

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:

**Ilya and Simona Golub,**  
  
Debtors.

Chapter 11

Bankruptcy No. 16-10968

Honorable Jack B. Schmetterer

**AMENDED DISCLOSURE STATEMENT FOR DEBTORS'  
AMENDED PLAN OF REORGANIZATION DATED SEPTEMBER 2, 2016**

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## ARTICLE 1. INTRODUCTION

### 1.1. Introductory Statement.<sup>1</sup>

This is the disclosure statement for the Amended Plan of Reorganization dated September 2, 2016 (the “**Plan**”) filed by Ilya and Simona Golub (“**Debtors**”), the debtors and debtors in possession in the captioned bankruptcy case.

On \_\_\_\_\_, 2016, the Bankruptcy Court for the Northern District of Illinois entered an Order approving this Disclosure Statement as containing adequate information. As a result, the Debtors are authorized to send this Disclosure Statement, along with the Plan, to creditors and to solicit votes in favor of the Plan.

This Disclosure Statement describes:

- Why the Debtors sought bankruptcy protection and what he hopes to accomplish through such relief.
- How the Plan proposes to treat claims of the type you hold (*i.e.*, what you will receive on your claim if the Plan is confirmed);
- How the treatment of creditors’ claims under the Plan compares to what creditors would receive on their claims in liquidation; and
- Who can vote on or object to the Plan;
- The feasibility of the Plan and why the Debtors believe the Plan is in the best interests of creditors
- The effect of confirmation of the Plan.

If there are inconsistencies between the terms of the Plan and the information set forth in this Disclosure Statement, the terms of the Plan shall control.

**Your rights may be affected by the Plan. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney if you have any questions or concerns. If you do not have an attorney, you may wish to consult one.**

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in Article 2 of the Plan.

## 1.2. Narrative of the Plan.

### 1.2.1 Overview of the Plan.

Rule 3016-1 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Northern District of Illinois requires a Chapter 11 disclosure statement to contain an initial narrative describing the plan of reorganization, as well as certain other information. The following is a narrative summary of the Plan. Among other things, the Plan contemplates that the Debtors will:

- Retain their Residence and continue to make payments to CitiMortgage and US Bank in accordance with the existing loan terms.
- Retain the Debtors' Vehicles and continue to make payments to the Holders of the Allowed Claims secured by the Debtors' Vehicles in accordance with the existing loan terms, including Ally, Fifth Third, Daimler and Nissan.
- Make a pro rata distribution to Holders of Allowed Unsecured Claims within 60 days after the Effective Date of the Plan.
- Retain all unliquidated real and Personal property.
- Obtain discharges from all Claims and obligations arising prior to the Effective Date upon completion of the Plan.

### 1.2.2 Anticipated Creditor Recoveries.

The following chart sets forth the amounts that the Debtors anticipates they will be able to pay to Creditors under the Plan. This chart is merely a summary of the expected distributions and Creditors are encouraged to read the entire Plan Statement to obtain a more detailed understanding of how the Plan will impact them.

CHART 1 – SUMMARY OF DISTRIBUTIONS		
Class	Description	Treatment

CHART 1 – SUMMARY OF DISTRIBUTIONS		
Class	Description	Treatment
Unclassified: Administrative Expense Claims	Claims for goods or services provided to the Debtors after the bankruptcy filing, including professional services. The Debtors have been paying their living expenses on an ongoing basis and estimates that at the time of the Confirmation Hearing there will be minimal unpaid Administrative Expense Claims. The Debtors estimate they will owe approximately \$20,000 in professional fees to their attorneys, and that this will be the only Professional Fee Claim	Allowed Administrative Expense Claims incurred by Debtors in the ordinary course will be paid in in the ordinary course. All other Allowed Administrative Expense Claims, including Professional Fee Claims, will be paid in full within 30 days after the Plan's Effective Date or when allowed or in accordance with any other agreement between the Holder of an Administrative Expense Claim and the Debtors.
Class 1 – CitiMortgage Secured Claim	Secured Claim of CitiMortgage in the amount of \$450,253.69. <b><i>This Claim is unimpaired under the Plan and thus not entitled to vote on the Plan.</i></b>	CitiMortgage shall retain any and all rights and remedies it has against the Debtors and Debtors' Residence under applicable law, and shall be paid in full through monthly principal and interest payments of \$2,562.12 as contractually agreed between CitiMortgage and the Debtors.
Class 2 – US Bank Secured Claim	Secured Claim of US Bank in the approximate amount of \$150,227.92. <b><i>This Claim is unimpaired under the Plan and thus not entitled to vote on the Plan.</i></b>	U.S. Bank shall retain any and all rights and remedies it has against the Debtors and Debtors' Residence under applicable law, and shall be paid in full through monthly principal and interest payments of approximately \$500.00 as contractually agreed between U.S. Bank and the Debtors.

