

GHANDI DEETER BLACKHAM

Electronically filed: January 29th, 2018

NEDDA GHANDI, ESQ.
 Nevada Bar No. 11137
 Email: nedda@ghandilaw.com
 LAURA A. DEETER
 Nevada Bar No. 10562
laura@ghandilaw.com
 725 S. 8th Street Suite 100
 Las Vegas, Nevada 89101
 Telephone: (702) 878-1115
 Fax: (702) 979-2485
 Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA

In re:)	CASE NO. BK-17-12699-mkn
)	CHAPTER 11
PROMETHEUS & ATLAS REAL ESTATE))	
DEVELOPMENT, LLC,)	
)	Hearing Date: Feb. 28, 2018
Debtor.)	Hearing Time: 9:30 a.m.

DEBTOR'S ~~SECOND-THIRD~~ AMENDED DISCLOSURE STATEMENT
DESCRIBING
CHAPTER 11 PLAN OF LIQUIDATION

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1 **I. INTRODUCTION**

2 Prometheus & Atlas Real Estate Development, LLC, a Nevada limited liability
3 company, (“Debtor” or “Proponent” or “Prometheus”) is the Debtor and Debtor-in-Possession
4 in a Chapter 11 bankruptcy case. On May 19, 2017, Debtor commenced a bankruptcy case (the
5 “Chapter 11 Case”) by filing its voluntary Chapter 11 petition under the United States
6 Bankruptcy Code (“Code”), 11 U.S.C. §101 *et seq.* Chapter 11 allows Debtor, and under some
7 circumstances, creditors and other parties in interest, to propose a plan of reorganization
8 (“Plan”).
9

10
11 Debtor has prepared this Disclosure Statement (“Disclosure Statement”) in connection
12 with the solicitation of votes on the Plan proposed by Debtor to treat the Claims of Creditors of
13 Debtor. The Plan may provide for Debtor to reorganize by continuing to operate, to liquidate
14 by selling assets of the estate, or a combination of both. Debtor is the party proposing the Plan
15 sent to you in the same envelope as this document.
16

17 **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT**
18 **FOR THE ENCLOSED PLAN.** Any exhibits to this Disclosure Statement are incorporated
19 into and are a part of this Disclosure Statement. The Plan is provided concurrently with this
20 Disclosure Statement. This is a liquidating Plan. In other words, the Proponent seeks to sell its
21 assets to satisfy the claims against it.
22

23 **A. Purpose of This Document.**

24 The objective of a Chapter 11 case is the confirmation (i.e., approval by the bankruptcy
25 court) of a plan of reorganization. A plan describes in detail (and in language appropriate for a
26 legal contract) the means for satisfying the claims against a debtor. After a plan has been filed,
27

1 the holders of such claims that are impaired (as defined in Bankruptcy Code Section 1124) are
2 permitted to vote to accept or reject the plan. Before a debtor or other plan proponent can solicit
3 acceptances of a plan, Bankruptcy Code Section 1125 requires Debtor or other plan proponent
4 to prepare a disclosure statement containing adequate information of a kind, and in sufficient
5 detail, to enable those parties entitled to vote on the plan to make an informed judgment about
6 the plan and whether they should accept or reject the plan.
7

8 The purpose of this Disclosure Statement is to provide sufficient information about
9 Debtor and the Plan to enable Creditors to make an informed decision in exercising their rights
10 to accept or reject the Plan. This Disclosure Statement will be used to solicit acceptances of the
11 Plan once approved by the Bankruptcy Court.
12

13 After the appropriate Persons have voted on whether to accept or reject the Plan, there
14 will be a hearing on the Plan to determine whether it should be confirmed. At the Confirmation
15 Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements
16 of the Bankruptcy Code. The Bankruptcy Court will also receive and consider a ballot summary
17 which will present a tally of the votes of Classes accepting or rejecting the Plan cast by those
18 entitled to vote. Once confirmed, the Plan will be treated essentially as a contract binding on all
19 Creditors and other parties-in-interest in the Chapter 11 Case.
20

21 THIS DISCLOSURE STATEMENT IS NOT THE PLAN. FOR THE CONVENIENCE
22 OF CREDITORS, THE PLAN IS SUMMARIZED IN THIS DISCLOSURE STATEMENT.
23 ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF. IN
24 THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT
25 AND THE PLAN, THE PLAN WILL CONTROL.
26

READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO

KNOW ABOUT:

(1) WHO CAN VOTE OR OBJECT;

(2) WHAT THE TREATMENT OF YOUR CLAIM IS, (i.e., what your Claim will receive if the Plan is confirmed) AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION;

(3) THE HISTORY OF DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY;

(4) WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN;

(5) WHAT IS THE EFFECT OF CONFIRMATION; AND

(6) WHETHER THE PLAN IS FEASIBLE.

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how the Plan will affect you and what is the best course of action for you.

Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

The Code requires a Disclosure Statement to contain “adequate information” concerning the Plan. Prior to setting a Confirmation Date, the Bankruptcy Court will have approved this document as an adequate Disclosure Statement, containing enough information

1 to enable parties affected by the Plan to make an informed judgment about the Plan. Any party
2 can now solicit votes for or against the Plan.

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

4 THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN
5 DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS
6 OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT
7 LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON ALL
8 CREDITORS AND INTEREST HOLDERS IN THIS CASE.
9

10 **1. Time and Place of the Confirmation Hearing.**

11 The Bankruptcy Court will determine whether or not to confirm the Plan at the Plan
12 Confirmation Hearing assuming the Disclosure Statement is approved. The Plan Confirmation
13 Hearing will be held in the Foley Federal Building, 300 S. Las Vegas Blvd., Las Vegas, NV
14 89101. You will receive a second notice of hearing of the Plan Confirmation Hearing upon
15 approval of this Disclosure Statement.
16

17 **2. Deadline To Vote For or Against the Plan.**

18 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot
19 and return the ballot in the enclosed envelope to Ghandi Deeter Blackham Law Offices, 725
20 South 8th Street, Suite A, Las Vegas, NV 89101, attn.: Nedda Ghandi, Esq.
21

22 Unless a different date is set by the Bankruptcy Court in the Order Approving Disclosure
23 Statement, your ballot must be received by ten (10) business days prior to the Confirmation
24 Hearing or it will not be counted.
25

26 **3. Deadline For Objecting to the Confirmation of the Plan.**

1 Unless a different date is set by the Court in the Order Approving Disclosure Statement,
2 objections to the Confirmation of the Plan must be filed with the Bankruptcy Court and served
3 upon Debtor's Counsel, Nedda Ghandi, Esq., within fourteen (14) business days prior to the
4 Confirmation Hearing.

