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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

7 In re:) Case No: 16-12929-ABL
8) Chapter 11
9 **06-019 VACAVILLE III BUSINESS**)
10 **TRUST**)
11 Debtor.)
12 _____)

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14 **AMENDED DEBTOR'S DISCLOSURE STATEMENT**
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1 06-019 VACAVILLE III BUSINESS TRUST, Debtor and Debtor-in-Possession
2 ("Vacaville III" or "Debtor") in the above case, provides this Disclosure Statement to its known
3 creditors for the purpose of voting on the Plan of Reorganization filed on June 27, 2017. A
4 copy of the Proposed Plan is attached hereto as "Exhibit 1".

5 **I. INTRODUCTION**

6
7 The Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code on May
8 27, 2016. ("Petition Date"). Pursuant to Sections 1107 and 1108, the Debtor is the Debtor-in-
9 possession representative of their bankruptcy estate.

10 The Debtor has prepared this Disclosure Statement in connection with the solicitation of
11 acceptance of its Plan filed on _____, 2017. The purpose of this Disclosure Statement is to
12 provide adequate information of a kind, and in sufficient detail, that would enable a hypothetical
13 reasonable investor, typical of the holders of claims and equity interests, to make an informed
14 judgment about the Plan. An acceptance or rejection of the Plan must be in writing and may only
15 be made by completing the ballot that accompanies the Plan. In order for your vote to be counted,
16 it must be received no later than 5:00 p.m. (Pacific Daylight Time) on _____, 2017, at the
17 following address:
18
19

20 Law Office of Timothy P. Thomas, LLC
21 1771 E. Flamingo Rd. Suite B-212
22 Las Vegas, Nevada 89119

23 Unless otherwise defined herein, the terms defined in the Plan shall have the same
24 meanings when used in the Disclosure Statement. In addition, unless otherwise defined, terms
25 used in the Disclosure Statement and Plan shall have the same meaning as in the U.S. Bankruptcy
26 Code or the Bankruptcy Rules.
27
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1 **II. INFORMATION REGARDING THE PLAN AND DISCLOSURE STATEMENT**

2 **A. Overview**

3 The objective of a chapter 11 case is the confirmation of a plan of reorganization by the
4 Bankruptcy Court. The formulation of a Plan of Reorganization ("Plan") sets for the means of
5 satisfying claims against the interests of the debtor. The Plan describes in detail, and in language
6 appropriate for a legal contract the means for satisfying claims. The Plan places claims in separate
7 classes and describes the treatment of each class, including whether the claims are impaired or
8 unimpaired. After a Plan has been filed, the holders of such claims that are impaired, as defined
9 in Section 1124, are permitted to submit a vote to accept or reject the Plan. If confirmed, your
10 recovery will be limited to the treatment set forth in the terms of the Plan.
11

12
13 The Court will consider whether the Plan has satisfied the various requirements of the
14 Bankruptcy Code, including, but not limited to, whether it is feasible and whether it is in the best
15 interests of holders of claims and interests. The Bankruptcy Court will also receive a ballot
16 summary prepared by the Plan proponent concerning the votes for acceptance or rejection of the
17 Plan by holders of claims and interests entitled to vote.
18

19 The Court has reserved November 22, 2017 at 11:00 a.m., Pacific Daylight Time, for the
20 hearing on the adequacy of the Amended Disclosure Statement, and any objections to the
21 Amended Disclosure Statement are due no later than November 21, 2017, at 5:00 p.m. Pacific
22 Daylight Time. The hearings may be continued from time to time without further written notice.
23 Section 1125 sets forth the requirements for a Disclosure Statement.
24

25 The Disclosure Statement is submitted in accordance with Section 1125 for the purpose
26 of soliciting acceptance of the Plan from holders of claims and interests. The purpose of the
27 Disclosure Statement is to,
28

- 1 (a) Provide adequate information to enable a hypothetical reasonable investor typical of
2 the holders of claims in the case to make an informed judgment about the Plan;
- 3 (b) Set forth information regarding the history of the Debtor, the filing of the Chapter 11
4 Petition and the Plan;
- 5 (c) Advise Creditors of the proposed resolution of their Claims; and
- 6 (d) Assist the Bankruptcy court in making an informed decision regarding whether the
7 Plan complies with the requirements of the Bankruptcy Code.
- 8

9 No post-petition solicitation of votes on the Plan may be made except pursuant to this
10 Disclosure Statement and no person has been authorized to utilize any information concerning
11 the Debtor other than the information contained in this Disclosure Statement for purposes of
12 solicitation.

13

14 **B. ADMONITIONS**

15 **THIS DISCLOSURE STATEMENT IS NOT THE PLAN. THIS DISCLOSURE**
16 **STATEMENT AND THE EXHIBITS TO THIS DISCLOSURE STATEMENT,**
17 **TOGETHER WITH THE PLAN WHICH IS ATTACHED HERETO AS EXHIBIT 1,**
18 **SHOULD BE READ IN THEIR ENTIRETY. FOR THE CONVENIENCE OF**
19 **CREDITORS, THE PLAN IS SUMMARIZED IN THIS DISCLOSURE STATEMENT,**
20 **BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN**
21 **ITSELF, WHICH IS CONTROLLING IN THE EVENT OF ANY INCONSISTENCY.**

22 **INTERESTED PARTIES MAY ALSO OBTAIN FURTHER INFORMATION**
23 **FROM THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF**
24 **NEVADA, INCLUDING ACCESS TO THE DOCKET FOR THIS CASE, AT THE**
25 **COURT'S WEBSITE: WWW.NVB.USCOURTS.GOV.**

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1 **APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY**
2 **COURT DOES NOT MEAN THAT THE BANKRUPTCY COURT RECOMMENDS**
3 **ACCEPTANCE OR REJECTION OF THE PLAN.**

4 **THE STATEMENTS AND INFORMATION CONCERNING THE DEBTOR SET**
5 **FORTH IN THIS DISCLOSURE STATEMENT CONSTITUTE THE ONLY**
6 **STATEMENTS OR INFORMATION CONCERNING SUCH MATTERS THAT HAVE**
7 **BEEN APPROVED BY THE BANKRUPTCY COURT FOR THE PURPOSE OF**
8 **SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN. THE STATEMENTS**
9 **AND INFORMATION ABOUT THE DEBTOR AND THE FINANCIAL INFORMATION**
10 **OF DEBTOR INCLUDING ALL FINANCIAL PROJECTIONS AND INFORMATION**
11 **REGARDING CLAIMS CONTAINED IN THE DISCLOSURES STATEMENT HAVE**
12 **BEEN PREPARED FROM DOCUMENTS AND INFORMATION OBTAINED FROM**
13 **THE DEBTOR. CERTAIN ESTIMATES, ASUMPTIONS AND PROJECTIONS MAY**
14 **BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THERE CAN**
15 **BE NO ASSURANCE THAT ANY FORECASTED OR PROJECTED RESULTS**
16 **CONTAINED IN THIS DISCLOSURE STATEMENT WILL BE REALIZED AND**
17 **ACTUAL RESULTS MAY BE MATERIALLY DIFFERENT FROM THOSE SHOWN.**
18 **DEBTOR IS UNABLE TO AND DOES NOT WARRANT OR REPRESENT THAT THE**
19 **INFORMATION CONTAINED IN THIS DISCLOSURES STATEMENT IS WITHOUT**
20 **ERROR.**