CHART 1 – SUMMARY OF DISTRIBUTIONS

Class	Description	Treatment
Class 3 – Ally Secured Claim	Secured Claim of Ally in the approximate amount of \$10,799.88. <b><i>This Claim is unimpaired under the Plan and thus not entitled to vote on the Plan.</i></b>	Ally shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2012 Chevrolet Corvette under applicable law, and shall be paid in full through monthly principal and interest payments of \$899.99 as contractually agreed between Ally and the Debtors.
Class 4 – Fifth Third Secured Claim	Secured Claim of Fifth Third in the approximate amount of \$10,799.88. <b><i>This Claim is unimpaired under the Plan and thus not entitled to vote on the Plan.</i></b>	Fifth Third shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2011 BMW 328xi under applicable law, and shall be paid in full through monthly principal and interest payments of \$340.14 as contractually agreed between Fifth Third and the Debtors.
Class 5 – Daimler Secured Claim	Secured Claim of Daimler in the approximate amount of \$10,799.88. <b><i>This Claim is unimpaired under the Plan and thus not entitled to vote on the Plan.</i></b>	Daimler shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2014 Mercedes E350 under applicable law, and shall be paid in full through monthly principal and interest payments of \$556.85 as contractually agreed between Daimler and the Debtors.
Class 6 – Nissan Secured Claim	Secured Claim of Nissan in the approximate amount of \$11,500. <b><i>This Claim is unimpaired under the Plan and thus not entitled to vote on the Plan.</i></b>	Nissan shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2014 Nissan Murano under applicable law, and shall be paid in full through monthly principal and interest payments of \$550.00 as contractually agreed between Nissan and the Debtors.

CHART 1 – SUMMARY OF DISTRIBUTIONS		
Class	Description	Treatment
Class 7 – Unsecured Claims	Allowed Claims arising prior to the Petition Date that are not secured by a lien on the Debtors’ property. The Debtors estimate there are approximately 29 Unsecured Creditors with Claims totaling approximately \$577,683.48. <b><i>These Claims are impaired are entitled to vote on the Plan.</i></b>	Holders of Allowed Class 7 Claims shall be paid their pro rata portion of \$35,000 in Cash in a single distribution made within sixty (60) days of the Effective Date of the Plan. Holders of Allowed Class 7 Claims will receive a distribution of approximately 6%. The Cash used to pay Class 7 Claims will come from the Debtors’ otherwise exempt retirement account.

### 1.3. Purpose for the Bankruptcy Filing

The Debtors are a married couple residing in Lake County with two children in college. The Debtors are hard-working individuals. Mr. Golub is employed as an IT Director and Mrs. Golub is employed as a pharmacist. Nevertheless, the Debtors’ expenditures have exceeded their income and they have relied on credit to make up the difference. Including principal, interest, fees and penalties, the Debtors are facing approximately \$577,000 in debt from credit cards, Personal loans, and student loans as well as a first and second mortgage on their home and several vehicle loans/leases. The Debtors now plan to retrench their budget, repay a fair amount to Unsecured Creditors from their retirement funds, and start fresh. The Debtors need the protections afforded by chapter 11 to meet these objectives.

### 1.4. Explanation of this Document and the Voting Process

#### 1.4.1 Purpose of a Disclosure Statement.

In order to emerge from Chapter 11 protection, the entity in bankruptcy – which is called the “debtor” – must prepare a document that sets forth the emergence strategy, which is called a reorganization plan. Creditors are entitled to vote for or against a proposed reorganization plan. In addition to the plan, a debtor is required to send creditors an explanatory document that has been approved by the Bankruptcy Court and that describes how the reorganization plan works and the proposed treatment of creditors under the plan, among other things. That document is called a “Disclosure Statement.”

