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5 **UNITED STATES BANKRUPTCY COURT**
6 **DISTRICT OF NEVADA**

<p>7 In re:</p> <p>8 HUBERTO OCHOA,</p> <p>9 Debtor.</p>	<p>BK-S-16-10463-abl</p> <p>DEBTOR'S DISCLOSURE STATEMENT RE: DEBTOR'S PLAN OF REORGANIZATION – PLAN # 1</p> <p>Hearing Date: TBD Hearing Time: TBD</p>
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1 **1. INTRODUCTION**

2 This Disclosure Statement contains information about HUBERTO OCHOA (the “Debtor”),
3 and describes the Debtor’s Plan of Reorganization - Plan # 1 (the “Plan”). Article 5 of this
4 Disclosure Statement contains a summary of the Plan including class treatment and distributions. A
5 full copy of the Plan is attached hereto as Exhibit 1 and also filed separately on the case docket.

6 *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully*
7 *and discuss them with your attorney. If you do not have an attorney, you may wish to consult*
8 *one.*

9 **1.1. Purpose of This Document.** This Disclosure Statement¹ is submitted pursuant to 11 U.S.C.
10 §1125² and describes:

- 11 • The Debtor and significant events during the bankruptcy case,
- 12 • How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you
- 13 • Who can vote on or object to the Plan,
- 14 • What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to
- 15 • Why the Plan proponent believes the Plan is feasible, and how the treatment of your claim
- 16 • The effect of confirmation of the Plan.

17 Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement
18 describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

19 **1.2. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing.** The Court has
20 not yet confirmed the Plan described in this Disclosure Statement. The Order approving this
21 Disclosure Statement sets the following:

- 22 • The deadline for objecting to confirmation of the Plan.
- 23 • The time and place for Plan confirmation.
- 24 • The deadline for voting to accept or reject the Plan.
- 25 • If the Order is conditional, the time and place of the hearing to finally approve

26 ¹ The Disclosure Statement follows the general form and content of Official Form 25B. Various alterations,
27 deletions, and additions have been made though to accommodate case specifics, facilitate ease of review, and
incorporate desired language.

28 ² Unless otherwise stated, references herein to the “Bankruptcy Code,” the “Code,” or unspecified references
to “Section” or “§” refer to 11 U.S.C. § 101 et seq., as amended.

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1 this Disclosure Statement and the deadline for objecting to the adequacy of
2 disclosure.

3 **The above deadlines are also detailed in the Notice of Confirmation Hearing or if the**
4 **Order is conditional, the Notice of Combined Hearing provided to you.** If your class is
5 entitled to vote for or against the Plan, ballots should be returned (and received by the deadline) to
6 the Debtor’s Balloting Agent at the address provided therein. In the event the Plan is not accepted
7 by all classes, the Debtor will request confirmation of the Plan in accordance with the provisions of
8 11 U.S.C. § 1129(b). If you want additional information about the Plan, you should contact
9 Debtor’s Counsel.

10 **2. DISCLAIMER(S)**

11 **2.1. THE COURT HAS APPROVED (OR CONDITIONALLY APPROVED AS THE**
12 **CASE MAY BE) THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE**
13 **INFORMATION TO ENABLE PARTIES AFFECTED BY THE PLAN TO MAKE AN**
14 **INFORMED JUDGMENT ABOUT ITS TERMS. THE COURT HAS NOT YET**
15 **DETERMINED WHETHER THE PLAN MEETS THE LEGAL REQUIREMENTS FOR**
16 **CONFIRMATION. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT**
17 **CONSTITUTE AN ENDORSEMENT OF THE PLAN BY THE COURT, OR A**
18 **RECOMMENDATION THAT IT BE ACCEPTED. IF CONDITIONAL, THE COURT’S**
19 **APPROVAL OF THIS DISCLOSURE STATEMENT IS SUBJECT TO FINAL**
20 **APPROVAL AT THE HEARING ON CONFIRMATION OF THE PLAN.**

21 **2.2. THE PLAN IS NOT A PART OF THIS DISCLOSURE STATEMENT AND MUST**
22 **BE REVIEWED INDEPENDENTLY. EXCEPT AS SET FORTH IN THIS**
23 **DISCLOSURE STATEMENT (INCLUDING REFERENCED SCHEDULES³ AND**
24 **EXHIBITS), NO REPRESENTATIONS CONCERNING THE DEBTOR, DEBTOR’S**
25 **ASSETS, PAST OR FUTURE FINANCIAL MANAGEMENT, OR THE PLAN ARE**
26 **AUTHORIZED. UNAUTHORIZED REPRESENTATIONS SHOULD NOT BE RELIED**
27 **UPON IN ARRIVING AT A VOTING DECISION WITH RESPECT TO THE PLAN**
28 **AND SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR. AN**
INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN
THIS DISCLOSURE STATEMENT HAS NOT BEEN CONDUCTED. NEITHER
DEBTOR NOR DEBTOR’S COUNSEL WARRANT OR REPRESENT THAT
INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS WITHOUT
ANY INACCURACY. FACTUAL INFORMATION REGARDING THE DEBTOR, THE
DEBTOR’S ESTATE, ASSETS, AND LIABILITIES, HAVE BEEN DERIVED FROM
THE DEBTOR’S RECORDS, PETITION SCHEDULES, PUBLIC RECORDS AND
RELATED DOCUMENTS SPECIFICALLY IDENTIFIED HEREIN. THE ABILITY
OF THE DEBTOR TO ACHIEVE PROJECTED PERFORMANCE IS SUBJECT TO
SUBSTANTIAL RISKS. THEREFORE, PROJECTIONS PREPARED BY THE
DEBTOR DO NOT CONSTITUTE A GUARANTY OF RESULTS.

