb.uscourts.gov](http://www.flsb.uscourts.gov).

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<sup>1</sup> See Amended Claim 1 filed 12/5/17

### **C. Retention and Compensation of Professionals**

The Debtor filed an application to retain Sherri B. Simpson, Esq., as its general bankruptcy counsel on December 21, 2016. See ECF No. 21. Said application was approved by this Court. See ECF No. 28.

### **D. Claims**

The Bankruptcy Code provides a procedure for all persons who believe they have a claim against a debtor to assert such claims, so that such claimant can receive distributions from the debtor's bankruptcy case. The Court establishes a "bar date" – a date by which creditors must file their claims, or else such creditors will not participate in the bankruptcy case or any distribution. After the filing of all claims, the debtor evaluates such claims and can raise objections to them. These claims objections allow the debtor to minimize claims against it, and thereby maximize the recovery to creditors. The Bankruptcy Court has not established the deadline for filing proofs of Claims against the Debtor, however, Debtor believes that the claims filed as of the date of this Disclosure are all the claims that exist.

The Debtor has reviewed the filed claims, has objected to or otherwise negotiated with any it deemed to be objectionable and believes that the claims filed are accurate at this time. Debtor reserves the right to amend this narrative prior to solicitation or object to claims that it later determines are objectionable for some reason.

### **E. The Debtor's Income**

As listed on the Debtor's Statement of Financial Affairs, the Debtor's Gross Income in 2014 totaled \$6,830,758.00 and in 2015 totaled \$8,887,447.00. Debtor is on track for 2016 to earn over \$10,000,000.00 pursuant to its operating reports on file. The Debtor derives its income from business operations.

## **III. SUMMARY OF PLAN**

**THE FOLLOWING IS A BRIEF SUMMARY OF THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A SUMMARY ONLY AND IS QUALIFIED, IN ITS ENTIRETY, BY THE PLAN AND THE PLAN DOCUMENTS. CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE MORE DETAILED DESCRIPTION OF THE PLAN CONTAINED IN SECTION IV OF THIS DISCLOSURE STATEMENT AND THE PLAN ITSELF. THE PLAN IS ATTACHED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS.**

For purposes of the Plan, the Claims of Creditors shall be classified as follows:

**A. Unclassified Claims**

1. **"Administrative Claims"** shall consist of Allowed Claims for liabilities incurred by the Debtor in the ordinary course during the Chapter 11 Case including the Administrative Claims of professionals.
2. **"Priority Tax Claims"** shall consist of those Allowed Claims asserted by the Internal Revenue Service which are given priority under Section 507(a)(8) of the Bankruptcy Code.
3. **"U.S. Trustee's Fees"** shall consist of those fees due to the United States Trustee as required pursuant to 28 U.S. C. § 1930(a)(6).

**B. Classified Claims**

<b>Class</b>	<b>Description</b>	<b>Status</b>	<b>Voting Status</b>
Class 1	All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), and priority tax claims under § 507(a)(8))	Unimpaired	No- Deemed Accepted
Class 2	Allowed Secured Allowed Secured Tax Claims	Impaired	Yes
Class 3	Allowed unsecured claims other than the Department of Revenue-IRS	Impaired	Yes
Class 4	Allowed Department of Revenue-IRS unsecured claims	Impaired	No. Deemed Rejected

**IV. CHAPTER 11 PLAN**

**THE FOLLOWING IS A BRIEF SUMMARY OF THE MORE SIGNIFICANT MATTERS CONTEMPLATED BY OR IN CONNECTION WITH THE CONFIRMATION OF THE PLAN. THUS, THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. THIS SUMMARY ONLY HIGHLIGHTS CERTAIN SUBSTANTIVE PROVISIONS OF THE PLAN. CONSIDERATION OF THIS SUMMARY WILL NOT, NOR IS IT INTENDED TO, YIELD A THOROUGH UNDERSTANDING OF THE PLAN. SUCH CONSIDERATION IS NOT A SUBSTITUTE FOR A FULL AND COMPLETE READING OF THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO REVIEW THE PLAN CAREFULLY. THE PLAN, IF CONFIRMED, WILL BE BINDING ON DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS.**