21 **THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE**
22 **MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT UNLESS ANOTHER**
23 **TIME IS SPECIFIED. NEITHER THE DELIVERY OF THIS DISCLOSURE**
24

1 STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH
2 THE PLAN SHALL UNDER ANY CIRCUMSTANCES CREATE AN IMPLICATION
3 THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH IN THE
4 DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE
5 STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THIS
6 DISCLOSURE STATEMENT WERE COMPILED.
7

8 THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY
9 PURPOSE OTHER THAN TO ASSIST THE COURT IN DETERMINING WHETHER
10 THE PLAN COMPLIES WITH THE REQUIREMENTS OF THE BANKRUPTCY
11 CODE, AND THE DISCLOSURE STATEMENT MAY ALSO BE RELIED UPON FOR
12 THE PURPOSE OF DETERMINING WHETHER TO VOTE IN FAVOR OF OR
13 AGAINST THE PLAN. NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT
14 CONSTITUTES AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY
15 NOR IS IT CONCLUSIVE EVIDENCE OF TAX OR OTHER LEGAL EFFECTS OF THE
16 REORGANIZATION OF THE DEBTOR ON HOLDERS OF CLAIMS OR HOLDERS
17 OF INTERESTS.
18
19

20 AT THE CONFIRMATION HEARING, THE BANKRUPTCY COURT WILL
21 CONSIDER WHETHER THE PLAN SATISFIES THE VARIOUS REQUIREMENTS OF
22 THE BANKRUPTCY CODE. THE BANKRUPTCY COURT WILL ALSO RECEIVE
23 BALLOT SUMMARIES WHICH WILL PRESENT A TALLY OF THE VOTES OF
24 CLASSES ACCEPTING OR REJECTING THE PLANS AS CAST BY THOSE
25 ENTITLED TO VOTE. ONCE CONFIRMED, THE PLANS WILL BE TREATED
26 ESSENTIALLY AS CONTRACTS BINDING ALL CREDITORS AND OTHER
27
28

1 **PARTIES-IN-INTEREST IN THE CHAPTER 11 CASES.**

2 **C. Ballots and Voting**

3 Only creditors whose claims have been allowed for the purposes of voting and are
4 “impaired” by the plan are entitled to vote on the Plan. According to the designation of Classes
5 of claims set forth under the Plan, holders of claims in all Classes are “impaired” by the Plan and
6 are entitled to vote on the plan, and the holders of those claims shall receive a ballot and be
7 permitted to vote to accept or reject the Plan.
8

9 Creditors are entitled to vote on confirmation on the Plan unless, (i) their class is
10 unimpaired or is to receive no distribution; (ii) an objection has been filed to the creditor's claim;
11 (iii) the creditor's claim is scheduled by Debtor as contingent, disputed, unliquidated or unknown
12 and the creditor has not filed a proof of claim; or (iv) the claim is unclassified. A creditor whose
13 claim has been either objected to or has been scheduled by Debtor as contingent, disputed,
14 unliquidated or unknown or the creditor has not filed a proof of claim and who wishes to vote,
15 must move to have its claim allowed for voting purposes by filing a motion for such relief in time
16 for that motion to be heard before the hearing on confirmation of the Plan. A creditor whose
17 claim has been allowed in part as secured and in part as an unsecured claim is entitled to accept
18 or reject a Plan in each capacity by casting one ballot for the secured portion of the claim and
19 another ballot for the unsecured portion of its claim.
20
21

22 A creditor is entitled to vote on the Debtor’s plan of reorganization only if the creditor
23 holds a valid claim with regard to the Debtor. Creditors will be issued separate ballots for each
24 class and for each specific claim which they hold that is entitled to a vote. Ballots returned for
25 invalid claims will be disregarded.
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2 **D. Confirmation and Objections**

3 1. Adequacy of the Plan

4 In order to be confirmed, the Plan must meet the requirements listed in Section 1129(a) or
5 (b) of the Bankruptcy Code. Those requirements include (1) the Plan must be proposed in good
6 faith; (ii) at least one impaired class of claims must accept the Plan, without counting votes of
7 insiders; (iii) the Plan must distribute to each creditor and equity interest holder at least as much
8 as the creditor or equity interest holder would receive in a Chapter 7 liquidation case, unless the
9 creditor or equity interest holder votes to accept the Plan; and (iv) the Plan must be feasible,
10 meaning that there is a reasonable probability that under the terms of the Plan, the debtor will be
11 able to meet its obligations without need for further financial reorganization or protection from
12 the Bankruptcy Court. These requirements are not the only requirements listed in Section 1129,
13 and they are not the only requirements for confirmation.
14
15

16 2. Objections and Voting Requirements.

17 Section 1128(b) provides that a party in interest may object to confirmation of a plan. Any
18 objections to the adequacy of the Disclosure Statement or to confirmation of the Plan must be in
19 writing and specify in detail the name and address of the objector. Any Plan confirmation
20 objection must be filed with the Bankruptcy court and served on counsel for the Debtor, Timothy
21 P. Thomas, Esq. at the address indicated on the front page of this Disclosure Statement.
22
23

24 At least one allowed and impaired class of claims must vote to accept the Plan without
25 counting votes of insiders or all impaired classes must vote to accept the Plan, unless the Plan is
26 eligible to be confirmed by “cram down” on non-accepting classes, as discussed below.

27 A class accepts the Plan if both of the following occur: (A) the holders of more than one-
28

1 half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan; and (B)
2 the holders of at least two-thirds (2/3) of the dollar amount of the allowed claims in the class, who
3 vote, casts their votes to accept the Plan.

4 3. Cramdown of Non-Accepting Classes.

5 Even in the event that one or more impaired classes rejects the Plan, the Court may
6 nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by
7 §1129(b) of the Code. A plan that binds non-accepting classes is commonly referred to as a “cram
8 down” plan. The Code allows the Plan to bind non-accepting classes of claims if it meets all
9 requirements for consensual confirmation except the voting requirements of §1129(a)(8) of the
10 Code, and it does not “discriminate unfairly” and is “fair and equitable” toward each impaired
11 class that has not voted to accept the Plan.
12
13

14 Confirmation of a reorganization plan without full acceptance of all impaired classes is
15 referred to as a “cramdown.” If a “cramdown” is granted, the claimholder can elect under 1111(b)
16 of the Code to either be deemed secured in the entire amount of their claim or to accept the
17 cramdown and receive distributions for the unsecured portion of their claim to be shared pro-rata
18 with other creditors.
19

20 With regard to the Plan, the Bankruptcy Court will (a) determine whether the Plan has
21 been accepted by the requisite majorities of each Voting Class; (b) determine all objections to the
22 Plan and to Confirmation of the Plan; (c) determine whether the Plan meets the requirements for
23 Confirmation of the Plan; (d) determine whether the Plan meets the requirements of the
24 Bankruptcy Code and has been proposed in good faith; and (e) confirm or refuse to confirm the
25 Plan.
26

27 A separate notice will be served with this Disclosure Statement and the Plan which reflects
28

1 the dates and deadlines set forth above.