5 **4. Identity of Person to Contact for More Information Regarding the Plan.**

6 Any interested party desiring further information about the Plan should contact Debtor's
7 Counsel, Nedda Ghandi, Esq., at the address, phone number or e-mail address set forth on the
8 first page of this document.
9

10 **C. Disclaimer**

11 Unless otherwise specifically noted, the financial information in this Disclosure
12 Statement has not been subject to audit. Instead, this Disclosure Statement was prepared from
13 information compiled from records maintained in the ordinary course of Debtor's operations.
14 Debtor has attempted to be accurate in the preparation of this Disclosure Statement. Other than
15 as stated in this Disclosure Statement, Debtor has not authorized any representations or
16 assurances concerning Debtor, its operations, or the value of its Asset. Therefore, in deciding
17 whether to accept or reject the Plan, you should not rely on any information relating to Debtor
18 or the Plan other than that contained in this Disclosure Statement or in the Plan itself.
19

20 The information contained in this Disclosure Statement is provided by Debtor and
21 Debtor's Counsel. Debtor represents that everything stated in the Disclosure Statement is true
22 to Debtor's best knowledge. The Bankruptcy Court has yet to determine whether or not the Plan
23 is confirmable and makes no recommendation as to whether or not you should support or
24 oppose the Plan.
25
26

II. DEFINITIONS AND RULES OF INTERPRETATION

A. Terminology and Meanings.

For the purposes of the Plan, any capitalized terms shall have the respective meanings as set forth in the accompanying Plan, and set forth herein for convenience; such meanings to be equally applicable to the singular and the plural forms of the terms defined, unless the context otherwise requires. Capitalized terms used in the Plan at all times shall refer to terms defined herein and in the Plan. To the extent that there is a conflict regarding any term meaning, the Plan shall control. Unless otherwise provided in the Plan, all terms used herein shall have the meaning assigned to them under the Bankruptcy Code or Bankruptcy Rules. The rules of construction applicable to the Bankruptcy Code and the Bankruptcy Rules shall be applicable to the Plan.

1. Definitions.

1. “Administrative Claim” means a Claim for costs and expenses of administration, pursuant to Bankruptcy Code Sections 503(b), 507(a)(2) or 507(b), including: (a) the actual and necessary costs and expenses incurred after the Petition Dates and through the Effective Date of preserving the Estates and operating the businesses of Debtor (such as wages, salaries, or commissions for services, and payments for goods and services); (b) compensation and reimbursement of expenses for legal, financial advisory, accounting, and other services, including but not limited to, Allowed Professional Fees, pursuant to Bankruptcy Code Sections 328, 330(a), or 331 or otherwise for the period commencing on the Petition Date and ending on the Effective Date; (c) all fees and charges assessed against the Estates, pursuant to chapter 123 of the Judicial Code and 28 U.S.C. § 1930; and (d) all Bankruptcy Court approved requests for

1 compensation or expense reimbursement for making a substantial contribution in the Chapter
2 11 Cases, pursuant to Bankruptcy Code Sections 503(b)(3), (4), and (5).

3 2. “Administrative Claim Bar Date” means the deadline for filing requests for payment
4 of Administrative Claims, which shall be thirty (30) days after the Effective Date, except with
5 respect to Professional Fees, which shall be subject to the provisions set forth herein relating to
6 the treatment of Administrative Claims for Professional Fees.
7

8 3. “Allowed” means, with reference to any Claim, Equity Interest or Interest and with
9 respect to Debtor: (a) any Claim against or Interest in Debtor that has been listed by Debtor in
10 their Schedules, as such Schedules may be amended by Debtor from time to time in accordance
11 with Bankruptcy Rule 1009, as not disputed, contingent or unliquidated and for which no
12 contrary Proof of Claim or Interest has been Filed; (b) any Claim or Interest allowed (i) under
13 the Plan, (ii) by Final Order, or (iii) as to which the liability of Debtor and the amount thereof
14 are determined by a final order of a court of competent jurisdiction other than the Bankruptcy
15 Court; or (c) as to which a Proof of Claim has been timely Filed in a liquidated amount with the
16 Bankruptcy Court, pursuant to the Bankruptcy Code or any order of the Bankruptcy Court, or
17 has been Filed with leave of the Bankruptcy Court after notice and a hearing, provided that no
18 objection to the allowance of such Claim or motion to expunge such Claim has been interposed
19 by any party in interest before any final date for the filing of such objections or motions set
20 forth in the Plan, the Confirmation Order or other order of the Bankruptcy Court. For purposes
21 of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount
22 equal to the amount of any valid and enforceable Claim that Debtor may hold against the Holder
23 thereof, to the extent such Claim may be validly offset, recouped, or otherwise reduced under
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1 applicable law. Unless the Bankruptcy Court has entered an order disallowing all or part of a
2 creditor's Claim prior to the deadline set by the Bankruptcy Court for casting ballots to accept
3 or reject Debtor's proposed Plan, creditor's votes will be counted in the balloting process. This
4 shall not impact Debtor's rights to object to said claims after the Confirmation Order is entered.

5 4. "Assets" means all of the assets, property, interests, and effects, Cash, receivables,
6 real and personal, tangible and intangible, wherever situated, of Debtor, as they existed on the
7 Effective Date or thereafter, including: (a) executory contracts and unexpired leases; and (b) all
8 of Debtor's other non-Cash property and assets, including any Causes of Action.

9 5. "Assumed Contracts" means any of Debtor's unexpired leases and executory
10 contracts existing on the Petition Date and any unexpired leases and executory contracts entered
11 into by Debtor post-petition which, prior to the Confirmation Date have been assumed by
12 Debtor pursuant to Bankruptcy Code Section 365, or are to be assumed by Debtor pursuant to
13 the Plan.

14 6. "Avoidance Actions" means any actions commenced, or that may be commenced
15 before or after the Effective Date, pursuant to Bankruptcy Code Sections 544, 545, 547, 548,
16 550 or 551.

17 7. "Bankruptcy Code" means Title 11 of the United States Code, as amended from time
18 to time, as applicable to this Chapter 11 Case.

19 8. "Bankruptcy Court" means the United States Bankruptcy Court for the District of
20 Nevada, or such other court as may from time to time have jurisdiction over these Chapter 11
21 Cases.

1 9. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as heretofore
2 or hereafter amended and the general, local and chambers rules and orders of the Bankruptcy
3 Court.