## **A. Treatment of Unimpaired Claims**

The following Allowed Administrative Claims, Allowed Priority Claims and United States Trustee's Fees are Unimpaired under the Plan and will be treated as follows:

### **1. Allowed Administrative Claims.**

#### **a. Ordinary Course Claims.**

Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by the Debtor shall be paid in full and performed by the Reorganized Debtor in the ordinary course of business consistent with past practices and in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

#### **b. Professional Fees and Expense Claims.**

Compensation of professionals and reimbursement of expenses incurred by professionals are Administrative Claims pursuant to sections 503(b)(2), 503(b)(3), 503(b)(4) and 503(b)(5) of the Code (the "Professional Fees and Expenses Claims"). All payments to Professionals for Professional Fees and Expenses Claims will be made in accordance with the procedures established by the Code, the Rules and the Court relating to the payment of interim and final compensation for services rendered and reimbursement of expenses. The Court will review and determine all applications for compensation for services rendered and reimbursement of expenses. Counsel estimates its total outstanding fees and costs through Confirmation will total approximately \$20,000, which shall be paid on or before Confirmation, unless otherwise agreed to by SFL. All entities seeking an award by the Court of Professional Fees and Expenses shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date pursuant to section 330 of the Code and Rule 2016 by the date that is ten (10) days after the Effective Date or such other date as may be fixed by the Court.

The time for filing objections to applications for allowance and payment of Professional Fees and Expenses, and the date and time for a hearing in respect of such applications and the related objections, if any, shall be set forth in the Confirmation Order or other order of the Court. Notwithstanding anything herein to the contrary, all Professional Fees and Expenses that are awarded by the Court shall become Allowed Administrative Claims and shall be paid in full in Cash on the later of the Effective Date of the Plan, the date on which such Professional Fees and Expense Claim becomes an Allowed Administrative Claim by Final Order of the Court or as soon thereafter as is reasonably practicable.

### **2. Priority Tax Claims.**

Each holder of an Allowed Priority Tax Claim shall receive deferred cash payments over a period not to exceed five years following the Order for Relief, of a value, as of the Effective Date of the Plan, equal to the amount of the Allowed Priority Tax Claim, plus statutory interest, except to the extent that a holder of an Allowed Priority Tax Claim under section 507(a)(8) of the Code has been paid by the Debtor prior to the Effective Date or agrees to a different treatment. Prior to the Effective Date, the Debtor shall have the right, in its sole discretion, to prepay at any time, in whole or in part, any Allowed Priority Tax Claim without premium or penalty of any sort or nature. The Debtor estimates the amount of The Department of Revenue-IRS's Allowed Priority Tax Claim is approximately \$549,305.26.

### **3. United States Trustee's Fees.**

The Reorganized Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) through Confirmation on the Effective Date. The Reorganized Debtor shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) for post-confirmation periods within the time periods set forth in 28 U.S.C. §1930(a)(6), until the earlier of the closing of this Case by the issuance of a Final Decree by the Court, or upon entry of an order of this Court dismissing this Case, or converting this Case to another chapter under the Code, and the Reorganized Debtor shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating disbursement for the relevant periods.

## **B. Treatment of Classified Claims**

### **Class 1 - Allowed Priority Claims**

(a) Description. All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), and priority tax claims under § 507(a)(8)).

(b) Treatment. Each Holder of an Allowed Priority Claim shall receive on account of such Claim, Cash equal to the amount of such Allowed Priority Claim, without post-petition interest or penalty, on the later of (i) the Effective Date or as soon as practicable thereafter or (ii) the date that is ten (10) Business Days after an order of the Bankruptcy Court allowing such Priority Claim becomes a Final Order. The Debtor believes that all Priority Claims have been paid in full.

( c ) Impairment. The Class 1 Claims are not impaired and are deemed to have accepted the plan.

