

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

IN RE:

ENDLESS POSSIBILITIES, LLC

Case No. 15-42927-11

Debtor(s).

Small Business Case under Chapter 11

**ENDLESS POSSIBILITIES, LLC THIRD AMENDED COMBINED PLAN AND  
DISCLOSURE STATEMENT, DATED OCTOBER 31, 2016**

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Respectfully Submitted:

EVANS & MULLINIX, P.A.

/s/ Colin N. Gotham

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## I. INTRODUCTION

This is the combined Plan and Disclosure Statement (for ease of reference, the combined Plan and Disclosure Statement will be referred to as the "Plan") in the small business chapter 11 case of Endless Possibilities (the "Debtor"). This Plan is filed under chapter 11 of the Bankruptcy Code (the "Code") and proposes to pay creditors of the Debtor from cash flow from operations. This Plan provides for three class of secured claims; one class of unsecured claims; and one class of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately thirty (30) cents on the dollar. The proposed distributions are discussed at pages 4-10 of this Plan. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Article III of this Plan for information regarding the precise treatment of their claims.

This Plan also provides detailed information regarding the terms for payment of the Debtor's creditors and other information designed to assist creditors and equity security holders in determining whether to accept the Plan. *Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)*

### A. Purpose of This Document

This Plan describes:

- The Debtor and significant events during the bankruptcy case.
- Historical information regarding the Debtor and the events leading to its bankruptcy filing.
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the Plan is confirmed).
- Who can vote on or object to the Plan.
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan.
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation.
- The effect of confirmation of the Plan.

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

The Court has not yet confirmed the Plan. This section describes the procedures under which the Plan will or will not be confirmed.

#### 1. Time and Place of the Hearing to Confirm the Plan/Approve Adequate of Disclosure Statement

The hearing at which the Court will consider confirmation of the Plan and determination of the adequacy of disclosure set forth in the Plan will take place on (DATE TO BE DETERMINED BY COURT), in Courtroom 6552 at the Charles Evans Whittaker Courthouse, 400 E. Ninth Street, Kansas City, MO 64106.

2. **Deadline For Voting to Accept or Reject the Plan**

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Colin Gotham, 7225 Renner Road, Ste 200, Shawnee, KS 66217. See section IX.B. below for a discussion of voting eligibility requirements. Your ballot must be received by DATE TO BE DETERMINED BY COURT or it will not be counted.

3. **Deadline For Objecting to the Adequacy of Disclosure and Confirmation of the Plan**  
Objections to the adequacy of the disclosures stated in this Plan and to confirmation of the Plan must be filed with the Court and served upon Colin Gotham, attorney of the Debtor, by DATE TO BE DETERMINED BY COURT.

4. **Identity of Person to Contact for More Information**

If you want additional information about the Plan, you should contact Colin N. Gotham, 7225 Renner Rd., Ste. 200, Shawnee, KS 66217.

## II. **BACKGROUND**

### A. **Description and History of the Debtor's Business**

The Debtor is a Missouri Limited Liability Company. Since 1998, the Debtor has been in the business of daycare and children's education.

### B. **Insiders of the Debtor**

Wolfgang Shields, Member and sole owner of Debtor. Mr. Shields was paid \$0.00 in 2014, \$7,500.00 in 2015, and \$23,100.00 in 2016.

### C. **Management of the Debtor Before and During the Bankruptcy**

During the two years before the Debtor's bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively, the "Managers") were Wolfgang Shields.

The Managers of the Debtor during the Debtor's chapter 11 case have been: Wolfgang Shields.

### D. **Events Leading to the Debtor's Chapter 11 Filing**

The Debtor was facing foreclosure attempts from its real estate lender and ongoing litigation with the Department of Labor.