4 10. "Bar Date" means September 20, 2017, the date established by the Bankruptcy Court
5 by which non-governmental Creditors are required to file proofs of claim with respect to pre-
6 petition Claims including Claims asserted, pursuant to Bankruptcy Code Section 503(b)(9),
7 except with respect to Administrative Claims, Claims arising from the rejection of any
8 executory contracts and unexpired leases, and Claims that were scheduled by Debtor as
9 undisputed, noncontingent, and unliquidated; and November 15, 2017, by which governmental
10 Creditors are required to file proofs of claim with respect to pre-petition Claims, including but
11 not limited to Priority Tax Claims.
12
13

14 11. "Business Day" means a day, other than a Saturday, Sunday, or other day on which
15 commercial banks in Las Vegas, Nevada are authorized or required by law to close.
16

17 12. "Cash" means legal tender of the United States of America, which may be conveyed
18 by check or wire transfer.

19 13. "Cash Collateral Orders" means any and all interim and final orders entered by the
20 Bankruptcy Court, which permitted Debtor to use the cash collateral of any Secured Lenders.

21 14. "Causes of Action" means any Claim, Avoidance Action, cause of action,
22 controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability,
23 damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind
24 or character whatsoever, known, unknown, contingent or non-contingent, matured or
25 unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed,
26
27

1 secured or unsecured, assertable directly or derivatively, whether arising before, on or after the
2 Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law.

3 15. "Chapter 11 Case" means the Chapter 11 case filed by Debtor as set forth in the
4 caption of the instant Disclosure Statement.

5 16. "Claim" has the meaning set forth in Bankruptcy Code Section 101(5).

6
7 17. "Claim Objection Deadline" means sixty (60) days from the entry of an order
8 confirming the Plan for all Claims, except for Claims for which a specific objection deadline
9 has been set forth elsewhere in the Plan.

10 18. "Claims Register" means the official register of Claims and Interests maintained by
11 Debtor.

12
13 19. "Class" means a class of Holders of Claims or Interests as described in Article III
14 of the Plan.

15 20. "Confirmation" means the entry by the Bankruptcy Court of the Confirmation Order.

16
17 21. "Confirmation Date" means the date upon which the clerk of the Bankruptcy Court
18 enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of
19 Bankruptcy Rules 5003 and 9021.

20 22. "Confirmation Funds" means all funds required to be disbursed, or deposited and
21 held for later disbursement upon allowance or other Bankruptcy Court authorization, on or as
22 of the Effective Date (i) to Holders of Allowed Professional Fee Claims, other Allowed
23 Administrative Claims, Allowed Priority Claims to be paid in Cash on the Effective Date, any
24 Allowed Priority Tax Claims other than Priority Tax Claims to be paid in deferred payments
25 pursuant to the Plan, (ii) to the U.S. Trustee for U.S. Trustee Fees due as of the Effective Date
26

1 and (iii) for any other Distributions and payment of costs and expenses in connection with
2 consummating the Plan.

3 23. "Confirmation Hearing" means the hearing held by the Bankruptcy Court to
4 consider confirmation of the Plan pursuant to Bankruptcy Code Section 1129, as such hearing
5 may be adjourned or continued from time to time.
6

7 24. "Confirmation Order" means the order entered by the Bankruptcy Court confirming
8 the Plan in accordance with the Bankruptcy Code, which shall be in form and substance
9 reasonably acceptable to Debtor.

10 25. "Creditor" means a Holder of a Claim.

11 26. "Cure" means the payment of Cash by Debtor, or the Distribution of other property
12 and the performance of any other obligations as the parties may agree or the Bankruptcy Court
13 may order necessary to cure defaults under an executory contract or unexpired lease of Debtor
14 that are required to allow Debtor to assume, or to assume and assign that contract or unexpired
15 lease under Section 365(a) of the Bankruptcy Code, or under the Plan.
16

17 27. "Cure Bar Date" means the deadline for filing requests for payment of Cure, which
18 shall be fifteen (15) days prior to the Confirmation hearing.
19

20 28. "Debtor" shall mean Prometheus & Atlas Real Estate Development, LLC.

21 29. "Debtor in Possession" mean Debtor, as debtor in possession in the Chapter 11 Case,
22 pursuant to Bankruptcy Code Sections 1107 and 1108.
23

24 30. "Disallowed Claim" means any Claim or portion thereof that has been disallowed
25 by a Final Order of the Bankruptcy Court.
26

1 31. "Disclosure Statement" means the solicitation and disclosure statement for the Plan,
2 including all exhibits and schedules thereto.

3 32. "Disputed Claim" means: (a) any Claim or portion of a Claim (including any
4 Administrative Claim, Priority Claim or other Secured Claim) listed in the Schedules as
5 disputed, contingent, or unliquidated; or (b) any Claim, as to which an objection to the
6 allowance thereof has been filed with the Bankruptcy Court within any time limitation fixed by
7 the Bankruptcy Code, the Bankruptcy Rules, the Plan or an order of the Bankruptcy Court,
8 which objection has not been settled, withdrawn, or determined, in whole or in part, by a Final
9 Order. Pursuant to United States Bankruptcy Court, District of Nevada, Local Rule 3007(d),
10 Debtor may file an objection to any Proof of Claim within sixty (60) days after the entry of an
11 order confirming the Plan.
12
13

14 33. "Distribution" means any distribution made by the Distribution Agent pursuant to
15 the terms of the Plan.

16 34. "Distribution Agent" means Debtor, or the Person or Entity chosen by Debtor to
17 make or to facilitate Distributions pursuant to the Plan.
18

19 35. "Distribution Record Date" means the Confirmation Date unless the Bankruptcy
20 Court establishes a different date for the Distribution Record Date in the Confirmation Order.
21

22 36. "Effective Date" means the first Business Day on which the conditions specified in
23 Article X of the Plan have been satisfied in full or waived; in any case, the Effective Date shall
24 not occur until a buyer closes on the Property and completes all obligations pursuant to its
25 purchase agreement (as approved by the Bankruptcy Court), including payment of the purchase
26 price to the Debtor.
27
28

1 37. "Entity" has the meaning as set forth in Bankruptcy Code Section 101(15).

2 38. "Estate" means, the estate of Debtor that was created by the commencement of the
3 Chapter 11 Case pursuant to Bankruptcy Code Section 541, and shall be deemed to include any
4 and all privileges and incorporeal hereditaments of Debtor and any and all interests in property,
5 whether real, personal or mixed, rights, Causes of Action, avoidance powers or extensions of
6 time that Debtor or the estate shall have had effective as of the Petition Date or thereafter,
7 whether by virtue of Bankruptcy Code Sections 544, 545, 546, 547, 548, 549 or 550 or
8 otherwise.
9

10 39. "File" means to file a document with the Bankruptcy Court in the Chapter 11 Case.