### **Class 2 - Allowed Secured Claim of Department of Revenue - IRS**

(a) Description. Class 2 consists of the Allowed Secured Claim of the Department of Revenue - IRS. This relates to unpaid payroll taxes, including trust fund taxes, penalties and interest. The Amended Claim filed December 5, 2017 states that the secured claim is \$1,952,341.98. The value of all of Debtor's right, title and interest to property is less than the secured claim, however, the Debtor proposes to remain in business and proposes a payment plan that will satisfy most of the obligation.

(b) Treatment. Except to the extent that the holder of the Allowed Class 2 Claim has been paid prior to the Effective Date or agrees to a different treatment, in full satisfaction, settlement, release and extinguishment of the Allowed Class 2 Claim, the Debtor shall pay Dept. Of Revenue - IRS as follows: nine thousand dollars (\$9000.00) per month for sixty (60) months and then twenty thousand dollars (\$20,000.00) per month starting the sixty first (61) month and continuing for a total of sixty (60) months commencing upon the later of the effective date of this Plan as defined in Article VII or the date on which such claim is allowed by a final non-appealable order.

No interest shall be paid on this claim, nor shall any other penalties accrue or be added to the claim during the life of the Plan.

Further, the Department of Revenue-IRS shall apply the payments first to the trust fund portion of the obligation, and only after the trust fund portion is satisfied, to any remaining penalties and interest.

The Dept. Of Revenue - IRS shall retain any and all Liens on the Debtor's Property and other rights until such time as the proposed payments herein have been satisfied. Thereafter, upon completion of the payments described herein, Dept. Of Revenue - IRS shall release its Liens on all property retained by the Debtor. Within thirty (30) days of completion of the aforementioned payments, Dept. Of Revenue - IRS shall file and record in the public records, a satisfaction or release of Lien, or any other document(s) necessary to release the Liens in favor of the Dept. Of Revenue - IRS against the Debtor that are encumbering any assets of the Debtor.

(c) Impairment. The Class 2 Claim is Impaired and the Class 2 Claimholder is entitled to vote to accept or reject the Plan.

### **Class 3 - Allowed General Unsecured Claims Other than the Department of Revenue-IRS**

(a) Description. Class 3 consists of the Allowed General Unsecured Claims. Pursuant to Debtor's schedules, the Debtor estimates the aggregate amount of General Unsecured Claims is approximately \$40,000.00.

(b) Treatment. The holders of Allowed Class 3 Claims shall be paid 100% of the Allowed Amount of such claim, without interest, by receiving equal monthly payments for a period of sixty (60) months.

(c) Impairment. The Class 3 Claims are Impaired and Class 3 Claimholders are entitled to vote to accept or reject the Plan.

#### **Class 4 - Allowed General Unsecured Claim of the Department of Revenue - IRS**

(a) Description. Class 4 consists of the Allowed General Unsecured Claim of the Department of Revenue - IRS. Pursuant to the Amended Claim filed December 5, 2017, the Allowed General Unsecured Claim of the Dept. Of Revenue - IRS is \$186,187.26.

(b) Treatment. The holder of Allowed Class 4 Claims shall receive no distribution under the Plan.

(c) Impairment. The Class 4 Claims are Impaired and Class 4 Claimholders are entitled to vote to accept or reject the Plan.

### **C. Means of Implementation of the Plan**

#### **1. Vesting of the Property of the Estate**

Except as otherwise provided in the Plan, pursuant to section 1141 of the Code, the Property of the Estate of the Debtor shall revert in the Reorganized Debtor on the Effective Date, free and clear of all Liens, Claims and interests of holders of Claims, except as otherwise provided in the Plan or the Confirmation Order.

#### **2. Source of Plan Funding & Feasibility**

Funds to be used to make cash payments under the Plan shall derive from the Debtor's monthly income from operations. Debtor has been able to increase its income as shown by the operating reports and create a steady stream of income year round, as compared to the past where income would drop substantially in the summer months. Based upon the monthly operating reports, the Debtor is cash flow positive and shows the ability to fund the Plan. In order to assist in funding the Debtor's business operations under the Plan, the Debtor may retain its Cash on hand, the funds in its bank accounts, and may retain amounts received from accounts receivable to pay accounts payable.