2 **III. REPRESENTATIONS**

3 Unless otherwise specifically noted, the financial information in this Disclosure Statement
4 has not been subject to audit. Instead, this Disclosure Statement was prepared from information
5 compiled from records maintained in the ordinary course of the Debtor business. Debtor has
6 attempted to be accurate in the preparation of this Disclosure Statement.
7

8 Other than stated herein, the Debtor has not authorized any representations or assurances
9 concerning Debtor or its business operations or the value of their assets. Therefore, in deciding
10 to accept or reject the Plan, you should not rely on any information relating to the Debtor or the
11 Plan other than that contained in the Disclosure Statement or in the Plan itself.
12

13 **IV. BACKGROUND AND EVENTS LEADING TO THE CHAPTER 11 FILING**

14 **A. The Debtor and Its Business**

15 The Debtor is a holding company for several parties who acquired an interest in one real estate
16 parcel that served as collateral to secure an investment that was ultimately foreclosed upon.
17 Debtor is in the business of managing and marketing the real property for sale.
18

19 **B. Events Leading to the Chapter 11 Filing.**

20 In, 2006, Windemere Capital, LLC made the 06-019 Vacaville III Loan, in the amount of
21 \$5,315,000 to GSJ Company, LLC. The loan was secured by a Note and a Deed of Trust on
22 property located in City of Vacaville, Solano County, State of California. The interests in the Note
23 and Deed of Trust were assigned to various investors by way of previously recorded assignments.
24

25 The secured property consisted of one (1) parcel, Assessor's Parcel Number 0109-270-100,
26 consisting of approximately 130 acres. ("the Property").
27

28 The loan went into default in 2007 and the investors completed foreclosure of the subject

1 Deed of Trust in 2011. Mesa Asset Management ("Mesa") was subsequently retained as trustee
2 of the Debtor entity to manage the liquidation of the real property. Mesa does not hold an equity
3 position in the Debtor. The Debtor entity was formed in 2010, but has no business operations
4 beyond the holding of the Property. The Debtor holds 61.11% of the estimated property value of
5 \$3,000,000 as an undivided co-owner with the other investors in the original loan holding their
6 interests as tenants in common of the Property. The Debtor has no current employees and no
7 other ongoing liabilities.
8

9 The Property is subject to unpaid property taxes. The taxes are significantly less than the fair
10 market value of the real property. The taxing authority had noticed a tax sale which would have
11 transferred the Property for less than the invested amounts of the owners and for less than market
12 value of the property.
13

14 On May 1, 2013, in order to avoid the tax sale and maximize the recovery of value from the
15 Property, the Debtor filed a Chapter 11 reorganization Bankruptcy in the United States
16 Bankruptcy Court, District of Nevada, Case No. BK-S-13-13810-LED. The Debtor attempted to
17 market the Property for sale through the bankruptcy case. The Debtor listed the Debtor's portion
18 of the Property to be valued at \$1,819,200 and the tax debt at the time at \$710,402.89. The Debtor
19 was unable to obtain a purchase agreement and propose a plan of reorganization. On January 6,
20 2016, the Bankruptcy Court entered an order Dismissing the case.
21

22 On May 27, 2016, the Debtor filed a second voluntary Chapter 11 bankruptcy petition to
23 avoid a rescheduled tax sale by Solano County. The Property total value of \$2,973,000, of which
24 the Debtor owns 60.64%, remains the same as the first case. The Debtor's most significant asset
25 is the Property. The tax debt secured by the Property had grown to \$993,366.61. Debtor's intent
26 is to market the Property for sale in order to satisfy the taxes and return funds to the original
27
28

1 investors.

2 The Debtor currently is pursuing marketing of the Property to solicit offers to
3 purchase the Property. The Debtor's management company, Mesa Asset Management, has been
4 soliciting purchase offers and interest for more than 6 years. Several parties have indicated an
5 interest in purchasing the property without making a formal offer.
6

7 Recently, the Debtor received a Letter of Intent from TANK Holdings, LLC ("TANK
8 Holdings") to purchase the Property for the sum of \$2,405,000 or \$18,500 per acre to purchase
9 the entire 130 acres. The offer is made to be presented as the "stalking horse" purchase agreement
10 with the allowance of other interested parties to submit superior bids through an auction process
11 to be held and approved in the U.S. Bankruptcy Court under 11 U.S.C. §363. The offer includes
12 a deposit of \$50,000 into escrow as a good faith deposit. Other interested parties would be
13 required to submit an equal deposit and to make any overbids in an initial amount of \$100,000 to
14 cover a break-up fee to TANK Holdings of \$75,000, with the remainder being remitted to Debtor
15 to cover costs related to the sale process. Subsequent overbids would be in increments of \$20,000.
16
17 The sale process will be set forth in a Motion to Approve Sale of the Property free and clear of
18 liens. The Property is to be sold in "as is" condition.
19

20 The Debtor supports the filing of the Motion to Approve the Sale to TANK Holdings based
21 upon the Letter of Intent or to sell the Property to a superior bid that is approved by the Court,
22 provided that the offer and the sales procedures are approved by the members of the Debtor entity
23 and the tenants-in-common. The proposed sale would be sufficient to meet all creditor claims
24 against the estate. The sale is subject to the approval of 51% of the investors in the original loan
25 under Nevada Law. Debtor shall file a sale motion to seek Bankruptcy Court approval of the
26 Purchase Agreement entered into between the Debtor and TANK Holdings on November 15,
27
28