The purpose of this Disclosure Statement is to provide Creditors with adequate information about the Plan and the Debtors so that Creditors can make an informed

decision about whether to vote to accept or reject the Plan. Creditors have an opportunity to vote on the Debtors' Plan by returning the Ballot that is included with this Disclosure Statement.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN AND IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED ANALYSIS OF THE PLAN. THE DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT SUCH REVIEW. IN THE EVENT OF A CONFLICT BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN WILL GOVERN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND TO READ CAREFULLY THIS ENTIRE DISCLOSURE STATEMENT BEFORE DECIDING WHETHER TO VOTE TO ACCEPT THE PLAN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF SEPTEMBER 2, 2016 AND ARE BASED ON FACTS KNOWN TO THE DEBTORS AT THAT TIME. THE DEBTORS BELIEVE THAT THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT IS ACCURATE AS OF THAT DATE.

NO PERSON SHOULD CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH PERSON SHOULD CONSULT WITH HIS OWN LEGAL, BUSINESS, FINANCIAL OR TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION AND THE PLAN. THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN DETERMINING WHETHER TO ACCEPT OR REJECT THE PLAN.

#### 1.4.2 The Voting Process.

Only Creditors holding Allowed Impaired Claims are entitled to vote on the Plan. Under the Plan, an Allowed Claim consists of (i) any Claim, or portion thereof, against the Debtors which has been listed by the Debtors in their Schedules of Assets and Liabilities as liquidated in amount and not disputed or contingent, for which no contrary proof of claim has been filed and to which the Debtors or Reorganized Debtors or any other party in interest, as applicable, has not filed an objection within the time allowed for objections; (ii) any timely filed Claim to which the Debtors or Reorganized Debtors or any other party in interest, as applicable, has not filed an objection within the time allowed for objections; (iii) any timely filed Claim which has been allowed by a Final Order; or (iv) any timely filed Claim as to which the liability of the Debtors and the amount thereof have been determined by Final Order of a court of competent jurisdiction other than the Bankruptcy Court.

Under the Bankruptcy Code, votes on a plan are tallied by Class (*see* below discussion of the 7 different Classes of Claims for the Debtors' Plan). A Class of Claims either accepts a Plan or rejects a Plan and that determination is made by counting the votes cast by each Creditor that is voting in a particular Class. A Class will accept the Plan if (a) the Holders of at least two-thirds in dollar amount of the Allowed Claims actually voting have voted to accept the Plan, and (b) the Holders of more than one-half in number of the Allowed Claims actually voting have voted to accept the Plan.

#### 1.4.3 Eligibility to Vote.

Classes 1 through 6 are not Impaired under the Plan and therefore do not get to vote on the Plan. Class 7 (Unsecured Claims) is Impaired and each Holder of an Allowed Claim in Class 7 is entitled to vote either to accept or to reject the Plan. In this case, the Court set an August 10, 2016 deadline for the Debtors to object to Claims. The Debtors did not file any objections, and therefore all scheduled Claims and Claims supported by properly-filed Proofs of Claim are Allowed Claims under the Plan.

Only those votes cast by Holders of Class 7 Claims and received in accordance with the provisions of the Plan and any Order of the Bankruptcy Court establishing voting procedures shall be counted in determining whether acceptances have been received sufficient in number and amount to confirm the Plan.

In order to be confirmed, the Plan must be accepted by each Class that is impaired, except that a Plan can be confirmed notwithstanding a dissenting Class so long as the Plan is fair and equitable and does not discriminate unfairly with respect to the treatment of the dissenting Class. This means of obtaining confirmation of a plan is commonly referred to as a "cramdown." The Debtors reserve the absolute right to seek confirmation of the Plan through the cramdown process if the Plan cannot be confirmed consensually.

**Ballots must be returned on or before the voting deadline of \_\_\_\_\_, 2016, to the Clerk of the United States Bankruptcy Court, 219 South Dearborn Street, 7<sup>th</sup> Floor – Ballot Desk, Chicago, Illinois 60604. Additional ballots can be obtained by contacting the attorneys for the Debtors listed on the first page of this Disclosure Statement.**

#### 1.5. Liquidation Analysis.

The proponent of a Chapter 11 plan must set forth an analysis of the value that would be realized by Creditors in the event the debtor's assets are liquidated so that creditors and the Court can evaluate whether the plan provides creditors with a benefit. This is known as a "liquidation analysis." The Debtors' liquidation analysis is as follows:



Chart 2 – Liquidation Analysis				
Real Property				
Asset	Value	Secured Claim	Exemption	Costs of Sale <sup>2</sup>
Debtors' Residence	\$665,000.00	-\$600,481.61	-\$30,000.00	-\$53,200.00
Totals:	\$665,000.00	-\$600,481.61	-\$30,000.00	-\$53,200.00
Personal Property				
Asset	Value	Secured Claim	Exemption	Costs of Sale
2012 Chevrolet Corvette	\$30,000.00	-\$10,799.88	-\$2,400.00	
2011 BMW 328xi	\$16,000.00	-\$16,000.00 <sup>3</sup>		
Household goods and furnishings, electronics, collectibles, sporting and hobby equipment and clothing	\$6,400.00		-\$500.00	
Jewelry	\$3,000.00		-\$742.00	
Cash	\$2,052.00		-\$1,835.00	
Debtor in Possession Accounts	\$3,405.00		-\$2,257.00	
TD Ameritrade Account	\$3,166.00		-\$3,166.00	
Business Solutions Provider, Inc.	\$0.00			
401(k) Principal	\$197,589.50		-\$197,589.50	

<sup>2</sup> Costs of sale included here are estimates. For liquidation of the Debtors' Residence the Debtors have estimated an 8% cost of sale to cover commissions and other costs for closing including a real estate attorney, fees, etc. The costs of sale for all of the Debtors' miscellaneous personal property is more difficult to estimate. For vehicles, a 10% premium is typical at auction, here the Debtors' have estimated only \$2,500. However, even if all costs of sale were eliminated for the Debtors' personal property, the Debtors' Plan still proposes to pay more than Creditors would receive from a cost-of-sale-free Chapter 7.

<sup>3</sup> The full amount of Fifth Third's claim is \$18,828.79. However, for purposes of the Liquidation Analysis, Fifth Third's claim is considered secured only to the extent of the value of its collateral, \$16,000. The remainder of Fifth Third's claim, \$2,828.79 will be added to the total unsecured claims.

401(k) Vanguard	\$447,218.49		-\$447,218.49	
Retirement Annuity (Simona)	\$110,000.00		-\$110,000.00	
Retirement Annuity (Ilya)	\$27,000.00		-\$27,000.00	
401(k) Fidelity	\$108,030.77		-\$108,030.77	
SEP IRA: TD Ameritrade (Ilya)	\$0.01		-\$0.01	
SEP IRA: TD Ameritrade (Simona)	\$0.00		\$0.00	
Totals:	\$953,861.77	-\$26,799.88	-\$900,738.77	-\$2,500.00
<b>Summary</b>				
	Total Amount	Real Property	Personal Property	
Total Property Value	\$1,618,861.77	\$665,000.00	\$953,861.77	
Less: Secured Claims	-\$627,281.49	-\$600,481.61	-\$26,799.88	
Less: Exemptions	-\$68,000.00	-\$30,000.00	-\$900,738.77	
Less: Costs of Sale	-\$69,000.00	-\$53,200.00	-\$2,500.00	
Totals:	\$23,823.12	-\$18,681.61	\$23,823.12	
<b>Calculation of Hypothetical Chapter 7 Distribution</b>				
Value of Non-exempt Property:		\$23,823.12		
Less: Est. Ch. 7 Administrative Expenses:		-\$3,132.31 <sup>4</sup>		
Less: Priority Claims <sup>5</sup> :		\$0.00		
Total Available to General Unsecured:		\$20,690.81		

<sup>4</sup> A chapter 7 trustee would receive statutory commission equal to 25% of the first \$5,000 disbursed and 10% of the next \$45,000. In this Reorganization Case that equates to \$1,250 from the first \$5,000 and \$1,882.31 from the next \$18,823.12 for a total estimated trustee compensation of \$3,132.31.

<sup>5</sup> No priority claims have been filed in the Reorganization Case and so are listed as \$0.00 here, however, Professionals employed on behalf of the Debtors in this Reorganization Case would have a priority claim if this matter were to converted to a Chapter 7 at this time.

Total dollar amount of Unsecured Claims:	\$580,512.27
Percent Distribution:	3.56%

**1.6. Best Interests of Creditors Test.**

1.6.1 In order to be confirmed by a bankruptcy court over the objection of a dissenting creditor, a reorganization plan must meet the “best interests of creditors test.” To meet this test, the plan proponent must show that creditors will receive under the applicable plan at least as much as they would receive if the debtor were liquidated in a hypothetical proceeding under Chapter 7 of the Bankruptcy Code. If the plan proponent can make that type of showing, the plan is deemed to be in the best interests of creditors because it is better than the alternative (i.e., liquidation).