### E. **Significant Events During the Bankruptcy Case**

- Debtor entered into four cash collateral orders with ReadyCap Lending, LLC.
- Colin N. Gotham was appointed the attorney for the Debtor.
- The bar date of March 31, 2016 was established.
- The Debtor has improved operations and profitability by increased revenue post Great Recession and no longer involved in costly litigation.
- The Debtor has objected to various proof of claims.

### F. **Projected Recovery of Avoidable Transfers**

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you

received a payment or other transfer within 90 days of the bankruptcy or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

#### **G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are stated in Article IV of the Plan.

#### **H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in **Exhibit A**. The land and buildings are valued based on the opinion of the Debtor and the Jackson County Appraiser's Office, and the personal property is valued at used replacement cost as best determined by the Debtor

The Debtor's did not maintain prepetition financial statements, but the Debtor has attached its 2013, 2014 and 2015 tax returns as **Exhibit B**. The Debtor anticipates increased income going forward because the rates from its primary customer, State of Missouri Family Support Division, increased effective July 1, 2016 by ten (10) percent. The increase appears on child care payments made in September 2016 and later. The Debtor's business is also located in an economically depressed area, but the area is being reinvigorated with a large investment from private enterprise which will help drive increased revenue. The Three Trials development will improve customer base and revenue. The Debtor also have restarted Saturday care services which will further increase revenue by approximately \$50,000 per year. The increased revenue is realistic because of the past history. The owner of the Debtor also resolved personal issues which has resulted in better business performance.

A summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in **Exhibit D**.

### **III. THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

#### **A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

#### **B. Explanation of Classes of Claims and Equity Interests**

##### **1. Classes of Secured Claims**

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under Code § 506. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim unless specific treatment is otherwise provided.

##### **2. Classes of Priority Unsecured Claims**

Certain priority claims that are referred to in Code §§ 507(a)(1), (4), (5), (6), and (7) are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

3. **Classes of General Unsecured Claims**

General unsecured claims are not secured by property of the estate and are not entitled to priority under Code § 507(a).

4. **Classes of Equity Interest Holders**

Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

**C. Overview - Treatment of Claims and Interests under Plan**

Claims and interests are treated as follows under this Plan:

| Class   | Impairment | Treatment   |
|---|------------|---|
| Class 1 – Priority Claims                           | Impaired   | Class 1 is impaired and shall be paid over five years with equal monthly installments of \$2,235.00 beginning March 1, 2017. Debtor shall pay interest at 4%.   |
| Class 2 – Secured Claim of ReadyCap Lending, LLC    | Impaired   | Class 2 is impaired and will be paid a monthly principal and interest payment of \$1,733.00 beginning March 1, 2017. The amount of the debt is \$219,195.15 and will be paid 5% interest with 15 year amortization with the entire balance due March 1, 2022, which debt is secured by a deed of trust on Debtor's real property. |
| Class 3 – Secured Claim of Internal Revenue Service | Impaired   | Debtor shall pay the secured claim of the IRS in the maximum principal amount of \$20,000.00 with 4% interest with sixty monthly installments of \$368.00 per month beginning March 1, 2017.  |
| Class 4 – Secured Claim of Jackson County, MO       | Impaired   | Class 4 is impaired and shall be paid over five years with a monthly principal and interest payment of \$423.00 beginning March 1, 2017 with remaining balloon payment on March 1, 2022. Debtor shall pay interest at 18% pursuant to RSMO 141.010.   |
| Class 5 – General Unsecured Creditors               | Impaired   | Class 5 is impaired and shall be paid over ten years with a monthly payment of \$625.00 beginning March 1, 2022 and continuing the first day of each month thereafter for ten years until a total of \$75,000.00 is paid.   |
| Class 6 – Equity Security Holders of the Debtor     | Impaired   | The equity security holders, Wolfgang Shields, shall retain his ownership in the Debtor.  |

**D. Treatment of Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. Accordingly, the Plan Proponent has not placed the following claims in any class:

1. Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under Code § 507(a)(2). Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that each administrative expense claim be paid on the effective date of the Plan, unless the holder of the claim agrees to a different treatment. As reflected below, each holder of an administrative expense claim allowed under Code § 503 will be

paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

The following chart lists the Debtor's estimated administrative expenses and their treatment under this Plan:

| Type   | Estimated Amount Owed | Proposed Treatment   |
|--|-----------------------|--|
| Expenses Arising in the Ordinary Course of Business After the Petition Date                            | \$0.00                | Paid in full on the effective date of the Plan, or according to terms of obligation if later   |
| The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date | \$0.00                | Paid in full on the effective date of the Plan, or according to terms of obligation if later   |
| Professional Fees, as approved by the Court  | \$10,000.00           | Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan |
| Clerk's Office Fees  | \$0.00                | Paid in full on the effective date of the Plan   |
| Other administrative expenses  | \$0.00                | Paid in full on the effective date of the Plan or according to separate written agreement  |
| Office of the U.S. Trustee Fees  | \$975.00              | Paid in full on the effective date of the Plan   |
| <b>TOTAL</b>   | <b>\$10,975.00</b>    |  |

2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by Code § 507(a)(8). Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

| Description<br>(name and type of tax) | Estimated Amount Owed | Treatment |
|---------------------------------------|-----------------------|-----------|
|---------------------------------------|-----------------------|-----------|

|                                |              |   |
|--------------------------------|--------------|---|
| Internal Revenue Service       | \$113,909.81 | Pmt interval = monthly<br>monthly payment = \$2098.00<br>Begin date = 3/1/2017<br>End date = 3/1/2022<br>Interest Rate = 4%<br>Total Payout Amount = \$125,865.00 |
| MO Div. of Employment Security | \$1,728.69   | Pmt interval = monthly<br>Monthly payment = \$32.00<br>Begin date = 3/1/2017<br>End date = 3/1/2022<br>Interest Rate = 4%<br>Total Payout Amount = \$1890.00      |
| City of Kansas City, MO        | \$5,720.54   | Pmt interval = monthly<br>Monthly payment = \$105.00<br>Begin date = 3/1/2017<br>End date = 3/1/2022<br>Interest Rate = 4%<br>Total Payout Amount = \$6,300.00    |

**E. Treatment of Classified Claims and Interests.**

1. Class 1: Priority Claims.

All allowed claims entitled to priority under Code § 507 and priority tax claims under Code § 507(a)(8)) will be paid in regular installments paid over a period not exceeding 5 years from the order of relief with interest from confirmation at 4% interest.

2. Class 2: Secured Claim of Ready Cap Lending, LLC.

The claim of ReadyCap Lending, LLC, to the extent allowed as a secured claim under Code § 506 will be paid as follows: Monthly principal and interest payment of \$1,733.00 beginning March 1, 2017. The amount of the debt is \$219,195.15 and will be paid 5% interest with the entire balance due March 1, 2022.

3. Class 3: Secured Claim of Internal Revenue Service.

Debtor shall pay the secured claim of the IRS in the maximum principal amount of \$20,000.00 with 4% interest with sixty monthly installments of \$368.00 per month beginning March 1, 2017.

4. Class 4: Secured Claim of Jackson County, Missouri

The claim of Jackson County, Missouri shall be paid over five years with a monthly principal and interest payment of \$423.00 beginning March 1, 2017 with remaining balloon payment on March 1, 2022. Debtor shall pay interest at 18% pursuant to RSMO 141.010.

5. Class 5: All Unsecured Claims Allowed Under Code § 502.



Unsecured claims allowed under Code § 502 (other than Class 1 Priority Claims) shall be paid over ten years with a monthly payment of \$625.00 beginning March 1, 2022 and continuing the first day of each month thereafter for ten years until a total of \$75,000.00 is paid.

6. Class 6: Equity Interests in the Debtor.

The equity security holders, Wolfgang Shields, shall retain his ownership in the Debtor.