1 2017, which sale motion will address the requirements under 11 U.S.C. § 363(f) and 11 U.S.C. §
2 363(h), and the applicable non-bankruptcy law as required under 11 U.S.C. § 363(f)(1), which in
3 this instance is NRS § 645B.340, and governs the sale of Property held by multiple holders of
4 beneficial interest in a loan. Chapter 645B of the Nevada Revised Statutes provides that holders
5 of a majority of the outstanding principal balance may act on behalf of all holders to sell the
6 Property in which they have a TIC Interest, and sets forth in relevant part as follows: “1. Except
7 as otherwise provided by law or by agreement between the parties and regardless of the date the
8 interests were created, if the beneficial interest in a loan or the ownership interest in the real
9 property previously securing the loan belongs to more than one person, the holders of the
10 beneficial interest in a loan whose interests represent 51 percent or more of the outstanding
11 principal balance of the loan or the holders of 51 percent or more of the ownership interest in the
12 real property, as indicated on a trustee’s deed upon sale recorded pursuant to subsection 10 of
13 NRS 107.080, a deed recorded pursuant to subsection 5 of NRS 40.430 or a deed in lieu of
14 foreclosure, and any subsequent deed selling, transferring or assigning an ownership interest, may
15 act on behalf of all the holders of the beneficial interests or ownership interests of record on
16 matters which require the action of the holders of the beneficial interests in the loan or the
17 ownership interests in the real property.” See NEV. REV. STAT. § 645B.340(1).
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21 On August 10, 2017, the Bankruptcy Court entered a Conditional Order of Dismissal based
22 upon a United States Trustee’s Office motion to dismiss or convert. The Conditional Order was
23 amended on October 5, 2017, to make it a Conditional Order of Conversion. The effect of the
24 Order is that if the Debtor is unable to confirm the Plan of Reorganization by November 30, 2017,
25 or a date mutually continued, the case will be converted to Chapter 7 liquidation to allow a Trustee
26 to proceed with the sale of the Property to TANK Holdings, or to the highest bidder.
27
28

1 At the end of October 2017, the Debtor obtained 83% total approval and 90%+ approval inside
2 the business trust, approving the proposed Letter of Intent reflecting TANK's offer to purchase
3 the Property for \$2,405,000.00. On October 27, 2017, the Debtor executed the Letter of Intent.
4 On November 15, 2017, the Letter of Intent was reduced to a Purchase Agreement and Escrow
5 Instructions ("Purchase Agreement"), which was executed by the Debtor and TANK Holdings on
6 November 15, 2017, to sell the Property to TANK Holdings as the stalking horse bidder in an
7 auction sale and approval of sale. A Motion to Approve Sale will be filed and noticed to all
8 interested parties to occur in conjunction with the confirmation of the Plan of Reorganization.
9 Under the Purchase Agreement, TANK Holdings shall have 150 days from the Effective Date of
10 the Purchase Agreement, which is November 15, 2017, to complete a feasibility review. In the
11 event the Bankruptcy Court approves the sale of the Property to TANK Holdings before the
12 expiration of the feasibility review, TANK Holdings retains all rights under the feasibility review
13 period as a condition of closing the sale of the Property.
14
15

16 **C. Debtor's Strategy for Reorganization**

17 The Debtor plans to satisfy current tax obligations, which are approximately \$1,151,521.78,
18 through the marketing and sale of the Property. Mesa Asset Management will be retained to
19 continue to manage the Debtor, in consideration for a management fee, calculated and receive a
20 management fee of (\$750.00/mo; \$9,000/yr). Based upon the comparable sales and marketing of
21 the surrounding communities and properties, the Property was estimated at the time of the petition
22 to be valued at \$3,000,000. Debtor's 61.11% percentage of interest in the Property, under the
23 TANK Holdings sale offer, the Debtor's interest would be worth approximately \$766,000.54.
24 The most significant creditor is Solano County with an undivided claim of \$1,151,521.78. In an
25 effort to complete a sale, the investor owners are willing to accept a loss on their original
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1 investment in the secured loan. The tenants-in-common would be paid on a pro rata basis with an
2 equivalent reduction from their original investment amount.

3 The Debtor will bring any proposed sale of the Property before the Bankruptcy Court to
4 approve the sale under 11 U.S.C. §363(f) which authorizes a court to complete the sale of property
5 interests of non-debtor parties. These efforts to conduct a sale of the Property are to be done in
6 order to protect and recover the maximum recovery for the investors while satisfying the taxing
7 authority in full.
8

9 Debtor estimates that the purchase price of the current sale of the Property will provide
10 sufficient income to satisfy the outstanding creditor's claims entirely. All proceeds will be
11 allocated to pay priority and secured tax debts upon the sale of the property. Debtor intends to
12 liquidate all remaining assets and terminate operations under the supervision of the U.S.
13 Bankruptcy Court. Subsequent to payment in full of all administrative and unsecured creditor
14 claims, remaining sales proceeds will be distributed to the investors as a return of investment.
15

16 **V. DESCRIPTION OF THE DEBTOR'S ASSETS AND LIABILITIES**

17 **A. Debtor's Assets**

18 **Real Property**

19 Debtor holds the real property, which consisted of one (1) parcels, consisting of approximately
20 130 acres. The Property has a collective market value of approximately \$3,000,000 with the estate
21 holding 61.11% or \$1,833,300 in value
22

23 Debtor has no outstanding account receivables, equipment or tangible assets.
24

25 **B. Principal Liabilities of the Debtors**

26 The primary creditor of the Debtor is the Solano County Treasurer, which holds a secured
27 claim in the amount of \$1,151,521.78 through November 30, 2017 for delinquent real property
28

1 taxes, consisting of \$528,470.70 in taxes, penalties and costs, \$621,937.58 in redemption interest,
2 \$15.00 in other fees, and \$1,098.50 in other fees, plus continued post-petition accrued taxes and
3 interest. The pre-petition tax arrears amount to approximately \$466,000.

4 There are no known priority claims. The general unsecured claims amount to
5 approximately \$86,833.95 consist of additional capital investments made by the investing
6 beneficiaries of the Debtor to satisfy administrative and operating costs, and the accrued
7 management fees of Mesa. See note #2¹

9 **VI. SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE**

10 As of March 1, 2017, the Bankruptcy Court's docket contained 92 entries on the case.
11 Below is a summary of material applications, motions and all adversary proceedings filed to date.

12 **A. Filing of Bankruptcy and Retention of Counsel**

13 On May 27, 2016, Debtor filed its Chapter 11 Bankruptcy Petition through the Law Office
14 of Timothy P. Thomas, LLC as Debtor's counsel.

15 On July 28, 2016, the Debtor completed the Section 341 Meeting of Creditors.

16 On August 30, 2016, the Court entered an Order Approving Motion to Employ the Law Office
17 of Timothy P. Thomas, LLC.

18 On July 12, 2017, the U.S. Trustee's Office filed a Motion to Convert or Dismiss the Chapter
19 11 Case based upon the misfiling of three (3) monthly operating reports. The reports have been
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24
25 2 Mesa has \$ 33,313.28 in costs (pre & post), Mesa has
26 \$34,000.00 in management fees which are owed. The investors have
27 \$23,043.34 in cost to be reimbursed to those who made
28 contributions. Both amounts carry interest.

1 refiled and there is a stipulated conditional order of conversion requiring the Debtor to pursue and
 2 confirm a reorganization plan. The deadline on the conditional order of conversion will be
 3 extended by stipulation to allow for the confirmation hearing date being scheduled to coordinate
 4 with the confirmation hearing on this proposed plan of reorganization.