The Debtors believe the Plan meets the “best interests test” because Creditors are likely to recover more under the Plan, and sooner, than they would recover if the Debtors’ assets were liquidated under chapter 7. As set forth above in the Liquidation Analysis above, if the Debtors’ assets were liquidated, the Holders of Allowed Unsecured Claims could potentially receive up to 3.58% on account of such Claims. Conversely, under the Plan, the Holders of Allowed Unsecured Claims will receive approximately 6.00% of what they are owed if the Plan is confirmed.

**1.7. Future Income**

Section 1129(a)(15) of the Bankruptcy Code provides that in the event the Holder of an Allowed Unsecured Claim objects to the Plan, then the Plan can be confirmed only if such Holder receives property with a value as of the Effective Date of the Plan equal to their Allowed Unsecured Claim or the Debtors’ dedicate their projected disposable income over a 5-year period to make plan payments.

A detailed calculation of the Debtors’ projected disposable income in accordance with §1325(b)(2) is attached as **Exhibit 1**. The Debtors’ projected disposable income is \$547.34 per month, for a total of \$32,840.40 when calculated over 60 months. The Debtors’ propose to contribute \$35,000 to repayment of Holders of Allowed Unsecured Claims – an amount in excess of their projected disposable income.

Currently, the Debtors’ income consists of the wages they receive from their respective employments as an IT Director and a Pharmacist which they expect to continue into the foreseeable future. The Debtors anticipate returning their future budget to a break even basis by reducing or eliminating the expenses they pay for their children in college except for the vehicle payments. The vehicles are necessary for the children in college and although the children may obtain loans to cover their tuition and living expenses, the children will not be able to take over the vehicle obligations. Nevertheless, this represents a substantial reduction in the expenses the Debtors are paying for their children. Additionally, the Debtors will reduce their Personal expenditures on flexible budget items such as food and housekeeping supplies and

clothing, laundry and dry cleaning costs. A copy of the Debtors' Schedule I and Projected Schedule J are attached as Exhibit 2. As reduced, the Debtors will live on a break-even basis and be able to pay the outstanding obligations to Secured Claims.

### **1.8. Feasibility and Risk Factors**

1.8.1 Feasibility. Although they are not required to do so, the Debtors are will contribute \$35,000 in Cash to fund distributions under the Plan. This is greater than the Debtors' projected disposable income over the next sixty (60) months, from otherwise exempt assets for distribution to Class 7 Claims. The Debtors believe that this contribution of Cash from otherwise exempt assets ensures the feasibility of the Plan. Due the reduction of their Personal expenses discussed above, the Debtors will live on a break-even basis and be able to pay the outstanding obligations to Secured Claims.

1.8.2 Risk Factors. The only likely risk is the Debtors' potential loss of employment at some point during the sixty (60) months following the Effective Date. The Debtors have been continuously employed with their current employers for over a decade and do not anticipate losing their jobs during the term of this Plan.

## **ARTICLE 2. ADMINISTRATIVE AND PRIORITY CLAIMS.**

2.1. Unclassified Claims. Pursuant to § 1123 of the Bankruptcy Code, except for certain claims entitled to priority, a plan must classify all claims into one or more classes. Section 1123 further provides that only those claims that are substantially similar may be placed in the same class.

In accordance with § 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims have not been classified, and the treatment of such unclassified Claims is set forth immediately below. An administrative expense claim is a claim that arose after the bankruptcy filing in favor of a Creditor who has provided goods or services to the debtor during his/her stay in bankruptcy (*i.e.*, from the petition date to the effective date of a plan).<sup>6</sup>

In the ordinary course of the Debtors' financial affairs, the Debtors have been paying their ongoing expenses and intend to do so post-confirmation and thus do not believe there will be any material non-ordinary course Administrative Expense Claims at the time of confirmation of the Plan, other than those in favor of the Professionals the Debtors retained during the Reorganization Case.

### **2.2. Treatment of Unclassified Claims.**

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<sup>6</sup> Priority claims are also unclassified but there are no Priority Claims filed or scheduled in this Case.

2.2.1 Administrative Expense Claims.

2.2.1.1. *Ordinary course claims.* Except as otherwise expressly provided for in the Plan, the Debtors shall pay Administrative Expense Claims incurred in the ordinary course of the Debtors' financial affairs in the ordinary course, and where applicable, according to the existing credit terms in effect between the Debtors and the Holders of such Claims.