³ Reference to numbered schedules (e.g. Schedule 1, Schedule 2, etc.) refer to schedules attached to this Disclosure Statement. Schedule references beginning with letters (e.g. Schedule “B” or “B 106”) refer to official bankruptcy forms filed separately on the case docket.

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1 **2.3. THIS DISCLOSURE STATEMENT MERELY CONTAINS A SUMMARY OF THE**
2 **PLAN. THE PLAN ITSELF SHALL CONTROL IN THE EVENT OF ANY**
3 **INCONSISTENCIES BETWEEN THE DOCUMENTS. STATEMENTS HEREIN ARE**
4 **MADE AS OF THE DATE THE DISCLOSURE STATEMENT IS EXECUTED BY**
5 **DEBTOR UNLESS ANOTHER TIME IS EXPRESSLY PROVIDED. THE DELIVERY**
6 **OF THIS DISCLOSURE STATEMENT SHALL NOT UNDER ANY**
7 **CIRCUMSTANCES CREATE AN IMPLICATION THAT THERE HAS NOT BEEN**
8 **ANY CHANGE IN THE INFORMATION PROVIDED SINCE THE DATE OF**
9 **EXECUTION.**

10 **3. BACKGROUND**

11 **3.1. Description and History of Debtor, Debtor’s Business, and Insiders (if any).**

12 Huberto Ochoa is a married individual who filed the underlying Chapter 11 on February 2
13 2016. Debtor previously received a discharge under chapter 13; however this bankruptcy was
14 filed to renegotiate the secured debt on the property located at 421 Wilshire Blvd. Las Vegas,
15 Nevada 89110. Debtor also receives monthly rental income from said Investment Property
16 which is not operated as an independent business entity.

17 Pursuant to 11 U.S.C. §101(31)(A), as an individual, Debtor’s “insiders” include:

- 18 1. Debtor’s non-filing spouse

19 **3.2. Management of Finances.**

20 Both before and after the filing of this case, Debtor has managed Debtor’s personal affairs
21 and the Investment Property. Debtor will continue to manage Debtor’s own financial affairs
22 post confirmation and throughout the duration of the Plan though Debtor reserves the right to
23 retain financial professionals as needed.

24 **3.3. Events Leading to the Chapter 11 Filing.**

25 Debtor was no longer regularly generating enough income to pay the investment property and
26 experienced a significant devaluation of the Investment Property.

27 **3.4. Significant Events Occurring in this Bankruptcy.**

28 On February 2, 2016 Debtor filed a voluntary petition pursuant to Chapter 11 of the
Bankruptcy Code. The meeting of creditors (11 U.S.C. § 341) was held and concluded on or
about March 10, 2016. Debtor has remained in possession of estate property pursuant to 11
U.S.C. § 1107. Since filing the voluntary petition, Debtor’s efforts have focused on
reorganization of secured debt. The case was re-designated a “small business case” as
defined under 11 U.S.C. § 101(51)(C & D). Debtor has filed an Application to Employ
(counsel) and a Motion To Value the Investment Property. On or about July 6, 2016 the
Court set the value of the investment property at 283,000.00. There have been no other
significant events during the pending proceedings and Debtor’s finances have remained
stable.

3.5. Prior Bankruptcy Proceedings.

There are no case associations for this case. Debtor has filed the following previous
bankruptcy case 12-11404. Debtor received a discharge on all debts and the underlying case
is to resolve all issues with the investment property.

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1
2 **3.6. Pending Litigation.**

3 No pending litigation involving the Debtor or the Estate is presently pending or anticipated.

4 **3.7. Fraudulent and Preferential Transfers.**

5 To the best of Debtor’s knowledge and belief there have not been any fraudulent or
6 preferential transfers within one year of the bankruptcy filing.