11 40. "Final Decree" means an order of the Bankruptcy Court closing the Chapter 11 Case
12 pursuant to Bankruptcy Code Section 350.
13

14 41. "Final Order" means an order or judgment entered by the Bankruptcy Court: (a) that
15 has not been reversed, stayed, modified, amended, revoked, varied or set aside, and as to which
16 (i) any right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived,
17 or (ii) the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired
18 and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending; or (b)
19 as to which an appeal has been taken or petition for certiorari, review, reargument, stay or
20 rehearing has been filed, and (i) such appeal or petition for certiorari, review, reargument, stay
21 or rehearing has been resolved by the highest court to which the order or judgment was appealed
22 or from which certiorari, review, reargument, stay or rehearing was sought, and (ii) the time to
23 appeal further or seek certiorari, review, reargument, stay or rehearing has been waived or
24 expired and no such further appeal or petition for certiorari, review, reargument, stay or
25

1 rehearing is pending, provided, however, that no order or judgment shall fail to be a “Final
2 Order” hereunder solely because of the possibility that a motion pursuant to Section 502(j) or
3 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure or
4 Bankruptcy Rule 9024 may be Filed with respect to such order or judgment.

5 42. “General Unsecured Claims” means claims that are unsecured nonpriority claims
6 that are listed in Debtor’s Schedules of Creditors Holding Unsecured Nonpriority Claims that
7 are not disputed, contingent, or unliquidated; unsecured nonpriority claims for which a Proof
8 of Claim has been Filed, and for which no objection thereto is Filed; and claims resulting from
9 rejection of executory contracts and unexpired leases, if any, all to the extent Allowed by the
10 Court.
11

12 43. “Holder” means any Person or Entity that is the owner of a Claim or Interest in the
13 Chapter 11 Cases.
14

15 44. “Interest” means any: (i) any equity or other ownership interest in any Person or
16 Entity, including, but not limited to, all issued and outstanding or reserved for issuance,
17 common stock, preferred stock, membership interests, warrants, options, or other ownership
18 rights or rights to purchase or receive additional shares of stock or membership interests in any
19 Person or Entity, and/or any other instrument or document to the extent that it directly or
20 indirectly evidences, creates or reserves any equity or ownership interest in any Person or Entity
21 giving rise to any Claim or Interest, (ii) equity security, including all membership interests
22 together with any warrants, options, or contractual rights to purchase or acquire such equity
23 securities at any time and all rights arising with respect thereto and (iii) partnership, limited
24 liability company or similar interest.
25
26
27
28

1 45. "Interest Holder" means the Holder of an Interest.

2 46. "Key Transaction Documents" means, the Plan, the Disclosure Statement, the
3 Ballots, and any and all Plan implementation documents filed with any Plan Supplements.

4 47. "Lien" has the meaning set forth in Bankruptcy Code Section 101(37).

5 48. "Notice of Confirmation" means that certain notice, pursuant to Bankruptcy Rule
6 3020(c)(2), notifying Holders of Claims and Interests that the Bankruptcy Court has confirmed
7 the Plan.
8

9 49. "Operative Document" means any contract, instrument, release, settlement
10 agreement or other agreement or document, if any, that is reasonably necessary to effectuate
11 and implement the transactions provided for in the Plan, including the Key Transaction
12 Documents.
13

14 50. "Person" means any individual, corporation, partnership, limited liability company,
15 joint venture, association, trust or organization, or other "person" as defined in Bankruptcy
16 Code Section 101(41), as well as any governmental agency, governmental unit or political
17 subdivision.
18

19 51. "Petition Date" means May 19, 2017.

20 52. "Plan" means the Chapter 11 Plan, including all documents referenced herein or
21 thereto and all exhibits, supplements, appendices and schedules hereto or thereto, either in its
22 present form or as the same may be altered, amended or modified from time to time pursuant
23 to the Bankruptcy Code or Final Order.
24

25 53. "Plan Proponent" means Debtor.
26
27
28

1 54. "Priority Claim" means a Claim entitled to priority under Bankruptcy Code Sections
2 507(a)(2) through (7).

3 55. "Priority Tax Claims" means any Claim that is entitled to priority under Section
4 502(i) or Bankruptcy Code Section 507(a)(8). Priority Tax Claims do not include *ad valorem*
5 tax Claims if such Claims under applicable state law are Secured by a Lien on Debtor's Assets.
6

7 56. "Professional" means a Person or Entity: (a) employed pursuant to a Bankruptcy
8 Court order in accordance with Bankruptcy Code Sections 327 or 1103 and to be compensated
9 for services rendered prior to or on the Effective Date, pursuant to Bankruptcy Code Sections
10 327, 328, 329, 330, or 331; or (b) awarded compensation and reimbursement by the Bankruptcy
11 Court, pursuant to Bankruptcy Code Section 503(b)(4).
12

13 57. "Professional Fees" means all reasonable fees and expenses incurred by
14 Professionals and allowed by the Bankruptcy Court.

15 58. "Professional Fee Claim" means any Claim for compensation or reimbursement of
16 fees and expenses as may be requested by a Professional to the extent such Professional is
17 required to apply to the Bankruptcy Court for payment of such Claim pursuant to Bankruptcy
18 Code Sections 326, 328, 330 or 331 and the terms of the Plan.
19

20 60. "Proof of Claim" means a Proof of Claim Filed against Debtor in the Chapter 11
21 Cases.
22

23 61. "Property" means the real property owned by Debtor, located in the NW4 SW4 SEC
24 12 20 59, City of Las Vegas, County of Clark, Nevada, APN# 137-12-301-009 situated at or
25 near Buckskin & Cliff Shadows Parkway.

26 62. "Proponent" mean Debtor as proponent of the Plan.
27

1 63. "Pro Rata" means, with respect to an amount of Cash or other consideration to be
2 paid or distributed on a particular date to a Holder of an Allowed Claim, that such Distribution
3 shall be made in accordance with the ratio, as of such date, of the amount such Allowed Claim
4 is to the aggregate of the amounts of Claims in the Class to which such Allowed Claim belongs.

5 64. "Rejected Contract" means any expired lease or contract, or any unexpired lease or
6 executory contract that has been rejected prior to Confirmation, or is the subject of a pending
7 motion for rejection or has been designated in the Disclosure Statement (or in any other
8 contract, instrument, stipulation, settlement, release, or other agreement or document entered
9 into in connection with the Plan) as a contract or lease that is not to be an Assumed Contract,
10 or is otherwise rejected pursuant to the Plan.
11

12 65. "Reorganized Debtor" means Debtor, or any successor thereto, by merger,
13 consolidation or otherwise, on or after the Effective Date.
14

15 66. "Representatives" means, with respect to a given Person or Entity, its past and
16 current directors, officers, shareholders, members, partners, employees, agents, attorneys,
17 professionals, advisors, trustees, consultants, accountants, contractors and other
18 representatives.
19

20 67. "Schedule of Assumed Contracts" means the schedule of Unexpired
21 Leases/Contracts to Be Assumed, if any, which is attached as an exhibit to the Disclosure
22 Statement.
23

24 68. "Schedule of Disputed Claims" means the non-exhaustive list of Claims whose
25 amounts are disputed, if any, which is attached in an exhibit to the Disclosure Statement.
26
27

1 69. "Schedules" means the schedules of Assets and liabilities, the list of Holders of
2 Interests and the statements of financial affairs Filed by Debtor under Bankruptcy Code Section
3 521 and Bankruptcy Rule 1007, and all amendments and modifications thereto through the
4 Confirmation Date.