2.2.1.2. *Other Administrative Claims.* All other Administrative Expense Claims, including Professional Fee Claims, shall be paid within 30 days of the later of (i) the Effective Date, (ii) the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or (iii) the date such Administrative Expense Claim becomes payable pursuant to any agreement between the Debtors or the Reorganized Debtors and the Holder of such Administrative Expense Claim.

2.2.2 *Deadline for Filing Administrative Expense Claims.* Except as otherwise provided by any Order entered in the Reorganization Case or the Plan and except for Administrative Expense Claims incurred in the ordinary course of the Debtor's business, the deadline for any Entity to assert an Administrative Expense Claim shall be 30 days after the entry of the Confirmation Order. Claims that are required to be filed within that time frame and are not so filed shall be deemed untimely and shall not be entitled to a distribution under the Plan.

**ARTICLE 3. CLASSIFICATION OF CLAIMS AND INTERESTS.**

3.1. **Classification Rationale.** A reorganization plan must place different types of claims in separate classes and must specify the treatment given to each class. In this Reorganization Case, the Debtors' Plan contains 7 Classes of Claims. These Classes of Claims are explained below.

3.2. **Classification of Claims and Interests.**

3.2.1 *Class 1: CitiMortgage Secured Claim.* Class 1 consists of the Secured Claim relating to the Debtors' Residence in favor of CitiMortgage.

3.2.2 *Class 2: US Bank Secured Claim.* Class 2 consists of the Secured Claim relating to the Debtors' Residence in favor of U.S. Bank.

3.2.3 *Class 3: Ally Secured Claim.* Class 3 consists of the Secured Claim relating to the Debtors' 2012 Chevrolet Corvette in favor of Ally Financial.

3.2.4 *Class 4: Fifth Third Secured Claim.* Class 4 consists of the Secured Claim relating to the Debtors' 2011 BMW 328xi in favor of Fifth Third Bank.

3.2.5 *Class 5: Daimler Secured Claim.* Class 5 consists of the Secured Claim relating to the Debtors' 2014 Mercedes E350 in favor of Daimler.

3.2.6 *Class 6: Nissan Secured Claim.* Class 6 consists of the Secured

Claim relating to the Debtors' 2014 Nissan Murano in favor of Nissan.

3.2.7 *Class 7: Unsecured Claims.* Class 7 consists of all Allowed Unsecured Claims arising prior to the Petition Date, except to the extent any such Unsecured Claim is specifically included within another class.

#### **ARTICLE 4. TREATMENT OF CLAIMS AND INTERESTS.**

4.1. **Unimpaired Classes.** Classes 1, 2, 3, 4, 5 and 6 are not impaired, and Holders of Claims in this Classes are not entitled to vote on the Plan.

4.1.1 *Class 1: CitiMortgage Secured Claims.* CitiMortgage shall retain any and all rights and remedies it has against the Debtors and Debtors' Residence under applicable law, and shall be paid in full through monthly principal and interest payments of \$2,562.12 as contractually agreed between CitiMortgage and the Debtors.

4.1.2 *Class 2: US Bank Secured Claims.* US Bank shall retain any and all rights and remedies it has against the Debtors and Debtors' Residence under applicable law, and shall be paid in full through monthly principal and interest payments of approximately \$500.00 as contractually agreed between U.S. Bank and the Debtors.

4.1.3 *Class 3: Ally Secured Claims.* Ally shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2012 Chevrolet Corvette under applicable law, and shall be paid in full through monthly principal and interest payments of \$899.99 as contractually agreed between Ally and the Debtors.

4.1.4 *Class 4: Fifth Third Secured Claims.* Fifth Third shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2011 BMW 328xi under applicable law, and shall be paid in full through monthly principal and interest payments of \$340.14 as contractually agreed between Fifth Third and the Debtors.

4.1.5 *Class 5: Daimler Secured Claims.* Daimler shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2014 Mercedes E350 under applicable law, and shall be paid in full through monthly principal and interest payments of \$556.85 as contractually agreed between Daimler and the Debtors.

4.1.6 *Class 6: Nissan Secured Claims.* Nissan shall retain any and all rights and remedies it has against the Debtors and the Debtors' 2014 Nissan Murano under applicable law, and shall be paid in full through monthly principal and interest payments of \$550.00 as contractually agreed between Nissan and the Debtors.