7 **3.8. Sources of Information for this Disclosure Statement.** Information contained in this
8 Disclosure Statement and the Plan have not been audited. Descriptions, values, and facts provided
9 are derived from the Debtor’s experience in managing Debtor’s personal affairs and finances and
10 where applicable, from professionals employed by Debtor. Significant effort has been made to
11 compile and review the information provided herein. **Creditors are urged to review the Plan**
12 **prior to voting.**

13 **4. OPERATIONS, CURRENT & HISTORICAL FINANCIAL CONDITIONS**

14 Debtor's income is generated from personal employment and from rental income received
15 from Debtor's Investment Property. Debtor has been able to improve cash reserves since the filing
16 of this bankruptcy and also retain income which can be used to fund the Plan. Available funding is
17 outlined in Schedule 1 “Cash Flow Analysis” attached hereto. A liquidation analysis is also
18 attached as Schedule 2. On the case docket are full descriptions of estate assets and liabilities
19 contained in Debtor’s official schedules, as amended. Also available are various operating reports
20 covering Debtor’s post-petition performance.

21 **4.1. Assets.**

22 Debtor’s assets consist generally of the following:

23 Real Property:	Investment Property: 1. 421 Wilshire Blvd. Las Vegas, Nevada 89110 (undersecured)
24 Personal Property:	Accounts Household Goods and Furnishings Wearing Apparel Automobiles, Trucks, Trailers, etc.

25
26
27 **Note:** Details regarding applicable exemptions and the extent to which these assets are
28 encumbered are provided in Debtor’s official schedules, as amended, filed on the case docket and
Schedule 2, attached hereto

4.2. Liabilities.

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The estimated liabilities of the Debtor as set forth in filed proofs of claim, Debtor's official schedules, as amended, as well as in post-petition operating reports include:		
Proofs of Claims Filed - Total: (1 Claims)		
Secured Claims Total:		\$415,608.35
Priority Claims Total:		\$0
Unsecured Claims Total:		\$0
	Total:	\$415,608.35
Schedule D – Creditors Holding Secured Claims		
Creditors Listed (1)	Total Scheduled:	\$432819.75
Schedule E – Creditors Holding Unsecured Priority Claims		
Creditors Listed (0)	Total Scheduled:	\$0.00
Schedule F – Creditors Holding Unsecured Non-Priority Claims (Amended)		
Creditors Listed (0)	Total Scheduled:	\$432819.75

Note: Plan payments (if any) shall be paid to creditors who have filed a proof of claim or who are deemed to have filed a proof of claim, that are not disputed, contingent, unliquidated, or otherwise allowed by order of the Court (11 U.S.C. § 1111 (a)). Scheduled claims may not match in amount, number, or classification, the actual proofs of claim filed. To ensure proper classification and the avoidance of redundant payments, prior to initial disbursement (if any), Debtor shall reconcile scheduled claims against filed proofs of claim, stipulated claims, and/or claims otherwise allowed. Debtor reserves its right to the full extent permissible under the Bankruptcy Code to object to claims.

4.3. Valuation Discussion. Debtor believes the valuation of assets, estimated on schedules, as amended, are fair estimate(s) if the assets were to be sold at fair market value. Should Debtor be converted to a Chapter 7 bankruptcy resulting in liquidation of the Estate, it is highly possible that significantly lower value(s), or no value at all may be received from liquidated assets. As such, the liquidation analysis in Schedule 2, should only be considered in the context of orderly sales transaction(s) with motivated purchasers. In the event of liquidation, actual value received and resulting creditor payments may vary dramatically depending on the specific markets available to sell Estate assets. Debtor believes the highest potential (and timely) recovery available with the least risk to creditors will be achieved through the proposed Plan.

4.4. Feasibility. Debtor's Investment Property rental income and personal income has remained stable since the order for relief and is expected to continue to do so. Debtor anticipates that the course of repayment will be certain other than unforeseen business loss, personal disability, or a downturn in general economic activity which exceeds worst estimates presently available to the

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1 general public. Debtor has sufficient net income to fund proposed payments to Creditors under the
2 Plan.

3 **4.5. Projected Recovery of Avoidable Transfers.** The Debtor does not intend to pursue
4 preference, fraudulent conveyance, or other avoidance actions.

5 **4.6. Claim Objections.** Except to the extent that a claim is already allowed pursuant to a final
6 non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your
7 claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to
8 your claim is later upheld. The procedures for resolving disputed claims are set forth in Article 5 of
9 the Plan.

10 **5. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS**
11 **AND EQUITY INTERESTS**

12 **5.1. What is the Purpose of the Plan of Reorganization?** As required by the Code, the Plan
13 places claims and equity interests in various classes and describes the treatment each class will
14 receive. The Plan also states whether each class of claims or equity interests is impaired or
15 unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the
16 Plan. This summary is not a solicitation for acceptance of the Plan. Creditors should not rely on
17 this summary to decide whether or not to vote in favor of or against the Plan. Creditors are
18 expressly referred to the Plan itself as it contains binding provisions which will not be summarized
19 herein.