#### **F. TREATMENT OF U.S. TRUSTEE FEES**

All fees required to be paid by 28 U.S.C. § 1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

#### **IV. ALLOWANCE AND DISALLOWANCE OF CLAIMS**

##### **A. Disputed Claims**

A disputed claim is a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or liquidated.

No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order.

##### **B. Settlement of Disputed Claims**

The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

#### **V. PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **A. Assumed Executory Contracts and Unexpired Leases**

The Debtor assumes the following executory contracts and/or unexpired leases effective upon the effective date of this Plan: None

Assumption means that the Debtor has elected to continue to perform the obligations under such executory contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. **Exhibit C** also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

##### **B. Rejected Executory Contracts and Unexpired Leases**

The Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases that (a) are not expressly assumed under section V.A. of this Plan or (b) were not assumed

under a separate motion before the effective date of this Plan. A proof of a claim arising from the rejection of an executory contract or unexpired lease under section V.A. of this Plan must be filed no later than thirty days after the effective date of this Plan. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

All executory contracts and unexpired leases that are not listed as being assumed will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases. If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

## **VI. GENERAL PROVISIONS**

### **A. Definitions and Rules of Construction**

The definitions and rules of construction stated in Code §§ 101 and 102 apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions.

### **B. Effective Date of Plan**

The effective date of this Plan is the later of March 1, 2017 or the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, unless the confirmation order has been vacated.

### **C. Severability**

If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

### **D. Binding Effect**

The rights and obligations of any entity named or referred to in this Plan will be binding upon and will inure to the benefit of the successors or assigns of such entity.

### **E. Captions**

The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

## **VII. OTHER PROVISIONS**

None

## **VIII. MEANS OF IMPLEMENTING THE PLAN**

### **A. Source of Payments**

Payments and distributions under the Plan will be funded by the following: Debtor's ongoing operations.

### **B. Post-Confirmation Management**

The Post-Confirmation Managers of the Debtor, and their compensation, will be as follows:

| Name             | Affiliations | Insider (yes or no) | Position | Compensation         |
|------------------|--------------|---------------------|----------|----------------------|
| Wolfgang Shields | Owner        | Yes                 | Manager  | \$3,200.00 per month |

**C. Risk Factors**

The proposed Plan has the following risks:

General overall economy and ability to parents to pay for child services.

Increase in costs like taxes and insurance.

Ability to retain employees.

Interruption in payment by government agencies.

**D. Tax Consequences of Plan**

Creditors and equity interest holders concerned with how the Plan may affect their tax liability should consult with their accountants, attorneys, or advisors. The following are the anticipated tax consequences of the Plan:

**(1) Tax consequences to the Debtor of the Plan.** The proposed to pay 100% of the creditors in full so the impact to the Debtor shall be minimal. The exact effect of the proposed Plan on Creditors depends upon the specific modification proposed regarding each Creditor's debt and manner in which the Creditors have previously accounted for such debt. Accordingly, each Creditor must individually analyze the impact of the proposed Plan on its debt and the Debtor makes no representations concerning the impact of the Plan on its Creditors.

**Cancellation of Debt (COD).** COD income is generally defined as the excess of the adjusted issue price of the outstanding debt over the amount paid to repurchase such debt. The Internal Revenue Code (I.R.C.) Section 108 sets forth the rules involving COD income. Under I.R.C. § 108 COD income is excluded from gross income to the extent that a taxpayer is insolvent before and after the COD, or it is excluded in full without regard to insolvency if the taxpayer Debtor is in Chapter 11. Under the Plan all unsecured Creditors will receive 100% distribution. Accordingly, the COD income which may be excluded from taxation under I.R.C. § 108, should be minimal.

**Debt Restructuring.** Restructuring of debt, even if the face amount of the debt is unchanged, may also create COD income, depending on the nature and extent of modifications. If the modifications of debt are sufficiently material in the aggregate under IRS promulgations and case law, then the old debt instruments will be deemed to be exchanged for new instruments, creating a taxable event. It does not currently appear that the Debtor has any such instruments that would require a restructuring or modification.