5 Debtor is seeking Court approval at the sales on the Property pursuant to 11 U.S.C. 363(f),
 6 allowing sale of the Debtors interests and those of the tenants-in-common, that will fund the plan.
 7

8 VII. OVERVIEW OF PLAN

9 A. General Summary

10 The following is a general summary of the Plan for the Debtor, which is qualified in its
 11 entirety by reference to the provisions of the related specific Plan of Reorganization. Pursuant to
 12 Section 1123(a)(1), Administrative Claims and U.S. Trustee Claims are not impaired and therefore
 13 not designated as Classes. The summary of Classes, whether or not they are impaired and entitled
 14 to vote is set forth below:
 15

16 06-019 Vacaville 17 III Business Trust 18 <u>Class</u>	<u>Creditor</u>	<u>Property</u>	<u>Claims</u>	<u>Payment</u>
19 Class 1	Solano County	\$3,000,000	\$1,151,521.78	100% from Sale
20 Class 2	Priority Unsecured	N/A	\$0	100%
21 Class 3	General Unsecured	N/A	\$90,356.62	100% Paid from sale
22 Class 4	Equity Holders	N/A	N/A	
23 Admin.	Professionals	N/A	\$5,000	Pay in full
24 US Trustee	Us Trustee fees	N/A	N/A	Pay in full

25 The Debtor intends to retain Mesa to manage the marketing and liquidation of the real
 26 property. Upon sale, the proceeds will be designated to pay all creditors 100% at the close of
 27 escrow, in entirety. Per the Operating Agreement, Mesa will receive a management fee equal to
 28 \$750/mo or \$9,000/yr after payment of Class 1 - 3 claims. After the payment of all Class claims,

1 the remaining proceeds of sale will be distributed under the Operating Agreement of Biggs
2 Business Trust to the equity holders of the Debtor pursuant to their interests and the Debtor entity
3 will terminate business operations. It is anticipated that the sale of all of Debtor's assets and
4 satisfaction of all claims will be completed within five (5) years of confirmation.

5 **B. Classes of Claims**

6 The following classes are set forth in the Plan, with the proposed treatment under the Plan
7 provisions. Specific provisions for treatment are set forth in Articles I and II of the Debtor's Plan
8 of Reorganization.
9

10 **1. Class 1 Allowed Secured Property Tax Claims secured by Debtor's Real**
11 **Property.**

12 Class 1 claims consist of claims secured by the Debtor's Property. Secured tax claims
13 include tax claims for secured property taxes as described in 11 USC §506(b) of the Bankruptcy
14 Code. The debtor intends to market and sell the property parcels as set forth above, or
15 alternatively, to market them for sale within 60 months of the Effective Date.
16

17 The prepetition secured claim of the Solano County Treasurer of approximately
18 \$1,151,521.78 through November 30, 2017 will be paid in full with all applicable costs, fees,
19 charges and interest pursuant to 11 USC Sections 506(b) and 511 upon the sale of the Property,
20 pursuant to the order of the Court approving the sale. Debtor will pay all property taxes with the
21 proceeds of the first land sale, to the extent possible in order to lessen the amount of the tax
22 claim.
23

24 If after five (5) years the Property has not been sold and the proportional secured real
25 property taxes have not been paid, this will be an event of default. A failure by the Debtor to
26 make a payment to Solano County pursuant to the terms of the Plan shall be an event of Default.
27
28

1 If the Debtor fails to cure an Event of Default as to tax payments within ten (10) days after
2 service of written notice or default, Solano County may enforce the entire amount of its claim,
3 plus all penalties and interest accrued under state law, against Debtor in accordance with
4 applicable state laws. This class is impaired by the delay in payment.

5 Each Class 1 Claimant receives a vote to either accept or reject the plan.

6
7 **Class 2: Priority Unsecured Claims**

8 Class 2 Priority Unsecured Claims are claims that are referred to in Section 507 (a)(1),
9 (4), (5), (6), and (7) of the Bankruptcy Code. The Bankruptcy Code requires each claim holder
10 to receive cash on the effective date of the Plan equal to the allowed amount of such claim. A
11 class of holders of such claims, however, may vote to accept different treatment.

12
13 There is currently no known Class 2 claims in this case.

14 **Class 3: General Unsecured Claims.**

15 General unsecured claims are not secured by property of the estate and are not entitled to
16 priority under Section 507(a) of the Bankruptcy Code. Class 3 claims consist of capital
17 investments made by the investing beneficiaries of the business trust to satisfy administrative and
18 operating costs. Mesa Asset Management holds an unsecured claim for a loan and advances made
19 to meet these costs. There are no known claim holders that do not have insider affiliated status.
20 General unsecured claims amount to approximately \$90,356.62.

21
22 After payment of the Class 1 claims, the general unsecured creditors will be paid 100% of
23 their allowed claim. Each Class 3 claimant receives a vote to either accept or reject the Plan.

24
25 **Class 4: Equity Holders.**

26 Class 4 consists of equity holding members of the Business Trust. The members initially
27 invested into a loan of \$5,315,000 that was secured by the real property in the estate. Upon
28

1 foreclosure, the majority of investors elected to become members of the Business Trust Debtor.
2 Other investors elected to hold their interests as Tenants-in-Common. The Equity Holders are
3 members of the Debtor and will be subordinated as insiders to the other creditor Classes 1-3.
4 Class 4 will receive a pro rata distribution of sale proceeds after Classes 1-3 have been paid in
5 full and all administrative allowed claims have been paid in full. Class 4 members will receive a
6 pro rata distributions as will the Tenants-in-Common based upon the initial investment to the
7 initial loan amount.
8

9 Class 4 claims are insider claims and are not valid for confirmation of the plan.

10 **C. Unclassified Claims against Debtor**

11 Certain types of claims are automatically entitled to specific treatment under the Code.
12 They are not considered to be impaired and holders of such claims do not vote on the Plan. They
13 may, however, object if, in their view, their treatment under the Plan does not comply with the
14 requirements of the Code. For a detailed analysis and description of the individual unclassified
15 claims, see Articles I and II of the Debtor's Plan of Reorganization.
16

17 **1. Administrative Expenses.**

18 Administrative expenses are costs and expenses of administering the Debtor's Chapter 11
19 case which are allowed under section 507(a)(2) of the Bankruptcy Code. Administrative expenses
20 include attorney's fees incurred by the Debtor for representation in the Bankruptcy Case, as well
21 as the claims of creditors that have provided services to the Debtor post-petition. These claims
22 include the payment of a management fee to Mesa Asset Management for services provided and
23 property taxes incurred post-petition. Pursuant to the Operating Agreement, the Mesa
24 management fee is calculated at \$9,000/yr. A list of the administrative claims is included in the
25 Plan. Additional U.S. Trustee fees may be approved by the court and paid through the estate prior
26
27
28

1 to confirmation and through administration of the Plan. Administrative claims will be paid within
2 10 days after the Plan Effective Date as they come due for payment or as agreed upon with the
3 Debtor from the revenue of the Debtors.