4.2. **Treatment of Impaired Class.** Class 7 is impaired, and Holders of Allowed Claims in this class are entitled to vote to accept or reject the Plan. The treatment is as follows:

In full satisfaction thereof, Holders of Allowed Class 7 Unsecured Claims shall

receive their pro rata share of \$35,000 in Cash, as a single distribution to be paid within sixty (60) days of the Effective Date of this Plan. The amount to be distributed to Holders of Allowed Class 7 Claims is greater than the Debtors' projected disposable income over the next sixty (60) months.

#### **ARTICLE 5. MEANS FOR EXECUTING THE PLAN.**

In order to be confirmed, a reorganization plan must provide a means for its implementation. In this instance, the Debtors intend to implement the Plan by taking the following steps:

- Making a withdrawal from one or more retirement account(s) to obtain the Cash to make a single distribution to Holders of Class 7 Claims.
- Making monthly payments to holders of Secured Claims.
- Paying expenses of administering the Plan;
- Employing and compensating professionals.

All of the Debtors' Assets will vest in the Reorganized Debtors on the Effective Date of the Plan free and clear of all liens, Claims, encumbrances and interests, except as otherwise provided in the Plan (i.e., Secured Creditors will maintain their liens).

#### **ARTICLE 6. DELIVERY OF DISTRIBUTIONS UNDER PLAN.**

6.1. The Debtors shall make a single distribution to Holders of Class 7 Claims by mailing checks in the amounts to which they are entitled under the Plan to: (a) the primary address set forth on the Proof of Claim filed by such Holders; (b) at the address set forth in any written notices of address change filed with the Bankruptcy Court or delivered to the Reorganized Debtors after the date of any related Proof of Claim; or (c) at the address reflected on the Debtors' Schedules of Assets and Liabilities if no Proof of Claim is filed and no notice of a change of address has been filed or delivered to the Reorganized Debtors.

6.2. The Plan further provides that no Cash [ARE THEY SENDING CASH OR CHECKS – IS CHECKS, SAY DISTRIBUTION HERE] payment of less than five dollars (\$5.00) will be made by the Reorganized Debtors to any Holder of an Allowed Claim. The amount of all distributions that otherwise call for a fraction of a cent shall be rounded to the nearest cent up or down with half cents or less being rounded down.

6.3. Also, the Reorganized Debtors shall hold onto all distributions that have been returned as undeliverable until the Creditor that is entitled to such distribution notifies the Reorganized Debtors in writing of a new address, in which case the Reorganized Debtors shall mail the distribution and any further distributions to the

new address for such Creditor. Notwithstanding the preceding, if the Creditor entitled to such distribution does not notify the Reorganized Debtor in writing of a new address within one year of the applicable date of a distribution, then such Creditor shall become a Lost Creditor with respect to such distribution. Nothing contained in the Plan shall require the Debtor or the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim. Section 8 of the Plan provides further details about the procedures for dealing with Lost Creditors.

6.4. To the extent applicable, the Debtors/Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

## **ARTICLE 7. PROVISIONS RELATED TO EXECUTORY CONTRACTS, UNEXPIRED LEASES AND OTHER MATTERS.**

7.1. Generally speaking, an executory contract is a pre-bankruptcy contract with the debtor which contains material unperformed obligations on the part of the debtor and the other party to the contract. An obligation is material if the failure to perform it relieves the other party of its corresponding obligations or duties under the contract.

7.2. The Bankruptcy Code allows the debtor to reject executory contracts and to cease performing thereunder. The other party to the executory contract then has a prepetition claim for the breach. As indicated in the Debtors' Schedules, the Debtors believe they are a party to two executory contracts with Daimler and Nissan which the Plan deems assumed. To the extent any other executory contracts exist, the Plan provides that such contracts shall be deemed rejected by the Debtors unless such contract or lease is (i) expressly assumed by the Debtors with Bankruptcy Court approval on or before the Effective Date, (ii) is the subject of a motion to assume pending on the Effective Date, or (iii) is identified on a list to be filed with the Bankruptcy Court, on or before the Confirmation Order Date, as to be assumed.

7.3. In the event that after the Effective Date a party to an alleged executory contract or unexpired lease contends that such contract or lease was deemed rejected by operation of the Plan, the Reorganized Debtors (i) have the right to dispute such contention and to seek an Order from the Court regarding whether such contract or lease was executory or unexpired and (ii) has the right to assume such lease or contract if it is determined by the Court that such contract or lease is executory or unexpired.