20 **5.2. Unclassified Claims.** Certain types of claims are automatically entitled to specific treatment
21 under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan.
22 They may, however, object if, in their view, their treatment under the Plan does not comply with that
23 required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

24 **5.2.1. Administrative Expenses.** Administrative expenses are costs or expenses of
25 administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code.
26 Administrative expenses also include the value of any goods sold to the Debtor in the ordinary
27 course of business and received within 20 days before the date of the bankruptcy petition. The
28 Code requires that all administrative expenses be paid on the effective date of the Plan, unless a

particular claimant agrees to a different treatment. The following administrative expenses presently apply to this case:

<p>Professional Fees, as approved by the Court.</p>	<p>These expenses consist of fees for services rendered and expenses incurred by counsel and other professional persons prior to the Effective Date of the Plan, as approved and allowed by order of the Court, and any other expenses incurred during the course of the Chapter 11 proceeding that have not yet been paid. Presently, the member(s) of this class include Michael J Harker, Esq., Counsel for the Debtor. Debtor engaged the Law Offices of Michael J. Harker, Esq., under a general retainer for representation in these Chapter 11 proceedings . Debtor’s Counsel has not filed any interim fee application(s) at this time. It is anticipated that, in addition to \$14,000.00 paid as a retainer prior to the filing of the bankruptcy, future legal fees will be approximately \$5,000 to \$15,000.00. Additional fees are subject to application, notice, and Court approval.</p>
<p>Office of the U.S. Trustee Fees</p>	<p>These expenses consist of various fees of the Office of the United States Trustee. The Reorganized Debtor shall timely pay post confirmation quarterly fees assessed pursuant to 28 U.S.C. § 1930 (a)(6) until such time as this Bankruptcy Court enters a final decree closing this Chapter 11 case, administratively closes, orders conversion to a case under Chapter 7, or dismisses this case. After Confirmation, the reorganized Debtor shall file with this Court and shall serve on the United States Trustee such reports as required by Trustee Guidelines and Federal Rule of Bankruptcy Procedure 2015. In the event the Debtor owes pre-confirmation U.S. Trustee's fees on the date of confirmation, the Debtor shall pay all past due fees to the U.S. Trustee on or before the Effective Date of the Plan.</p>

5.2.2. Priority Tax Claims. Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, pursuant to § 1129(a)(9)(C) of the Code, 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 priority tax claims presently apply to this case:

Claimant	Treatment
N/A	N/A

5.3. Classified Claims and Equity Interests. The following are the Classes set forth in the Plan, and the proposed treatment they will receive under the Plan.

5.3.1. 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 § 506 of the Code. 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

1 a general unsecured claim. The following classes contain Debtor’s secured prepetition claims
 2 and their proposed treatment under the Plan:

CLASS 1	Impaired: Yes	Insider(s): No
Description:	Secured Claim of BANK OF NEW YORK MELLON against Debtor’s Investment Property located at 421 Wilshire Blvd. Las Vegas, Nevada 89110	
Valuation:	Per the “ORDER GRANTING MOTION TO VALUE COLLATERAL (the “Class 1 Order”) (See Docket #34), hereby incorporated in its entirety by this reference, the Class 1 Secured Claim is valued at \$283,000.00	
Summary of Terms:	<ul style="list-style-type: none"> • Interest Rate: 5.25% per annum fixed (360-month amortization schedule) • Payment Start Date: 30 days after confirmation • Maturity Date: 360 months (all remaining amounts due) • Initial Fixed Monthly Payment: \$1563.00 (principal & interest) • Debtor will also pay all taxes and insurance. 	
Voting:	Class 1 is an impaired class and the holder of the Class 1 Secured Claim is entitled to vote to accept or reject the Plan.	

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14 **5.3.2. Classes of Priority Unsecured Claims.** Certain priority claims that are referred to in §§
 15 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code
 16 requires that each holder of such a claim receive cash on the effective date of the Plan equal to
 17 the allowed amount of such claim. However, a class of holders of such claims may vote to
 18 accept different treatment. The following chart lists all classes containing claims under §§
 19 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Claimant	Treatment
NA	NA

20
21
22 **5.3.3. Class[es] of General Unsecured Claims.** General unsecured claims are not secured by
 23 property of the estate and are not entitled to priority under § 507(a) of the Code. The following
 24 chart identifies the Plan’s proposed treatment of Class 3 which contains general unsecured
 25 claims against the Debtor:
 26
 27
 28

CLASS 2	Impaired: Yes	Insider(s): No
Description:	Unsecured claim of BANK OF NEW YORK MELLON against Debtor's Investment Property located at 421 Wilshire Blvd. Las Vegas, Nevada 89110	
Valuation:	Per the Class 1 Order (see above) hereby incorporated in its entirety by this reference, the Class 2 unsecured Claim is valued at \$132608.00	
Summary of Terms:	Upon successful confirmation of the Plan, the Class 2 unsecured claim shall be reduced to \$0.00.	
Voting:	Class 2 is an impaired class and the holder of the Class 2 Unsecured Claim is entitled to vote to accept or reject the Plan.	

5.3.4. Class[es] 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. The following chart sets forth the Plan's proposed treatment of the class[es] of equity interest holders:

CLASS 3	Impaired: NA	Insider(s): NA
Description	Equity Interest Holder – Huberto Ochoa	
Treatment:	Debtor shall retain under the Plan the following: 1) The Investment Property subject to the Class 1 Stipulation.	