4 2. Trustee's Fees

5 The U.S. Trustee's office accrues fees for the administration of the Bankruptcy Case and
6 Chapter 11 Plan. 28 U.S.C. §1930(a)(6) requires that the Debtor make payment of the U.S.
7 Trustee's fees as they accrue. These fees will be paid current on the Effective Date of the Plan
8 and paid as they become due and owing.
9

10 **VIII. MODIFICATION, ALTERATION AND REVOCATION OF THE PLAN**

11 **A. Modification of the Plan.**

12 The Debtor may modify the Plan at any time before confirmation of the Plan. However,
13 the Court may require a new disclosure statement and/or re-voting on the Plan.
14

15 Upon request of the Debtor, the U.S. Trustee, or the holder of an allowed unsecured claim,
16 the Plan may be modified at any time after confirmation of the Plan but before completion of
17 payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on
18 claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the
19 amount of distribution to a creditor whose claim is provided for by the Plan as is necessary to
20 account for any payment of the claim made other than under the Plan. Such modification is subject
21 to Court and U.S. Trustee approval.
22

23 **B. Revocation of the Plan**

24 The Debtor reserves the right to revoke or withdraw the Plan prior to the confirmation
25 hearing and to file subsequent Chapter 11 plans. If the Debtor revoke or withdraw the Plan, or if
26 confirmation does not occur, then (1) the Plan shall be null and void in all respects; (2) any
27
28

1 settlement or compromise embodied in the Plan shall: (a) constitute a waiver or release of any
2 Court: and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims
3 by or against, the Debtor or any other entity; (b) prejudice in any manner the rights of the Debtor
4 or any other entity; or (c) constitute an admission, acknowledgement offer or undertaking of any
5 sort by the Debtor or any other entity.
6

7 **C. Severability**

8 If, prior to confirmation of the Plan, any term or provision of the Plan is held by the Court
9 to be invalid, void or unenforceable, the Court shall have the power to alter and interpret such term
10 or provision to make it valid or enforceable to the maximum extent practicable, consistent with the
11 original purpose of the term or provision held to be invalid, void or unenforceable, and such term
12 or provision then will be applicable as altered or interpreted, provided that any such alteration or
13 interpretation must be in form and substance reasonably acceptable to the Debtor, and, to the extent
14 such alteration or interpretation affects the rights or treatment of holders of general unsecured
15 claims, such claim holder.
16

17 **IX. EFFECTS OF CONFIRMATION AND IMPLEMENTATION OF THE PLAN**

18 **A. Reservation of Rights**

19 The Plan shall have no force or effect until the Court enters the Confirmation Order.
20 Neither the filing of the Plan, any statement or provision contained in the Disclosure Statement,
21 nor the taking of any action by the Debtor or any other entity with respect to the Plan shall be an
22 admission or waiver of any rights of (1) the Debtor with respect to the holders of claims or other
23 entities; or (2) any holder of Claims or other entity prior to the Effective Date of the Plan.
24

25 **B. Vesting of Assets in the Reorganized Debtor.**

26 After confirmation of the Plan, all property of the Debtor shall vest in the relevant
27
28

1 reorganized Debtor, free and clear of all liens, claims, charges, or other encumbrances, except
2 those enumerated in the order approving the Motion to Value and the confirmation order. The
3 reorganized Debtor may operate its business and may use, acquire, dispose of property and
4 compromise or settle any claims without supervision or approval of the Bankruptcy Court and
5 free of any restrictions of the Bankruptcy Code or Rules, other than those restrictions expressly
6 imposed by the Plan and the confirmation order. Without limiting the foregoing, the Debtor may
7 pay the liabilities that are incurred after confirmation for professional fees, disbursement,
8 expenses or related support services without application to the Bankruptcy Court.
9

10 **C. Discharge of the Debtor.**

11 The Debtor is a corporate entity and as such does not receive a discharge from all debts
12 that arose prior to confirmation of the plan pursuant to §1141(d)(3)(C). However, the confirmed
13 plan of reorganization is binding upon any creditor, whether or not such creditor has accepted the
14 plan, pursuant to §1141(a).
15

16 **D. Plan Payments**

17 The Debtor will implement its Plan by having MESA serve as the Plan Agent for payment
18 of Claims pursuant to the Plan. No compensation will be paid to MESA for serving as Plan Agent
19 beyond the management fee; however, it will be entitled to reimbursement of expenses and
20 compensation for any professionals who assist in the performance of the duties of the Plan Agent.
21

22 The Plan Agent is authorized, without limitation, to:

- 23
- 24 (a) Manage, protect and preserve the Assets, subject to the terms and limitations set forth
25 in the Plan.
 - 26 (b) Release, sell, transfer, convey or assign any right, title, interest in or about the Assets
27 or any portion thereof with the approval of the Bankruptcy Court after hearing and
28

1 notice, unless the value of the Asset is less than \$25,000, in which case Bankruptcy
2 Court approval is not required.

3 (c) Pay and discharge any costs, expenses, professional fees or obligations deemed
4 necessary to preserve or enhance the value of the Assets.

5 (d) Open and maintain bank accounts and deposit funds or draw checks and make
6 distributions in accordance with the Plan.

7 (e) Engage and retain attorneys, accountants, engineers, agents, tax specialists, financial
8 advisers, appraisers, investment bankers, or other professionals and clerical assistance
9 as may, in the discretion of the Plan Agent, be deemed necessary.

10 (f) Execute any documents on behalf of the Estate necessary to further the goals and
11 objectives and accomplish the purposes of the Plan.

12 (g) Pay obligations or expenses of or relating to the Assets and that the Plan Agent
13 reasonably deems to be in the best interest of Creditors or necessary to effectuate the
14 Plan.

15 (h) Analyze, evaluate, pursue and settle and compromise any and all Litigation Claims
16 and other causes of action on behalf of the Estate, objections to Claims, and any
17 appeals thereof, and otherwise sue and be sued as is necessary to fulfill the obligations
18 and duties under the Plan.

19 (i) Enforce, waive, or release rights, privileges or immunities relating to the Assets.

20 (j) Initiate, prosecute, settle and resolve any and all litigation claims and other causes of
21 action on behalf of the Estate, objections to Claims, and any appeals thereof with the
22 approval of the Bankruptcy Court after hearing on notice, unless the amount in
23 controversy is less than \$25,000, in which case approval of the Bankruptcy Court is
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25
26
27
28

1 not required.

2 (k) Liquidate and convert all or any portion of the Assets to Cash.

3 (l) Establish and maintain reserves required by the Plan.

4 (m) Make Distribution in accordance with the terms of the Plan

5 (n) Act as is necessary with regard to all matters which the jurisdiction of the Bankruptcy
6 Court is reserved under the Plan.

7
8 (o) As soon as is practicable after the Final Distribution, oversee the dissolution and
9 winding up of the Estate in accordance with applicable law and seek a Final Order
10 from the Bankruptcy Court closing the Case and entry of a Final Decree.