7.4. The Plan further provides that if an executory contract or unexpired lease is rejected as of the Effective Date pursuant to the Plan, the non-debtor party to the executory contract or lease may file a Proof of Claim for damages by reason of the rejection. Any Proof of Claim with respect to Claims under an executory contract or unexpired lease that has been rejected must be filed with the Court within 30 days



after the date of the rejection. A Claim under an executory contract or unexpired lease which has been rejected shall constitute a Class 7 Claim, as limited by the provisions of sections 502(b)(6) and 502(b)(7) of the Code and state law mitigation requirements. Nothing contained herein shall be deemed an admission that such rejection gives rise to, or results in, a Claim, or deemed a waiver by the Reorganized Debtors of any objections to such Claims if asserted.

## **ARTICLE 8. DISCHARGES AND RELEASES.**

8.1. Consistent with the Bankruptcy Code, the Plan contains certain releases and discharges in favor of the Debtors and those assisting the Debtors in their efforts to reorganize. Thus, as specified in § 1125(e) of the Bankruptcy Code, the Plan provides that Persons that solicit acceptances or rejections of the Plan are not liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

8.2. Furthermore, upon the Effective Date of the Plan, the provisions of the Plan shall bind all Persons to the fullest extent permitted under applicable law, expressly including, without limitation, all Holders of Allowed Claims, *whether or not they accept the Plan or have filed a Claim*.

8.3. The Plan also contains a broad release and discharge in favor of the Debtors/Reorganized Debtors, which generally provides that all Persons, including the Holders of Claims, are deemed to unconditionally and irrevocably release and discharge the Debtors/ Reorganized Debtors from any and all Claims, obligations, guarantees, suits, judgments, damages, rights, causes of action or liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Claim of such Person against the Debtors or any other matter in any way related to, or arising from, the Debtors or the operation of the Debtors, the administration of the Reorganization Case, or the negotiation, preparation, formulation, solicitation, dissemination, implementation, confirmation and consummation of the Plan upon completion of this Plan.

8.4. Finally, the Plan enjoins all entities, including but not limited to, all of the Debtors' Creditors (present, future, contingent, non-contingent, matured, unmatured, secured, unsecured, asserted, unasserted, liquidated or unliquidated), and their respective successors and assigns, including any trustee subsequently appointed, from asserting, commencing or continuing in any manner any action, encumbrance, lien, setoff, Claim, or right of recoupment, against the Debtors, the Reorganized Debtors or any property of the foregoing, related in any manner to any matter occurring prior to the Effective Date of the Plan upon completion of this Plan.

## ARTICLE 9. EXPLANATION OF OTHER PLAN PROVISIONS.

The Plan also contains certain other provisions that bear upon its implementation and execution, as well as the rights and obligations of the Debtors and Creditors under the Plan. The following is a list of the provisions that the Debtors believe might be relevant to a Creditor's decision to vote for or against the Plan:

9.1. **Post-Confirmation Jurisdiction**. The Plan provides that the Bankruptcy Court shall retain post-confirmation jurisdiction to hear and determine a variety of matters, including matters related to the implementation and construction of the Plan, the treatment of Claims under the Plan, and the resolution of objections to Claims. The effect of these provisions is that most, if not all, disputes related to Claims or involving the Debtors and Creditors or the Debtors' Assets will be heard in the Bankruptcy Court, but only to the extent that the Bankruptcy Court has proper jurisdiction under applicable law to hear such matters.

9.2. **Plan Modifications**. The Bankruptcy Code allows a Debtors to amend a plan under certain conditions, including after the Plan has been confirmed. In this case, the Plan reserves the Debtors' rights to modify the Plan. In addition, the Plan also provides that subsequent to the Effective Date and substantial consummation of the Plan, the Reorganized Debtors may modify the treatment provided under the Plan to any Class of Claims, provided that the Holders of Claims in such Class approve the modification in a writing sent to all Holders of Claims in such Class which sets forth the proposed modification. The Debtors shall have obtained consent to a proposed Plan modification if a majority of Holders of the Claims in each affected Class approve the modification in writing and such majority accounts for more than 66% of the value of the Claims in the affected Class or Classes.

9.3. **The Effective Date**. The date that a plan is confirmed is not necessarily the date that the plan becomes effective. In this case, the Effective Date of the Plan shall not occur unless and until the Confirmation Order approves the Plan, is signed by the Bankruptcy Court and entered upon the docket in the Reorganization Case and becomes a Final Order in that it is no longer subject to appeal or has not been appealed.

9.4. **Payment of Statutory Fees**. The Plan provides that all fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing pursuant to § 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date.

Dated: September 2, 2016

Respectfully submitted,

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