5.4. Means of Implementing the Plan.

- 1. Source of Payments.** Payments and distributions under the Plan will be funded by the Investment Property rents and Debtor's wage income as required.
- 2. Post-confirmation Management.** See 3.2 above.

5.5. Risk Factors. Various risk factors can affect the success of a Plan and/or require future amendment(s). Risk factors personal to the Debtor may include change or loss of employment, disability, unexpected expenses (business or otherwise), loss of customers, and management decisions which may negatively affect business revenue. Events beyond Debtor's control can also result in the inability to fund the Plan such as a general slowing of economic activity and/or events of "force majeure."

1 **5.6. Executory Contracts and Unexpired Leases.** The Plan describes which contracts and
2 unexpired leases Debtor's intends to assume under the Plan. Assumption means that the Debtor has
3 elected to continue to perform the obligations under such contracts and unexpired leases, and to
4 cure defaults of the type that must be cured under the Code, if any. If applicable, the Plan also lists
5 how the Debtor will cure and compensate the other party to such contract or lease for any such
6 defaults. If you object to the assumption of your unexpired lease or executory contract, the
7 proposed cure of any defaults, or the adequacy of assurance of performance, you must file and
8 serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan,
9 unless the Court has set an earlier time. All executory contracts and unexpired leases that are not
10 expressly assumed will be rejected under the Plan. Consult your adviser or attorney for more
11 specific information about particular contracts or leases. If you object to the rejection of your
12 contract or lease, you must file and serve your objection to the Plan within the deadline for
13 objecting to the confirmation of the Plan.

14 **5.7. Tax Consequences of Plan.** Distributions received from the Estate may be taxed. The
15 characterization of distributions for tax purpose depends upon the nature of the claim. The method
16 of accounting utilized by a creditor for income tax purposes may also affect the tax consequences
17 of a distribution. In general, the amount of gain (or loss) recognized by a creditor distributee will
18 be the difference between (i) the creditor's basis (if any) in the claim, and (ii) the amount of the
19 distribution. Characterization of a distribution as ordinary income or capital gain depends generally
20 upon whether the distribution results from a claim which would otherwise generate ordinary
21 income or would constitute a return of capital.

22 **STATEMENTS REGARDING INCOME TAX CONSEQUENCES ARE NOT BINDING**
23 **AND NO RULING HAS BEEN SOUGHT OR OBTAINED BY DEBTOR FROM THE**
24 **INTERNAL REVENUE SERVICE OR ANY OTHER TAXING AUTHORITY WITH**
25 **RESPECT TO THESE MATTERS. CREDITORS ARE URGED TO CONSULT**
26 **THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS TO**
27 **DETERMINE SPECIFIC TAX CONSEQUENCES UNDER FEDERAL, STATE, AND**
28 **LOCAL LAWS, WHICH MAY RESULT FROM CONFIRMATION AND**
CONSUMMATION OF THE PLAN.

6. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. 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 § 1129, and they are not the only requirements for confirmation.

6.1. 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. See Article 5 above for a description of Plan classes and their impairment status as proposed.

6.1.1. 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, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure. **The deadline for filing a proof of claim in this case was December 2, 2015 and unless otherwise extended by court order, all objections to claims must be filed within sixty (60) days after entry of an order confirming the Plan.**

6.1.2. 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

1 under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan
2 alters the legal, equitable, or contractual rights of the members of that class.

3 **6.1.3. Who is Not Entitled to Vote.** The holders of the following five types of claims and
4 equity interests are not entitled to vote:

- 5 • holders of claims and equity interests that have been disallowed by an order of the
6 Court;
- 7 • holders of other claims or equity interests that are not “allowed claims” or “allowed
8 equity interests” (as discussed above), unless they have been “allowed” for voting
9 purposes.
- 10 • holders of claims or equity interests in unimpaired classes;
- 11 • holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the
12 Code; and
- 13 • holders of claims or equity interests in classes that do not receive or retain any value
14 under the Plan;
- 15 • administrative expenses.

16 **Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the
17 Confirmation of the Plan and to the Adequacy of the Disclosure Statement (unless already
18 approved by the Court).**

19 **6.1.4. Who Can Vote in More Than One Class?** A creditor whose claim has been allowed in
20 part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in
21 multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot
22 for each claim.

23 **6.2. Votes Necessary to Confirm the Plan.** If impaired classes exist, the Court cannot confirm
24 the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting
25 the votes of any insiders within that class, and (2) all impaired classes have voted to accept the
26 Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes.