Initially, the payments shall be as follows: (i) Dept of Revenue- IRS for the priority claim in the amount of \$10,116.29; (ii) Dept. Of Revenue - IRS for secured claim in the amount of \$9,000.00; and (iii) General Unsecured Creditors other than the Dept. Of Revenue-IRS in the amount of \$639.75.

### **V. CONFIRMATION AND CONSUMMATION PROCEDURES'**

#### **A. Acceptance Or Rejection Of Plan**

## **1. Impaired Classes to Vote**

The Bankruptcy Code entitles only holders of Impaired Claims or Equity Interests who receive some distribution under a proposed plan to vote to accept or reject that plan. Claims in Classes 2 and 3 and 4 are Impaired under this Plan. Holders of Claims that are Unimpaired under a proposed plan are conclusively presumed to have accepted that plan and are not entitled to vote on it (Class 1). Holders of classes of Claims that will receive no distributions under a proposed plan (Class 4) are conclusively presumed to reject that plan and, therefore, also not entitled to vote on it.

Each holder of an Allowed Claim that is entitled to vote on the Plan pursuant to the Code shall be entitled to vote separately to accept or reject the Plan as provided in such order as may be entered by the Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Court. Holders of Claims valued at an unknown amount, and holders of Disputed Claims, shall not be entitled to vote on the Plan, unless otherwise provided for in the Plan.

Any Ballot not filed in accordance with the filing instructions on the Ballot pertaining to this Plan shall not be counted for voting purposes. A from Ballot is attached to the Disclosure Statement as Exhibit "B".

## **2. Acceptance by Class of Creditors**

An Impaired Class of creditors is deemed to have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in amount and more than one-half (2) in number of the Allowed Claims of such Class.

## **3. Cramdown**

In the event that any Impaired Class of creditors with claims against the Debtor's Estate fail to accept the Plan in accordance with section 1129(a) of the Code, the Debtor will request this Court to confirm the Plan in accordance with section 1129(b) of the Code ("Cramdown Provisions"). For purposes of seeking Confirmation of the Plan under the Cramdown Provisions, the Debtor reserves the right to modify or vary the terms of the Plan or the treatment of the Claims of those Classes that rejected the Plan so as to comply with the requirements of the Cramdown Provisions.

## **4. Confirmation Hearing**

The Bankruptcy Court shall schedule the Confirmation Hearing to consider the final approval of this Disclosure Statement and confirmation of the Plan before the Honorable Paul G. Hyman, Judge for the United States Bankruptcy Court for the Southern District of Florida, located at the United States Bankruptcy Court, Flagler Waterview Building, 1515 N. Flagler Drive, 8<sup>th</sup> Floor, Courtroom A, West Palm Beach, Florida 33401. The Confirmation Hearing may be adjourned from time to time without notice except as given

at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing. The Bankruptcy Court shall set forth a deadline to file objections, if any, to the approval of this Disclosure Statement or the confirmation of the Plan.

## **VI. EFFECTS OF CONFIRMATION OF PLAN**

As of the Effective Date, all persons who have held, hold or may hold Claims against the Debtor, will be enjoined from taking any of the following actions or affecting the Reorganized Debtor, the Debtor's estate, the assets or properties of the Reorganized Debtor, other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against the Reorganized Debtor, the Debtor's estate or the assets or properties of the Reorganized Debtor; (ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree or order against the Reorganized Debtor or the Debtor's estate or the assets or properties of the Reorganized Debtor or the Debtor's estate; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Reorganized Debtor or the Debtor's estate or the assets or properties of the Reorganized Debtor or the Debtor's estate or any direct or indirect successor-in-interest to the Reorganized Debtor, or any assets or properties of any such transferee or successor other than as contemplated by the Plan; (iv) asserting any set off, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Reorganized Debtor or the Debtor's estate or the assets or property of the Reorganized Debtor, or any direct or indirect transferee of any assets or property of, successor-in-interest to, the Reorganized Debtor; and (v) proceeding in any manner in any place whatsoever that does not conform or comply with the provisions of the Plan.