**Attribute Reduction.** The price for exclusion of COD income is the reduction of tax attributes. Under I.R.C. Section 108(b) tax attributes, to the extent of excluding COD income, are reduced in the following order:

Net operating losses for the current taxable year and the Debtor's NOL carryovers on a dollar for dollar basis;

Business tax credits (multiplied by three to create a loss equivalency);

Minimum tax credits;  
Capital loss carryovers;  
Basis reduction for real and personal property;  
Passive activity loss and credit carryovers; and  
Foreign tax carryovers.

Thus the projected net operating losses may be reduced by projected COD income, but the exact amount of this attribute reduction, if even applicable to the Debtor, cannot be determined until tax returns are completed and the amount of cancellation of debt income becomes more crystallized.

**(2) Tax consequences to the creditors.** Both secured and unsecured Creditors may be either required to recognize income or allowed a deduction as a result of the implementation of the Plan. The exact tax treatment depends on each Creditor's method of accounting, the nature of each Creditor's Claim, the property being received and exchanged for such Claim, if any, and whether and to what extent such Creditor has taken a bad debt deduction in prior taxable years with respect to a particular debt owed to it by the Debtor.

EACH HOLDER OF A CLAIM, WHETHER SECURED OR UNSECURED, IS URGED TO CONSULT WITH ITS TAX ADVISORS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE TREATMENT OF ITS CLAIM UNDER THIS PLAN.

## **IX. CONFIRMATION REQUIREMENTS AND PROCEDURES**

### **A. Overview of Requirements**

To be confirmable, the Plan must meet the requirements listed in Code §§ 1129(a) or (b). These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in Code § 1129, and they are not the only requirements for confirmation.

### **B. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

### **C. What Is an Allowed Claim or an Allowed Equity Interest?**

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a

claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court overrules the objection or allows the claim or equity interest for voting purposes under Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was March 31, 2016.

**D. What Is an Impaired Claim or Impaired Equity Interest?**

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in Code § 1124, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

**E. Who is Not Entitled to Vote**

The following types of creditors and equity interest holders are not entitled to vote:

1. Holders of Claims and equity interests that have been disallowed by an order of the Court.
2. Holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
3. Holders of claims or equity interests in unimpaired classes.
4. Holders of claims entitled to priority pursuant to Code §§ 507(a)(2), (a)(3), and (a)(8).
5. Holders of claims or equity interests in classes that do not receive or retain any value under the Plan.
6. Holders of administrative expenses.

Even if you are not entitled to vote on the plan, you have a right to object to the confirmation of the plan.

**F. Who Can Vote in More Than One Class**

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**G. Votes Necessary to Confirm the Plan**

If impaired classes exists, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed below in section G.2.

**1. Votes Necessary for a Class to Accept the Plan**

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

**2. Treatment of Nonaccepting Classes**

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by Code § 1129(b). A Plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for

consensual confirmation except the voting requirements of Code § 1129(a)(8), does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

#### **H. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as **Exhibit E**.

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to as **Exhibit F**.

#### **K. Ability to Make Future Plan Payments And Operate Without Further Reorganization**

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. The Plan Proponent has provided projected financial information. Those projections are listed in **Exhibit G**. The final Plan payment is expected to be paid on March 1, 2032.

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

### **X. EFFECT OF CONFIRMATION OF PLAN**

#### **A. Discharge**

On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in Code § 1141(d)(1)(A), except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in Code § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in Code § 1141(d)(b)(8).

#### **B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

#### **C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the

case. Alternatively, the Court may enter such a final decree on its own motion.

/s/ Wolfgang Shields

Wolfgang Shields, Member

/s/ Colin N. Gotham

Colin N. Gotham, Attorney for the Debtor