27 **6.2.1. Votes Necessary for a Class to Accept the Plan.** A class of claims accepts the Plan if
28 both of the following occur: (1) the holders of more than one-half (1/2) 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
(2/3) 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 (2/3) in
amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

1 **6.2.2. Treatment of Nonaccepting Classes.** Even if one or more impaired classes reject the
 2 Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the
 3 manner prescribed by §1129(b) of the Code. A plan that binds nonaccepting classes is
 4 commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting
 5 classes of claims or equity interests if it meets all the requirements for consensual confirmation
 6 except the voting requirements of §1129(a)(8) of the Code, does not “discriminate unfairly” and
 7 is “fair and equitable” toward each impaired class that has not voted to accept the Plan. The
 8 requirement that a plan not discriminate unfairly generally refers to whether similar claims or
 9 equity interests are treated similarly.

10 **6.2.3. Non-Accepting Secured Class(es).** With respect to secured creditors, to be fair and
 11 equitable, a plan must permit a secured creditor to retain its lien and be paid the full value of its
 12 secured claim. (See § 1129(b)(2)(A)).

13 **6.2.4. Non-Accepting Unsecured Class(es).** The “fair and equitable” plan standard with
 14 respect to a non-accepting unsecured class can be found at § 1129(b)(2)(B). Subsection (ii)
 15 applies where an unsecured class is not receiving or retaining property equal to the allowed
 16 amount of their claim(s). Recently the 9th Circuit Court of Appeals clarified that the standard
 17 under subsection (ii) for permitting retention of property under a plan of reorganization, applies
 18 to the pre-petition property of an individual debtor.⁴ The subsection (ii) standard does not apply
 19 to the retention of property included in the bankruptcy estate by way of 11 U.S.C. §1115 though
 20 (property acquired after the commencement of the case).

21 **6.3. Non-Consensual Confirmation.** Debtor believes the Plan conforms with the requirements of
 22 § 1129(b)(2)(A) and (B). In particular, should there be a non-accepting unsecured class, Debtor
 23 believes the Plan can be confirmed for reasons which include:⁵

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 26 ⁴ See *Zachary v. California Bank & Trust*, 2016 WL 360519 (9th Cir. Jan. 28, 2016). 11 U.S.C.
 1129(b)(2)(B)(ii) constitutes to the extent intended by Congress, codification of the judicial doctrine
 commonly referred to as the “Absolute Priority Rule.”

27 ⁵ As proposed, a “cram down” scenario under the Plan is highly unlikely as Class 2B creditor(s) shall be paid
 28 the full amount of their claim(s) and do not vote. Class 2A is for voting purposes only and the sole Class 2A
 claim is to be forgiven upon confirmation of the Plan per the Class 1 Stipulation.

1 **6.3.1. Certain Retained Estate Assets Are Exempt:** A portion of the property proposed to be
2 retained by the Debtor is exempt and thus excluded from the bankruptcy estate under 11 U.S.C.
3 §522.

4 **6.3.2. Certain Under-Secured Property Is Retained Under the Plan Solely At The**

5 **Discretion Of Controlling Creditor(s).** Debtor has negotiated retention of certain property
6 from creditor(s) who have sole authority and discretion with respect to said property.

7 Unsecured creditors have no interest either directly or derivatively (i.e. via their interest in the
8 Bankruptcy Estate) in the subject property as it was exempt or was without equity on the
9 petition date.

10 **UPON SATISFACTION OF 11 U.S.C. §1129(a) GENERAL CONFIRMATION**
11 **STANDARDS, BUT EXCLUDING PARAGRAPH (8), DEBTOR WILL REQUEST THE**
12 **COURT CONFIRM A PLAN UNDER THE STANDARDS SET FORTH IN §1129(b).**
13 **YOU SHOULD CONSULT YOUR OWN ATTORNEY IF YOU BELIEVE YOUR**
14 **CLAIM, INTEREST, OR ANY OTHER RIGHT(S) YOU HAVE, MAY BE AFFECTED**
15 **AS A RESULT.**

16 **6.4. Liquidation Analysis.** To confirm the Plan, the Court must find that all creditors and equity
17 interest holders who do not accept the Plan will receive at least as much under the Plan as such
18 claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is
19 attached to this Disclosure Statement as Schedule 2.

20 **6.5. Feasibility.** With respect to feasibility, the court is only required to determine whether a
21 plan can be accomplished. This entails determining:

- The availability of cash for payments required at confirmation;
- The ability of the debtor to make payments called for under the plan; and
- The absence of other factor(s) which might make it impossible for a debtor to accomplish what is promised in the plan as contemplated.

22 The Court's judgment on these matters does not constitute an expression of the Court's opinion as
23 to whether the plan is a good one or an opinion by the Court regarding any debt instrument or
24 equity interest or security interest issued to creditors under the plan. Rather, the Court's judgment
25 is merely that the plan complies with the applicable Bankruptcy Code provisions and has garnered
26 sufficient votes by its creditors for confirmation.

1 **7. ALTERNATIVES TO THE PROPOSED PLAN**

2 Debtor believes the Plan will realize the maximum available benefit for creditors. If the
3 Plan is not confirmed, however, the Debtor will seek other avenues for resolution and/or
4 liquidation of debts.