5 70. "Secured" means when referring to a Claim: (a) secured by a Lien on property in
6 which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to
7 applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to
8 Section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in the
9 Estate's interest in such property or to the extent of the amount subject to setoff, as applicable,
10 as determined pursuant to Section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to
11 the Plan as a secured Claim.
12

13 71. "Secured Lenders" means, collectively, all lenders holding Liens on property in
14 which the Estate has an interest to secure their Claims as set forth in Debtor's Schedules, as
15 amended or modified, and any respective other Persons or Entities holding Claims with respect
16 to each Secured Loan held by each of the Secured Lenders and any permitted assignee or other
17 transferee thereof, each individually, a "Secured Lender."
18

19 72. "Secured Loan" means a loan held by a Secured Lender which is Secured by
20 property in which the Estate has an interest.
21

22 73. "Unclassified Claims" means Administrative Claims and Priority Tax Claims.
23

24 74. "U.S. Trustee Fees" means fees payable pursuant to 28 U.S.C. § 1930.
25

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1 **B. Rules of Interpretation.**

2 Any term used in the Plan that is not defined in the Plan, either in this Article or
3 elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning
4 assigned to that term in the Bankruptcy Code or the Bankruptcy Rules. For purposes of the
5 Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular
6 or the plural, shall include both the singular and the plural; (b) to the extent a reference or
7 description in the Plan to an Operative Document is inconsistent with the terms or conditions
8 of that Operative Document, the terms and conditions of the Operative Document shall govern
9 over the reference or description contained in the Plan; (c) any reference in the Plan to an
10 existing document, schedule, Operative Document, or exhibit Filed or to be Filed means such
11 document, schedule, Operative Document, or exhibit, as it may have been or may be amended,
12 modified, or supplemented as of the Confirmation Date in accordance with the terms hereof;
13 (d) unless otherwise specified in a particular reference, all references in the Plan to Sections,
14 Articles, and exhibits are references to Sections, Articles, and exhibits of or to the Plan; (e) the
15 words “herein”, “hereof”, “hereto”, “hereunder”, and others of similar import refer to the Plan
16 in its entirety rather than to only a particular portion of the Plan; (f) the word “all” shall mean
17 “any and all;” (g) captions and headings to Articles and Sections are inserted for convenience
18 of reference only and are not intended to be a part of or to affect the interpretations of the Plan;
19 (h) the rules of construction set forth in Bankruptcy Code Section 102 shall apply, including
20 that the terms “includes,” “shall include,” and “including” are not limiting; (i) reference to a
21 pleading, request, or document being “Filed” means duly and properly filed with the
22 Bankruptcy Court as reflected on the docket of the Bankruptcy Court; (j) all exhibits and
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1 schedules to the Plan are incorporated into the Plan, and shall be deemed to be included in the
2 Plan, regardless of when they are Filed; (k) any service or notice provided for in the Plan shall
3 be provided at the addresses specified herein; (l) except to the extent that the Bankruptcy Code
4 or other federal law is applicable, or to the extent the exhibits or Operative Documents provide
5 otherwise, the rights, duties and obligations under the Plan shall be governed, construed and
6 enforced in accordance with the laws of the State of Nevada; and (m) to the extent a reference
7 or description in the Disclosure Statement or an Operative Document is inconsistent with the
8 terms or conditions of the Plan or Operative Document, the terms and conditions of the Plan or
9 Operative Documents, as applicable, shall govern over the reference contained in the Disclosure
10 Statement.
11 Statement.

12 **III. BACKGROUND**

13 **A. Description and History of Debtor's Business.**

14 Debtor is in the business of real estate development and currently owns 5 acres of
15 undeveloped land in Las Vegas, NV, APN 137-12-301-009 (the "Property"). The Property is
16 encumbered by a deed of trust securing a loan with a principal balance of \$1,200,000, excluding
17 interest, fees and costs currently held by Eliot A. Alper Revocable Trust, and by a deed of trust
18 securing a loan with a principal balance of \$550,000 currently held by John Irving Trust of
19 2008.
20
21

22 **B. Principals/Affiliates of Debtor's Business.**

23 Debtor is a Nevada limited liability company with a sole owner/Managing Member,
24 James Kalhorn.
25

26 ///

1 **C. Management of Debtor Before and After the Bankruptcy.**

2 During the time period prior to the date on which Debtor filed its bankruptcy petition,
3 Debtor operated as a Nevada limited liability company. Debtor intends to continue its
4 operations at the Property in the ordinary course of business until the Property is sold and the
5 liquidation and winding up of Debtor is complete.
6

7 **D. Events Leading to Chapter 11 Filing.**

8 The events leading to this Chapter 11 case are the downturn in the economy generally
9 and the Las Vegas real estate market specifically, as well as the foreclosure action instituted
10 against the Property as described below. Debtor anticipates that by liquidating the Property,
11 Debtor will be able to satisfy its debts.
12

13 **E. Significant Events During the Bankruptcy Proceedings.**

14 **Other Legal Proceedings**

15 On or about February 9, 2017, Nevada Title Company, trustee under the Deed of Trust
16 held by Eliot A. Alper Revocable Trust, recorded a Declaration of Default and Notice of Breach
17 and Election to Sell the Property, foreclosure proceeding number 17-02-0187-FCL.
18

19 On March 23, 2017, Caballos De Oro Estates LLC initiated *CABALLOS DE ORO*
20 *ESTATES LLC v. ELIOT A. ALPER, Prometheus & Atlas Real Estate Development LLC, John*
21 *Irving, James Kalhorn* in the Eighth Judicial District Court, Clark County, Nevada, case number
22 A-17-752905-C (“State Court Action”), seeking to quiet title to the Property. The matter is
23 presently stayed due to the pendency of this Bankruptcy.
24

25 The following is a list of significant events which have occurred during the Bankruptcy
26 Case:
27

1 On May 19, 2017, Debtor filed its voluntary petition to begin this Chapter 11 Case.

2 To date, Debtor has petitioned the Bankruptcy Court to retain the following
3 Professionals in the Case: Nedda Ghandi, Esq., of Ghandi Deeter Blackham Law Offices, as
4 Debtor's counsel, and David J. Merrill, Esq. of David J. Merrill, P.C., as Debtor's special
5 counsel. The Application to Employ Nedda Ghandi, Esq. was granted on August 9, 2017. The
6 Application to Employ David J. Merrill, Esq. was granted on September 1, 2017. Debtor is also
7 petitioning the Bankruptcy Court to retain Mark Holten of Signa Realty Group as its realtor,
8 which was granted on October 5, 2017, and to retain Integra Realty Services as its appraiser.
9