## **VII. VOIDABLE TRANSFERS**

The Debtor has reviewed all transfers in the aggregate of \$6,225 or more to a particular transferee made during the ninety (90) day period prior to the filing and does not believe any of the transfers are voidable. The Debtor believes any such payments were made in the ordinary course and were made from exempt assets.

After the Effective Date, the Reorganized Debtor shall have the authority to compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such Actions with the approval of the Court. In order to obtain Court approval of a settlement, the Reorganized Debtor shall file and serve on all known creditors, a motion to approve the settlement, pursuant to Rule 9019, to give the creditors the opportunity to review any such proposed settlement. Prior to Confirmation, the Debtor shall file a schedule of potential Avoidance Actions, if any.

## **VIII. TAX IMPLICATIONS OF THE PLAN**

The tax consequences of the implementation of the Plan to a specific Creditor will depend on a number of factors, including whether the Creditor's Claim constitutes a "security" for federal income tax purposes, whether a Creditor has already taken a deduction of loss with respect to its Claim and the timing of any distributions under the Plan. It is possible that certain Creditors will recognize gain or income as a result of distributions under the Plan. There also may be state, local or foreign tax considerations applicable to particular holders of Claims, none of which are discussed herein. Each holder of a Claim or any other party in interest in this case is strongly urged to consult with their tax advisor regarding the federal, state and local income and other tax consequences that the implementation of this Plan may have on them.

## **IX. LIQUIDATION**

Notwithstanding acceptance of the Plan by each Impaired Class, in order to confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Interest in any such Impaired Class who has not voted to accept the Plan. Accordingly, if an Impaired Class does not unanimously accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such Class member would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on such date.

To estimate what members of each Impaired Class of unsecured creditors and equity security holders would receive if the Debtor was liquidated under Chapter 7, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtor's Assets if this Chapter 11 Case was converted to a Chapter 7 case under the Bankruptcy Code and the Assets were liquidated by a Trustee in bankruptcy (the "Liquidation Value" of such Assets). The Liquidation Value would consist of the net proceeds from the disposition of Debtor's Assets and would be augmented by any Cash held by Debtor. The Debtor's Assets are minimal and consist only of personal property valued at \$290,000, as shown in Schedule B, the Debtor's Liquidation Value would not allow holders of Allowed General Unsecured Claims to receive any distribution, and the Debtor's Plan proposes holders of Allowed General Unsecured Claims with the option to be paid in full over the life of the Plan. Accordingly, the Distributions under the Plan will provide at least the same recovery to holders of Allowed Claims against the Debtor on account of such Allowed Claims as would Distributions by a Chapter 7 Trustee.

## **X. MISCELLANEOUS**

### **A. Modifications**

The Debtor reserves the right to revoke or withdraw the Plan in its sole discretion, at any time before the Confirmation Date, or, if for any reason the Plan cannot be

consummated after the Confirmation Date, at any time up to and including the Effective Date. If the Plan is revoked and withdrawn, then (a) nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the estate or to prejudice in any manner the rights of any person in any further proceedings in the Chapter 11 Case or otherwise; and, (b) any provision of the Confirmation Order shall be null and void and all such rights of or against the estate shall exist as though the Plan had not been filed and no actions were taken to effectuate it. The Debtor may modify the Plan, in its sole discretion, either pre- or post-confirmation in accord with the Bankruptcy Code, or, if for any reason the Plan cannot be consummated after the Confirmation Date, at any time up to and including the Effective Date.

### **B. Confirmation Order Controls**

To the extent the Disclosure Statement is inconsistent with the Plan, the Plan shall control. To the extent that the Plan, the Disclosure Statement or any agreement entered into between or among the Debtor and any third party is inconsistent with the Confirmation Order, the Confirmation Order shall control.

### **C. Effectuating Documents and Further Transactions**

The Debtor or Reorganized Debtor, as the case may be, is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to implement, effectuate and further evidence the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan.

### **D. Terms of the Plan are Binding**

Pursuant to Section 1141 of the Bankruptcy Code, the Plan and all of its terms, when approved and confirmed by the Bankruptcy Court, shall be binding upon, including, without limitation, the Debtor, the Debtor's estate, the Reorganized Debtor, all holders of Claims, Allowed or not, and their respective successors and assigns.