5 **7.1. Conversion.** In the event no suitable alternative to the Plan can be found, Debtor may be
6 compelled to recommend conversion of this Chapter 11 case to a case under Chapter 7 with
7 resulting liquidation of the Estate. Creditors are encouraged to reach their own conclusions but
8 Debtor is of the opinion that a forced liquidation of assets will not be in the best interest of
9 creditors for the following reasons:

- 10
- To evaluate the Debtor's assets and liabilities, the newly appointed Chapter 7 Trustee will require time to become familiar with the Debtor's financial affairs, interview persons, and review documents and operations;
 - Additional administrative expenses entitled to priority over general unsecured claims will be incurred, such as Trustee commissions and fees for any professionals retained;
 - There will likely be no distribution, if any, to the creditors until the case is ready to be closed;
 - Secured creditors must be paid in full first from the sale of encumbered assets which presently appraise for less than amounts due under applicable security agreements; and
 - The bulk of the Estate's unencumbered personal property is exempt under applicable law.

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16 Debtor has prepared a "Liquidation Analysis," attached hereto as Schedule 2 which illustrates the
17 likely outcome of a liquidation of the Estate. This analysis is conservative though and assumes an
18 orderly liquidation, low transaction costs, and estimated sales proceeds that may not reflect market
19 reality in a forced sale. Additionally, certain costs of liquidation such as auction or broker's fees,
20 salvage costs, and incidental expenses have not been accounted for.

21 **7.2. Dismissal.** Dismissal of the case would, in the Debtor's opinion, lead to an unsatisfactory
22 result as well. Dismissal will likely result in secured creditor(s) initiating foreclosure proceedings
23 on the Investment Property that Debtor is attempting to reorganize. As stated previously, limited
24 personal assets will be available for the creditors to secure judgments against, as a significant
25 portion are exempt or have only modest equity. Creditors may incur significant costs as well as be
26 forced into conflict with other creditors. Further, these actions would cause the Debtor to incur
27 more expenses in the form of professional fees, etc., thereby leaving even less for distribution to
28 creditors. It should be noted that a vote against the Plan leading to rejection of the Plan will not

1 alter the present status of the Debtor. A vote on the Plan does not include a vote on alternatives to
2 the Plan. There is no assurance what turn the proceedings will take if the Plan is rejected. If you
3 believe one of the alternatives referred to above is preferable to the Plan and you wish to urge it
4 upon the Court, you should consult independent counsel.

5 **8. IMPLEMENTATION OF THE PLAN, JURISDICTION**

6 Implementation of the Plan occurs after entry of an order by the Bankruptcy Court
7 confirming the Plan. If accepted and approved as filed, implementation of the Plan shall begin as
8 soon as practicable after Confirmation. Notwithstanding confirmation of the Plan, the Court will
9 retain jurisdiction (i) to determine the allowance of claims upon objection by a party in interest, (ii)
10 to determine requests for payment of administrative claims and expenses, including compensation,
11 entitled to priority under §507(a)(I) of the Code, (iii) to resolve disputes regarding interpretation of
12 the Plan, (iv) to modify the Plan, (v) to implement provisions of the Plan, (vi) to adjudicate any
13 cause of action brought by the Debtor or Trustee as representatives of the Estate, (vii) to enter a
14 final decree, and (viii) for other purposes.

15 **9. MODIFICATION OF PLAN**

16 **9.1. Modification Prior to Confirmation.** The Debtor may modify a plan at any time before
17 confirmation of the plan, but modified plans must meet the requirements of §§ 1122 and 1123 of
18 the Bankruptcy Code. However, the Court may require a new disclosure statement and/or re-
19 voting on the Plan.

20 **9.2. Modification After Confirmation.** If the debtor is an individual, as in this present case, the
21 plan may be modified at any time after confirmation of the plan but before the completion of
22 payments under the plan, whether or not the plan has been substantially consummated.
23 Modification may be upon request of the Debtor, the Trustee, the United States Trustee, or the
24 holder of an allowed unsecured claim for the purpose of (1) increasing or reducing the amount of
25 payments under a plan on claims of a particular class provided for by the plan, (2) extending or
26 reducing the time period for such payments, or (3) altering the amount of distribution to a creditor
27 whose claim is provided for by the plan to the extent necessary to take account of any payment of
28 such claim made other than under the plan.

1 DEBTOR RESERVES THE RIGHT TO AMEND OR MODIFY THE PLAN PRIOR TO
2 THE ENTRY OF THE CONFIRMATION ORDER. FURTHERMORE, AFTER THE
3 ENTRY OF THE CONFIRMATION ORDER, THE DEBTOR MAY, UPON ORDER OF
4 THE BANKRUPTCY COURT, AMEND OR MODIFY THE PLAN, IN ACCORDANCE
5 WITH SECTION 1127(E) OF THE BANKRUPTCY CODE OR REMEDY ANY
6 DEFECT OR OMISSION OR RECONCILE ANY INCONSISTENCY IN THE PLAN IN
7 SUCH MANNER AS MAY BE NECESSARY TO CARRY OUT THE PURPOSE AND
8 INTENT OF THE PLAN, SUBJECT TO COMPLIANCE WITH ALL APPLICABLE
9 REQUIREMENTS OF THE BANKRUPTCY CODE.