10 On July 19, 2017, Caballos De Oro Estates LLC filed its *Ex Parte Motion for 2004*
11 *Examination Person Most Knowledgeable of Prometheus & Atlas Real Estate Development,*
12 *LLC*, which was granted on July 19, 2017. The examination is set for August 11, 2017.
13

14 On July 24, 2017, Debtor initiated Adversary Case number 17-01221 by filing its *Notice*
15 *of Removal of CABALLOS DE ORO ESTATES LLC against ELIOT A. ALPER, Prometheus &*
16 *Atlas Real Estate Development LLC, John Irving, James Kalhorn*, thereby removing the State
17 Court Action to the Bankruptcy Court.
18

19 On July 28, 2017, Caballos De Oro Estates LLC filed its *Motion for Relief from Stay*.
20 On August 9, 2017, Eliot A. Alper Revocable Trust filed its *Opposition* thereto. On August 16,
21 2017, Debtor filed its *Opposition* thereto. The matter is set for hearing on August 30, 2017. The
22 Motion was granted in part and denied in part on November 1, 2017 [ECF No. 54].
23

24 There are three Proofs of Claim filed to date. Except to the extent that a Claim is already
25 Allowed pursuant to a final non-appealable order, Debtor reserves the right to object to
26 creditors' Claims. Therefore, even if your Claim is Allowed for voting purposes, you may not
27

1 be entitled to a distribution if an objection to your Claim is later upheld. The procedures for
2 resolving Disputed Claims are set forth in the Plan.

3 Separately, the Court set a Bar Date for Proofs of Claim in the Case for non-
4 governmental Creditors and for governmental agencies. The Bar Date is the date after which
5 Creditors cannot file a Proof of Claim in this Case. Importantly, if your Claim is listed in
6 Debtor's Schedules, and you agree with the Claim amount listed there, you do not need to file
7 a Proof of Claim in the Case. However, the non-filing of a Proof of Claim may impact your
8 eligibility for payment in the Plan. If Debtor amends its Schedules and your Claim is affected,
9 you will have an opportunity to file an objection to any such change.
10

11 State Court Litigation

12 Pursuant to this court's ruling of November 1, 2017 in the adversary case of Caballos
13 de Oro, LLC, etc. v. Eliot Alpert, etc., et al. USBC D. Nev. Case no. 2:17-bk-12699-MKN,
14 adv. No. 17-012221-mkn (the "Litigation"), the Debtor and others who are or who may become
15 parties to the Litigation are and will be litigating their respective rights and obligations to the
16 Property in said Litigation, including, among others, the validity and relative priority of their
17 respective claimed interests in the Property. As a result of the November 1, 2017 order, the
18 Litigation has been remanded and is now pending in Nevada State District Court, Eighth
19 Judicial District, Clark County as Caballos de Oro etc. v. Eliot Alpert, etc. et al., District Court,
20 Clark County Case No. A-17-752905-C. The rights and obligations of the parties to the
21 Litigation in the Property are to be determined in the Litigation and any resolution thereof. This
22 Plan's provisions relating to the sale or other monetization of the Property are contingent upon
23 the outcome of the Litigation. It is not the intent of this Plan to resolve the respective rights and
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1 obligations of the parties to the Litigation in the Property. Rather, such are to be determined in
2 the Litigation.

3 **F. Recovery of Preferential, Avoidable, or Fraudulent Transfers.**

4 At this time, Debtor does not intend to pursue preference, fraudulent conveyance, or
5 other Avoidance Actions. Debtor does reserve its right, however, to perform and complete an
6 investigation with regard to prepetition transactions. Although Debtor does not believe
7 significant transfers occurred, Creditors should be aware that if you received a payment or other
8 transfer within 90 days of the Petition Date, or other transfer avoidable under the Bankruptcy
9 Code, Debtor may seek to avoid such transfer in an Avoidance Action.
10

11 **G. Current and Historical Financial Conditions.**

12 The identity and fair market value of the estate's single asset is listed in **Exhibit A**
13 to the Disclosure Statement. The value of the asset is based on the appraisal performed for said
14 parcel. Copies of the appraisal are available upon request.
15

16 The Debtor reserves the right to re-appraise the Property prior to final confirmation of
17 the Plan to reflect the values at the time of confirmation. Therefore, if you are a secured lender,
18 your secured claim may change in connection with confirmation of the Plan if the value of your
19 collateral has fallen after the date this case was filed. If you are a secured creditor and intend to
20 object to any revised valuation of your collateral based on a re-appraisal, you must file an
21 objection to the Plan. If you are a secured lender subject to a revised appraisal, a copy of the
22 related appraisal will be delivered to you upon filing with the Court. All other creditors may
23 receive copies of the Debtor's property appraisals upon request of Debtor's counsel.
24
25

26 ///

1 **H. Disclosure of Transactions With Insiders.**

2 Debtor discloses, to the best of its knowledge, that it has made no payments to or on
3 behalf of entities that may be defined as “Insiders” pursuant to the Bankruptcy Code, 11 U.S.C.
4 § 101(31) in the year prior to the Petition Date.

5 **IV. SUMMARY OF THE PLAN OF LIQUIDATION**

6 **A. What Creditors Will Receive Under The Proposed Plan.**

7
8 As required by the Bankruptcy Code, the Plan places Claims in separate Classes and
9 describes the treatment each Class will receive. The Plan also states whether each Class of
10 Claims is Impaired. If the Plan is confirmed, your recovery will be limited to the amount
11 provided by the Plan.

12 **B. Claims: Unclassified and Classified.**

13
14 Certain Claims are automatically entitled to specific treatment under the Code. They are
15 not considered Impaired, and Holders of such Claims do not vote on the Plan. They may,
16 however, object if, in such Claim Holder’s view, the treatment under the Plan does not comply
17 with the Code. As such, Debtor did not place the following Claims in any Class: Administrative
18 Claims and Priority Tax Claims.