11 (p) Without limiting any of the foregoing, deal with the Assets or any part or parts thereof
12 in all other ways as would be lawful and do any and all things necessary to further the
13 goals and objectives and accomplish the purposes of the Plan.
14

15 The Plan Agent will make the plan payments from the revenue that is generated from the
16 sale of Debtor assets in whole or in part. The real property value is estimated at \$3,000,000. The
17 sales costs and other expenses of sale will be paid from the proceeds of sale at the time of closing.
18 The expected net revenue from the sale of the Property is anticipated to be sufficient to pay all
19 allowed claims 100%.
20

21 Debtor has approximately \$0 in cash reserves as of August 1, 2017. The plan
22 contemplates to use of the reserve funds to satisfy the initial costs of the Plan at the Effective Date
23 and to replenish this reserve from the monthly income. Mesa has advanced funds to meet these
24 expenses to be reimbursed as part of its general unsecured claim.
25

26 Plan payments will be made on all allowed claims under the Plan through the Debtor-in-
27 Possession account. Under supervision of the U.S. Trustee, the Debtor will deposit all surplus
28

1 income into this account after payment of all operational expenses and allowed claims. Payments
2 pursuant to the Plan will be made pursuant to the terms of the Plan until such claims are paid.

3 Except as otherwise agreed or set forth in the Plan, payments upon disputed claims will
4 be made after the claim has become an Allowed Claim and a final non-appealable order of the
5 Bankruptcy Court has been entered. Notwithstanding anything in the Plan to the contrary, no
6 partial payments and no partial distributions shall be made with respect to a disputed claim until
7 all such disputes in connection with such disputed claim have been resolved by settlement among
8 the parties or by entry of a final order of the Court. Any post-petitions payments made pursuant
9 to an order of the Court will be credited to the satisfaction of the Allowed Claim under the terms
10 of the Plan.
11

12 **E. Objections to Claims**

13 After the Effective Date, objections to Claims shall be made and objections to Claims
14 made previous thereto shall be pursued by the Plan Agent or any other party properly entitled to
15 do so after notice to the Plan Agent and the Reorganized Debtor, with approval by the Bankruptcy
16 Court. Any objections to the Claims made after the Effective Date shall be filed and served not
17 later than 180 days after the Effective Date; provided, however, that such period may be extended
18 by order of the Bankruptcy court for good cause shown. In order to facilitate the Payment to
19 holders of Allowed Claims and if and to the extent there are Disputed Claims in any Class, the
20 Plan Agent shall set aside in a separate designated reserve account the payments applicable to
21 such Disputed claims as if such Disputed Claims were Allowed Claims, pending allowance of the
22 claim or disallowance of the Disputed Claims.
23
24
25

26 **F. Holding of Undeliverable Distributions and Failure to Claim**

27 All Distributions are to be made to the holder of each Allowed Claim by the Plan Agent
28

1 at the address listed on the Schedules or proof of claim filed by such holder at the time of
2 Distribution. If any holders Distribution is returned as undeliverable, no further Distributions to
3 such holder shall be made unless and until the Debtor is notified of the holder's current address,
4 at which time all required Distributions shall be made to the holder. Undeliverable Distributions
5 shall be held by the Debtor until such Distributions are claimed. All Claims for undeliverable
6 Distributions must be made within ninety (90) days following a Distribution. After such date, all
7 unclaimed Distributions shall be allocated pro rata to the members of the Class related to such
8 Distribution notwithstanding any federal or state escheat laws to the contrary.
9

10 **G. Fractional Amounts**

11 Payment of fractions of dollars will not be made. Whenever any payment of a fraction of
12 a dollar under the Plan would otherwise be called for, the actual payment made will reflect a
13 rounding of such fraction to the nearest dollar (up or down) with half dollars being rounded down.
14

15 **H. Binding Effect**

16 The Plan shall be binding on, and shall inure to the benefit of, the Debtor and the holders
17 of all Claims and their respective successors and assigns.
18

19 **I. Exculpation**

20 The Debtor, the Plan Agent, and their respective agents and attorneys shall not be liable
21 for any actions or omissions taken or not taken in connection with or arising out of the
22 administration of the Chapter 11 Case, pursuit of confirmation of the Plan, the consummation of
23 the Plan, or the administration of the Plan or the property to be distributed under the Plan, except
24 for gross negligence or willful misconduct as determined by Final Order of the Bankruptcy Court.
25

26 **J. Governing Law**

27
28

1 Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights,
2 duties and obligations of the Debtor, all Creditors and any other Person arising under the Plan
3 shall be governed by, and construed and enforced in accordance with, the internal laws of the
4 State of Nevada, without giving effect to Nevada's choice of law provisions.

5 **K. Computation of Time**

6 In computing any period of time prescribed or allowed by the Plan, the day of the act,
7 event, or default from which the designated period of time begins to run shall not be included.
8 The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal
9 holiday, or when the act to be done is filing of a paper in the Bankruptcy court, a day on which
10 weather or other conditions have made the clerk's office inaccessible, in which event the period
11 runs until the next day which is not one of the aforementioned days.

12 **L. Final Decree**

13 After the Estate is fully administered, the Debtor shall file an application for a Final
14 Decree and shall serve the application on the U.S. Trustee, together with a proposed Final Decree.
15 The application will be heard by the U.S. Bankruptcy Court with regard to closing the case.

16 **X. TAX CONSEQUENCES OF THE PLAN**

17 THE FOLLOWING SUMMARY DOES NOT CONSTITUTE TAX ADVICE TO ANY
18 PERSON. NO REPRESENTATIONS REGARDING THE EFFECT OF IMPLEMENTATION
19 OF THE PLAN ON INDIVIDUAL CREDITORS ARE MADE HEREIN OR OTHERWISE.
20 ALL CREDITORS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE
21 TAX CONSEQUENCES OF THE PLAN TO THEM, TO THE DEBTOR AND TO THE
22 BANKRUPTCY ESTATE.

23 THE DEBTOR, CREDITORS AND ANY PERSON, ENTITY, TRUST OR
24
25
26
27
28

1 ORGANIZATION AFFILIATED WITH THE FOREGOING (“THE PARTIES”) ARE
2 STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE
3 FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES TO THEM WHICH
4 MAY RESULT FROM THE PROPOSED REORGANIZATION. THIS DISCLOSURE
5 STATEMENT SHALL NOT IN ANY WAY BE CONSTRUED AS MAKING ANY
6 REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF
7 CONFIRMATION AND CONSUMMATION OF THE PLAN TO THE PARTIES. THIS
8 DISCLOSURE STATEMENT IS GENERAL IN NATURE AND IS MERELY A SUMMARY
9 DISCUSSION OF POTENTIAL TAX CONSEQUENCES TO THE PARTIES AND IS BASED
10 UPON THE INTERNAL REVENUE CODE AND PERTINENT REGULATIONS RULINGS,
11 COURT DECISIONS, AND TREASURY DECISIONS.
12
13

14 Under the Internal Revenue Code of 1986, as amended (the “IRC”), there may be federal
15 income tax consequences to the Parties as a result of confirmation and consummation of the Plan
16 as described in the Disclosure Statement.
17

18 The federal income tax consequences to Creditors and their affiliates arising from the Plan
19 will vary depending upon, among other things, the type of consideration received by the Creditor
20 in exchange for its Claim, whether the Creditor reports income using a cash or accrual method,
21 whether the Creditor has taken a “bad debt” deduction with respect to its Claim, whether the
22 Creditor receives consideration in more than one tax year of the Creditor, whether the Creditor is
23 a resident of the United States, and whether the Creditor’s claim is classified as a “security” or
24 “debt” for federal income tax purposes. If a Creditor’s claim is characterized as a loss from a
25 security, then the loss will be treated as a sale or exchange of a capital asset under IRC §165, and
26 whether it is a long term or short term capital loss will depend on the Creditor’s holding period.
27
28

1 If a Creditor's claim is characterized as a loss resulting from a debt, then the extent of the
2 deduction will depend on whether the debt is deemed wholly worthless or partially worthless, and
3 whether the debt is construed to be a business or non-business debt as determined under IRC
4 §166.