If, after the Confirmation Date, any term or provision of this Plan is determined to be unenforceable, the remaining terms and provisions of this Plan shall nonetheless continue in full force and effect.

### **E. Injunction**

The Confirmation Order shall act as an injunction:

1. Against the filing, commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the



Debtor, with respect to any property of any of the foregoing or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing, or any property of any such transferee or success except as specifically authorized in the Plan;

2. Enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other Order against the Debtor, with respect to any property of any of the foregoing or any of the direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing, or any property of any such transferees or successor except as specifically authorized in the Plan;

3. Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any liens or encumbrances against the Debtor, with respect to any property of any of the foregoing or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing, or any property of any such transferee or successor except as specifically authorized in the Plan;

4. Setting-off, seeking reimbursement or contribution from or subrogation against or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to the Debtor, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing except as specifically authorized in the Plan; or

5. Proceeding in any manner and any place with regard to liquidating any Claim in any forum other than the United States Bankruptcy Court for the Southern District of Florida, or, if that Court does not have jurisdiction thereon, in the United States District Court for the Southern District of Florida, or in such forum deemed appropriate by the Debtor.

## **F. Compensation and Benefit Programs**

Except as provided in the Plan, and other than stock option or similar plans which will be cancelled as part of the treatment of any Class of Claims under the Plan, all employment and severance practices and policies, and all compensation and benefit plans, policies, and programs of the Debtor applicable to its directors, officers, and employees who served as directors, officers and employees, respectively, on or after the Petition Date, including, without limitation, all savings plans, retirement plans (exclusive of defined benefit plans), health care plans, severance benefit plans, incentive plans, workers' compensation programs and life, disability and other insurance plans, are treated as Executory Contracts under the Plan and are hereby assumed pursuant to sections 365(a) and 1123(b)(2) of the Code; provided, however, that the Reorganized Debtor reserves the right to modify any and all such compensation and benefit practices, plans, policies, and programs in accordance with the terms thereof.

## **G. Insurance Policies**

Each of the Debtor's insurance policies and any agreements, documents or instruments relating thereto, including without limitation, any retrospective premium rating plans relating to such policies, shall be treated as Executory Contracts under the Plan. Notwithstanding the foregoing, distributions under the Plan to any holder of a Claim covered by any insurance policies and related agreements, documents or instruments that are assumed hereunder, shall comply with the treatment provided under the Plan. Nothing contained in the Plan shall constitute or be deemed a waiver or release of any Action that the Debtor may hold against any entity, including, without limitation, the insurers under any of the Debtor's policies of insurance.

## **H. Continued Corporate Existence**

The Reorganized Debtor shall continue to exist after the Effective Date with all powers of a corporation under the laws of the State of Florida and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under Florida law; and, following the Effective Date, the Reorganized Debtor may operate its business free of any restrictions imposed by the Bankruptcy Code, the Bankruptcy Rules or by the Court, subject only to the terms and conditions of this Plan and Confirmation Order. After the Effective Date, the Reorganized Debtor may operate its business, and may use, acquire, and dispose of its property, free of any restrictions of the Code and Rules. The Debtor's owners as of the Petition Date were as follows: Andrew Luchey 100%. Andrew Luchey's salary and benefits during the one year period prior to the Petition Date totaled \$54,860. Upon the Effective Date, the Reorganized Debtor shall be owned 100% by Andrew Luchey.