19 **1. Administrative Claims.**

20
21 Administrative Claims are Claims for the costs or expenses of administering Debtor’s
22 Chapter 11 case which are Allowed under Section 507(a)(2) of the Bankruptcy Code.
23 Administrative Claims also include the value of any goods or services sold to Debtor in the
24 ordinary course of business. The Bankruptcy Code requires that all Administrative Claims be
25 paid on the Effective Date of the Plan, unless a particular claimant agrees to a different
26

1 treatment. All fees required to be paid by 28 U.S.C. § 1930 will accrue and be timely paid until
 2 the case is closed, dismissed, or converted to another Chapter of the Code. Any U.S. Trustee
 3 Fees owed on or before the effective date of the Plan will be paid on the effective date. The
 4 following lists all of Debtor's Section 507(a)(2) Administrative Claims and their treatment
 5 under the Plan (see **Exhibit F** for detailed information about each administrative expense
 6 claim):
 7

8 **UNCLASSIFIED CLAIMS: ADMINISTRATIVE CLAIMS**

TYPE	ESTIMATED AMOUNT	PROPOSED TREATMENT
Expenses Arising in the Ordinary Course of Business Post-Petition	Unknown	Paid in full on the effective date of the Plan, through the Debtors' monthly plan payments, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.
Professional Fees, as approved by the Court	\$200,000±	Paid in full on the effective date of the Plan, through the Debtors' monthly plan payments, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.
Office of the U.S. Trustee Fees	\$9,750±	Paid in full on the effective date of the Plan, through the Debtors' monthly plan payments, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.
Clerk's Office Fees	Unknown	Paid in full on the effective date of the Plan, through the Debtors' monthly plan payments, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.
Other Administrative Expenses	Unknown	Paid in full on the effective date of the Plan, through the Debtors' monthly plan payments, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	TOTAL ESTIMATED AMOUNT:	\$ 209,750±	
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Court Approval of Fees Required:

The Court must rule on all fees listed in this chart before the fees will be owed. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional(s) in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees allowed by the Court will be owed and required to be paid under the Plan.

2. Priority Tax Claims.

Priority Tax Claims include certain unsecured income, employment and other taxes described by Section 507(a)(8) of the Bankruptcy Code. The Bankruptcy Code requires that each Holder of such a Section 507(a)(8) Priority Tax Claims receive the present value of such Claim in deferred cash payments, over a period not exceeding five (5) years from the date of the order of relief. The legal and equitable rights of Priority Tax Claims are unaltered by the Plan. As of the Date of the Plan, Debtor does not have any other Priority Unsecured Claims as referred to in Section 507(a)(1), (4), (5), (6), and (7) of the Bankruptcy Code.

To date, Debtor does not have any Priority Tax Claims.

3. Classified Claims and Interests.

The Bar Date for filing claims will expire on September 20, 2017. The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan.

All Claims and Interests, except Administrative Claims (including Professional Fee Claims) and Priority Tax Claims, are placed in the Classes set forth below. In accordance with

1 Bankruptcy Code Section 1123(a)(1), Administrative Claims and Priority Tax Claims, as
2 described above, have not been classified.

3 A Claim or Interest is placed in a particular Class only to the extent that the Claim or
4 Interest falls within the description of that Class and is classified in other Classes to the extent
5 that any portion of the Claim or Interest falls within the description of such other Classes. A
6 Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions
7 pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that
8 Class and such Claim has not been paid, released or otherwise settled prior to the Effective
9 Date.
10

11 The following are the Classes set forth in the Plan, and the proposed treatment that they
12 will receive under the Plan.
13

14 **4. Class 1(a): Secured Claim of Eliot A. Alper Revocable Trust**

15 *Classification:* Class 1(a) shall be the Secured Claim of Eliot A. Alper Revocable Trust
16 Dated March 22, 1999 (“Alper”), which claim shall be Impaired, and which claim is secured
17 by the Property pursuant to the Deed of Trust recorded in Book 20160128, as Document No.
18 0003534 of the Official Records of Clark County, Nevada. The amount of this claim is \$
19 1,595,143.09 pursuant to Amended proof of claim 1-1 filed January 3, 2018. The Alper Claim
20 is undisputed
21

22 *Treatment:* The holder of the Allowed Class 1(a) Secured Claim shall be impaired and
23 paid the secured amount of its claim in full from the proceeds of the sale of the Property. The
24 Property has been appraised for a value that exceeds the principal of the loan. Specifically, the
25 Property has been appraised at \$2,600,000. Thus, Alper is not under-secured. Given that all
26

1 secured claims against the Property total \$ \$2,257,301.65, Debtor has significant equity in the
2 Property and Secured Creditor Alper is over-secured and shall be entitled to all interest,
3 attorneys' fees, and costs under 11 U.S.C. § 506(b) incurred through the date of the payment to
4 Alper from the proceeds of the sale of the Property.

5 *Unsecured Portion:* Any amount of the Class 1(a) claim that is deemed to be nonpriority
6 unsecured shall be afforded the treatment set forth in Class 2 below. Any amount of the Class
7 1(a) claim that is deemed to be priority unsecured shall be afforded the treatment of priority
8 unsecured claims set forth above.

9
10 *Voting:* Class 1(a) is an impaired class, and the holder of the Class 1(a) claim is entitled
11 to vote to accept or reject the Plan.

12
13 **5. Class 1(b): Secured Claim of John Irving Trust of 2008**

14 *Classification:* Class 1(b) shall be the Allowed Secured Claim of John Irving Trust of
15 2008 ("Irving"), which claim shall be Impaired, and which claim is secured by the Property
16 pursuant to the Deed of Trust recorded in Book 20160201, as Document No. 0002534 of the
17 Official Records of Clark County, Nevada. The amount of this claim is \$ 662,158.56 pursuant
18 to proof of claim 2-1, filed September 15, 2017.

19
20 *Treatment:* The holder of the Allowed Class 1(b) Secured Claim shall be impaired and
21 paid the secured amount of its claim in full from the proceeds of the sale of the Property. The
22 Property has been appraised for a value that exceeds the principal of the loan. Specifically, the
23 Property has been appraised at \$2,600,000. Thus, Irving is not under-secured. Given that all
24 secured claims against the Property total \$ 2,257,301.65, Debtor has significant equity in the
25 Property and Secured Creditor Irving is over-secured.

1 *Unsecured Portion:* Any amount of the Class 1(b) claim that is deemed to be nonpriority
2 unsecured shall be afforded the treatment set forth in Class 2 below. Any amount of the Class
3 1(b) claim that is deemed to be priority unsecured shall be afforded the treatment of priority
4 unsecured claims set forth above.