5 **XI. LIQUIDATION ANALYSIS**

6 **A. Alternatives to the Plan**

7
8 The Debtor believes that the Plan, as described herein, enables the Creditors to receive
9 payment of their Allowed Claims as quickly as possible and for the greatest return as required
10 under the Bankruptcy Code. In addition, the Debtor believes that the Plan provides this payment
11 more quickly than only other alternative. In the Debtor's view, the only alternative to the Plan is
12 a forced liquidation of the Debtor's Property in a chapter 7 case, payment through an auction or a
13 tax sale. Either of these sale methods would greatly reduce the amount of return to the Debtor's
14 unsecured creditors.
15

16 In general, to determine what holders of Allowed claims in each Class would receive if
17 Debtor were liquidated, the Bankruptcy Court must determine what funds would be generated
18 from liquidation of the Debtor's assets. Such liquidation funds would be reduced by the costs and
19 expenses of the liquidation and by such additional Administrative Claims and the use of the
20 chapter 7 for the purpose of liquidation.
21

22 The funds recovered from liquidation would be further reduced by the commission
23 payable to the chapter 7 trustee and the trustee's attorney's fees, as well as the costs of the chapter
24 11 estate (such as the compensation for chapter 11 professionals). In a chapter 7 case, the trustee
25 would be entitled to seek a sliding scale commission based upon the funds distributed to the
26 Creditors. In contrast, the trustee's commission is not paid in a chapter 11 case, and the Plan
27
28

1 Administer under the Plan will not be paid a commission or any compensation for his services.

2 **B. Liquidation**

3 Pursuant to Section 1129(a)(7), for the Plan to be confirmed it must provide that creditors
4 will receive at least as much under the Plan as they would receive in a liquidation of the Debtor
5 under chapter 7 (the “Best Interests Test”). The Best Interests Test with respect to each impaired
6 class requires that each holder of a claim of such class either (a) accepts the Plan, or (b) receives
7 or retains under the Plan, property of value, as of the Effective Date, that is not less than the value
8 such holder would receive or retain if the Debtor were liquidated under Chapter 7. The Court
9 will determine whether the value received under the Plan by the holders of claims in each impaired
10 class of creditors is equal to or exceeds the value that would be allocated to such holders in
11 liquidation under Chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan meets the
12 Best Interests Test and provides value that is not less than the value which would be recovered
13 by each holder in a Chapter 7 proceeding.

14
15
16 In the instant case, the Debtor only owns real property. Therefore, the impaired classes
17 would recover only the net present value of the estate property after sale by the taxing authority.
18 With the current offer from TANK Holdings, a chapter 7 trustee may be able to pursue that sale
19 in the event that the plan is not confirmed. However, if the offer from TANK Holdings fails to
20 be approved or completed, the Chapter 7 Trustee would have little interest in continuing to market
21 the Property and would likely allow a tax sale to proceed against the Property. The Plan provides
22 for an extended time for sale, even if the approved sale under §363 fails to be completed, resulting
23 in the payment of equal or greater amounts than the present liquidation value to each of these
24 classes.
25
26

27 If the Debtor were to liquidate the Property today without the TANK Holdings offer, the
28

1 sale would most likely be for less than the amount of the Class 1 claim and generate no income
2 for the general unsecured creditors. All anticipated proceeds would apply to secured and priority
3 tax claims prior to payment of any general unsecured claims or investor claims. Liquidation is
4 anticipated to amount to less than required to satisfy the priority tax debt, leaving nothing for
5 unsecured creditors. Therefore, the proposed payment plan would be more beneficial to the
6 general unsecured creditors.
7

8 **C. Assumptions for Liquidation Analysis**

9 The following assumptions were made in preparing the Liquidation Analysis:

- 10 1. The Liquidation Analysis satisfies Section 1129(a)(7)(A)(ii) to determine whether
11 the Plan is in the best interests of the Debtor's estate and creditors.
12
- 13 2. The Liquidation Analysis is based upon a number of estimates and assumptions
14 that, although considered reasonable by the Debtor are subject to economic and
15 business contingencies beyond the Debtor's control. Accordingly, no assurances
16 can be made. The Liquidation Analysis is subject to change. Nothing contained
17 herein shall be used as an admission against the Debtor or any other Person.
18
- 19 3. The Liquidation Analysis utilizes figures estimated by the Debtor as a basis for
20 determining liquidation values. It does not include any proceeds from the sale of
21 fully encumbered Assets. Additionally, liquidation values have been estimated by
22 the Debtor for certain Assets as more particularly set forth in Exhibit 2.
23
- 24 4. The Chapter 11 distribution to unsecured creditors ranges is anticipated to be
25 100% for payment of all Unsecured Claims. In contrast, the Chapter 7 distribution
26 is anticipated to be \$0% for Unsecured Creditors if the Property is sold through a
27 tax sale. If a Chapter 7 Trustee is able to complete the proposed sale to TANK
28

1 Holdings, the liquidation value would be further reduced by the Chapter 7
2 Trustee's proportional fees from the sale. See Exhibit 2.

3 **XII. CONCLUSION**

4 The Debtor has analyzed different scenarios and believes that confirmation of the Plan provides
5 for a recovery for Creditors that is greater than other likely alternatives, and particularly a
6 liquidation alternative. In addition, alternatives other than Confirmation of the Plan could result
7 in extensive delays and increases in administrative expenses resulting in potentially smaller
8 distributions to the holders of Claims and equity interests. Accordingly, the Debtor recommends
9 confirmation of the Plan and urges all holders of Allowed Claims to vote to accept the Plan and
10 to indicate acceptance by returning their Ballots to be received no later than voting deadline.
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1 Dated this 17th day of November, 2017.

2 /s/ Peter J. Becker
3 Peter J. Becker, Manager of Mesa Asset Management,
4 Trustee of 06-019 Vacaville III Business Trust
5
6

7 Submitted by:

8 LAW OFFICE OF TIMOTHY P. THOMAS, LLC
9

10 /s/ Timothy P. Thomas
11 Timothy P. Thomas, Esq.
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