## **I. Exemption from Transfer Taxes**

Pursuant to section 1146(c) of the Code, the issuance, transfer or exchange of notes or equity securities under the Plan, including creation of any mortgage, deed of trust or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any instrument of transfer under, in furtherance of, or in connection with the Plan, including, without limitation, any agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated by the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

## **XI. RETENTION OF JURISDICTION BY THE BANKRUPTCY COURT**

The Bankruptcy Court shall retain jurisdiction of these proceedings after the Confirmation Date of this Plan until the entry of the final decree pursuant to Bankruptcy Rule 3022 for the following purposes:

- a. to hear and determine pending applications for the assumption or rejection of executory

contracts or unexpired leases, if any are pending, and the allowance of Claims resulting, therefrom;

b. to determine any and all adversary proceedings, motions, applications and contested matters, and other litigated matters pending on the Confirmation Date;

c. to hear and determine any objections to or the allowance, classification, priority, compromise, estimation or payments of any Administrative Claims or Claims;

d. to ensure that Distributions to holders of Allowed Claims are accomplished as provided in the Plan;

e. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

f. to issue such orders in aid of execution and consummation of the Plan, to the extent authorized by section 1142 of the Code;

g. to consider any amendments to or modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in the Plan, the plan supplement, or any order of the Court, including, without limitation, the Confirmation Order; h. to hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 330, 331, and 503(b) of the Code;

i. to hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;

j. to recover all Assets of the Debtor and Property of the Estate, wherever located;

k. to determine any Claim of or any liability to a governmental unit that may be asserted as a result of the transactions contemplated herein;

l. to enforce the Plan, the Confirmation Order and any other order, judgment, injunction or ruling entered or made in the Case, including, without limitation, the discharge, injunction, exculpation and releases provided for in the Plan;

m. to take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following consummation;

n. to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Code (including, but not limited to, an expedited determination under section 505(b) of the Code of the tax liability of the Debtor for all taxable periods through the Effective Date for all taxable periods of the Debtor through the liquidation and dissolution of such entity);

o. to hear any other matter not inconsistent with the Code; and

p. to enter a final decree closing the Case; provided however, that nothing in the Plan shall divest or deprive any other court or agency of any jurisdiction it may have over the Reorganized Debtor under applicable environmental laws.

**DEBTOR-IN-POSSESSION**

**A & ASSOCIATES, INC.. Dba A & A**

By: \_\_\_\_\_ /d  
Andrew Luchey, President

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic notice or U.S. Mail to all interested parties registered to receive such service this 4<sup>TH</sup> day of January, 2018.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1 (A).

SIMPSON LAW GROUP  
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By: /s Sherri Simpson  
Sherri B. Simpson, Esq.  
Fla. Bar No. 869491

**UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Case No. 16-23524-PGH  
Chapter 11

A & Associates, Inc., dba A & A

\_\_\_\_\_ Debtor \_\_\_\_\_ /

**BALLOT AND DEADLINE FOR FILING BALLOT ACCEPTING OR REJECTING PLAN**

**TO HAVE YOUR VOTE COUNT YOU MUST COMPLETE AND RETURN THIS BALLOT BY THE DEADLINE INDICATED BELOW [AS SET PURSUANT TO LOCAL RULE 3018-1(B)]**

The plan filed by A & Associates, Inc. dba A & A on January 4, 2018 can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it.

This ballot is for creditor (insert name) \_\_\_\_\_ for the following type of claim placed in the indicated class in the indicated amount:

<b>TYPE OF CLAIM</b>	<b>CLASS IN PLAN</b>	<b>AMOUNT OF CLAIM</b>
<input type="checkbox"/> General Secured		\$ _____
<input type="checkbox"/> General Unsecured		\$ _____
<input type="checkbox"/> Bond Holder		Amount of Bond/debenture \$ _____
<input type="checkbox"/> Equity Security Holder		Number of Shares of Stock _____

The undersigned [Check One Box]

Accepts

Rejects

the plan for reorganization of the above-named debtor.

Signed:

Print Name:

Address:

Phone:

Date:

**★★★FILE THIS BALLOT ON OR BEFORE \_\_\_\_\_★★★**

with:

Clerk of Bankruptcy Court

301 N. Miami Ave., Room 150, Miami, FL 33128

299 E. Broward Blvd., Room 112, Ft. Lauderdale, FL 33301

1515 North Flagler Drive, Room 801, West Palm Beach, FL 33401

**If you have more than one type of claim against this debtor, separate ballots must be filed and you should receive a ballot for each type of claim eligible to vote. Contact the plan proponent regarding incorrect or insufficient ballot(s).**