10 **10. EFFECT OF CONFIRMATION OF PLAN**

11 **10.1. No Immediate Discharge of Debtor.** Unless after notice and hearing and the Court orders
12 otherwise for cause, confirmation of this Plan does not discharge any debt provided for in this Plan
13 until the Court grants a discharge on completion of all payments under this Plan. Alternatively,
14 should Debtor demonstrate compliance with the requirements of 11 U.S.C. 1141(d)(5)(B) & (C), at
15 any time after confirmation of the Plan, and after notice and a hearing, the Court may grant a
16 discharge prior to completion of payments under the Plan.

17 **10.2. Vesting.** Property of the Estate will vest in the reorganized Debtor thirty days after entry of
18 the final Confirmation Order.

19 **10.3. Final Decree.** Once the estate has been fully administered, as provided in Rule 3022 of the
20 Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall
21 designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree
22 to close the case. Alternatively, the Court may enter such a final decree on its own motion.
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11. CONCLUSION

Debtor believes that the Plan as proposed will provide a better outcome for creditors to receive maximum potential payment on claims in a timely fashion than that which would occur resulting from a Chapter 7 liquidation or distress sale of Debtor’s assets. If the Plan is not approved, Debtor will continue to seek reorganization alternatives. Liquidation may ensue though with the potential consequences discussed above in Article 7.

Dated: November 28, 2016

Respectfully submitted by,

/s/ Huberto S. Ochoa
Huberto S. Ochoa
Debtor / Plan Proponent

/s/ Michael J Harker
Michael J Harker, Esq.
Attorney for Debtor/Plan Proponent

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SCHEDULE 1 – CASH FLOW ANALYSIS

Debtor:

Case Number:

Huberto S. Ochoa	16-10463-abl
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This analysis is based on a number of estimates and assumptions that, although considered reasonable by the Debtor, are inherently subject to significant economic, business and competitive uncertainties and contingencies beyond the control of the Debtor. This analysis is also based on the Debtor’s best judgment of how likely it is that Debtor will be able to retain the same level of income throughout the life of the Plan and not have income reduced. There can be no assurance that the cash flow estimates reflected in this analysis will be realized if the Debtor is unable to maintain current income and actual results may vary materially and adversely from those contained herein.

CURRENT AND PROJECTED MONTHLY INCOME/EXPENSE SUMMARY

Notes:	Income	Current	Projected
	1. “Current” column includes non-adjusted mortgage payments and “Projected” column includes adjusted mortgage payments per the Plan.	Rental Income 421 Wilshire Blvd. Las Vegas, Nevada 89110	\$1900
2. Entries are rounded to nearest whole dollar amount.	Debtor’s Net Wage Income	\$3274	\$3274
3. “Schedule” references refer to Debtor’s Official Forms B 6I & 6J, as amended.	Total Income Schedule I – Line 12	\$5174	\$5174
	Monthly Expenses	Current	Projected
	Mortgage Payment 9120 Whatley St Las Vegas, Nevada 89148	\$2500	\$1563
	Monthly Household Expenses Schedule B6/106 J – Line 22	\$3244	\$3244
	Total Expenses	\$5744	\$4807
	Cash Flow (Disposable Income)	(\$570)	\$367

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SCHEDULE 2 – LIQUIDATION SUMMARY ANALYSIS

Debtor:

Case Number:

Huberto S. Ochoa	16-10463-abl
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List of Debtor’s Real Property, Lien Amounts, Exemptions, and Equity

Property	Lien Amounts	Equity	Exempt	Non-Exempt
421 Wilshire Blvd	\$415608.35 ¹	(\$132608.35)	\$0.00	\$0.00
Real Property Totals				\$0.00

List of Debtors’ Personal Property, Lien Amounts, Exemptions and Equity²

Property	Lien Amounts	Estate Equity	Exempt	Non-Exempt
Financial Assets	\$0.00	\$2950.00	\$2950.00	\$0.00
Personal Clothing	\$0.00	\$1500.00	\$1500.00	\$0.00
Household Furniture	\$0.00	\$6000.00	\$6000.00	\$0.00
Autos, Trucks, Etc.	\$0.00	\$2100.00	\$2100.00	\$0.00
Category Totals		\$12550.00	\$12550.00	
			Sub-Total	\$0.00
			Total	\$0.00
			11 U.S.C § 326 Estimated Chapter 7 Administrative Expenses	\$0.00
			Estimated Liquidation Value	\$0.00

1. order granting motion to value collateral has value at \$283000.00 (see Docket #34)
2. For Details, refer to Debtor’s official Forms 6 A, B & C (see Docket #15). Proof of Claim amounts used where available.

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