5 *Voting:* Class 1(b) is an impaired class, and the holder of the Class 1(a) claim is entitled
6 to vote to accept or reject the Plan.
7

8 **6. Class 2: Allowed General Unsecured Claims.**

9 *Classification:* Class 2 consists of Allowed General Unsecured Claims that are
10 unsecured nonpriority claims listed in Debtor's Schedules of Creditors Holding Unsecured
11 Nonpriority Claims that are not disputed, contingent, or unliquidated; unsecured nonpriority
12 claims for which a Proof of Claim has been Filed, and for which no objection thereto is Filed;
13 and claims resulting from rejection of executory contracts and unexpired leases, if any, all to
14 the extent Allowed by the Court. These claims potentially include any judgment awarded in the
15 removed State Court Action, and any unsecured portion of Secured Claim 1(a) or 1(b), although
16 it is expected that there will be no unsecured portion of Secured Claim 1(a) or 1(b). To date, ~~no~~
17 one ~~Proofs~~ of Claim has ~~ve~~ been filed; thus Debtor has not filed any Objection to any Proofs of
18 Claim, but reserves the right to do so. A list of estimated General Unsecured Claims is attached
19 to the Disclosure Statement as **Exhibit I**.
20
21

22 *Treatment:* Except to the extent that a Holder of an Allowed Class 2 Claim has been
23 paid by the Debtor prior to the Effective Date or agrees to alternate treatment, each Holder of
24 an Allowed Class 2 Claim shall be paid its Pro Rata share of any Property Sale Proceeds
25 remaining after the satisfaction of Allowed Secured Claims in Classes 1(a) and 1(b) and of
26
27

1 Allowed Administrative Claims. This payment shall be full satisfaction, settlement, release and
2 exchange for such Allowed General Unsecured Claims. Upon payment, all Allowed General
3 Unsecured Claims shall be released without further action by Debtor or notice to Holders of
4 Allowed General Unsecured Claims being necessary.

5 *Impairment and Voting:* Class 2 is Impaired. Holders of Class 2 Allowed General
6 Unsecured Claims are entitled to vote to accept or reject the Plan.

7
8 **7. Class 3: Equity Interest Holders of the Debtor.**

9 *Classification:* Class 3 consists of all Equity Interests in the Debtor. Equity interest
10 holders are parties who hold an ownership interest (i.e., equity interest) and are classified here
11 in Class 3. In a corporation, entities holding preferred or common stock are equity interest
12 holders. In a partnership, equity interest holders include both general and limited partners. In a
13 limited liability company, the equity interest holders are the members. Finally, with respect to
14 an individual who is a debtor, the Debtor is the equity interest holder. In this Chapter 11 Case,
15 Debtor is a limited liability company. James Kalthorn owns a 100% interest in the Debtor.

16
17 *Treatment:* This class shall be paid only if funds remain after all other classes of
18 creditor(s) have been paid pursuant to the terms of the Plan. Holders of Class 3 Equity Interests
19 shall receive any remaining funds from the Property Sale Proceeds after the payment in full of
20 all Allowed Claims from the Property Sale Proceeds pursuant to the Plan.

21
22 *Impairment and Voting:* Class 3 is Impaired. Holders of Class 3 Equity Interest Holders
23 are entitled to vote to accept or reject the Plan.

24
25 **C. Terms Applicable to All Claims.**

26 **1. Retention of Defenses Regarding Claims.**

1 Except as otherwise provided in the Plan, nothing shall affect Debtor's rights and
2 defenses, both legal and equitable, with respect to any Claims.

3 **2. Voting by Impaired Classes.**

4 Members of Classes 1(a)-1(b), 2 and 3 are impaired and entitled to vote to reject or
5 accept the Plan.

6
7 **3. Disputed, Contingent and Unliquidated Claims and Interests.**

8 Any Claim or Interest that has been or is hereafter listed in the Schedules as disputed,
9 contingent, or unliquidated, and for which no Proof of Claim or Interest has been timely Filed
10 by the Bar Date, is not considered Allowed and shall be expunged without further action by
11 Debtor and without any further notice to or action, order, or approval of the Bankruptcy Court.

12
13 **V. ACCEPTANCE OR REJECTION OF THE PLAN**

14 **A. Acceptance by an Impaired Class.**

15 In accordance with Bankruptcy Code Section 1126(c) and except as provided in
16 Bankruptcy Code Section 1126(e), an Impaired Class of Claims shall be deemed to have
17 accepted the Plan if the Plan is accepted by the Holders of at least two-third (2/3) in dollar
18 amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have
19 timely and properly voted to accept or reject the Plan.

20
21 **B. Summary of Classes Voting on the Plan.**

22 Only the votes of Holders of Claims of Classes 1(a)-1(b), 2 and 3 will be solicited with
23 respect to the Plan.

24
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1 **C. Elimination of Vacant Classes.**

2 Any Class of Claims that is not occupied as of the date of the commencement of the
3 Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Bankruptcy
4 Rule 3018 shall be deemed eliminated from the Plan for purposes of voting to accept or reject
5 the Plan and for purposes of determining acceptance or rejection of the Plan by such Class
6 pursuant to Bankruptcy Code Section 1129(a)(8).
7

8 **D. Tabulation of Votes.**

9 Debtor will tabulate all votes on the Plan for the purpose of determining whether the
10 Plan satisfies Bankruptcy Code Sections 1129(a)(8) and (10).
11

12 **E. Nonconsensual Confirmation.**

13 If any Impaired Class of Claims entitled to vote shall not accept the Plan by the requisite
14 statutory majorities provided in Bankruptcy Code Section 1126(c), Debtor reserves the right to
15 amend the Plan or undertake to have the Bankruptcy Court confirm the Plan under Bankruptcy
16 Code Section 1129(b), or both. With respect to any Impaired Classes of Claims that are deemed
17 to reject the Plan, Debtor shall request that the Bankruptcy Court confirm the Plan under
18 Bankruptcy Code Section 1129(b).
19

20 **VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

21 **A. Executory Contracts and Unexpired Leases.**

22 Debtor shall be deemed to have assumed each Assumed Contract for the Property to
23 which such contracts relate as of the Effective Date. A list of the Assumed Contracts is included
24 as **Exhibit C** hereto. The Confirmation Order shall constitute an order of the Bankruptcy Court
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1 under Bankruptcy Code Sections 365 and 1123(b)(2) approving the contract and lease
2 assumptions by Debtor as of the Effective Date.

3 **B. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.**

4 Any of the Assumed Contracts that are, or may be, alleged to be in default, shall be
5 Cured either in the ordinary course of business or on the Effective Date. Except with respect to
6 Assumed Contracts with respect to which Debtor and the applicable counterparties have
7 stipulated in writing the appropriate Cure, all requests of Cure that differ from the amounts and
8 treatment proposed by Debtor must be Filed with the Bankruptcy Court on or before the Cure
9 Bar Date. Any request for payment or other Cure that is not timely Filed shall be disallowed
10 automatically and forever barred from assertion and shall not be enforceable against Debtor,
11 without the need for any objection by Debtor or further notice to or action, order, or approval
12 of the Bankruptcy Court, and any Claim for Cure shall be deemed fully satisfied, released, and
13 discharged upon payment by Debtor of the amounts listed on the proposed Cure schedule,
14 notwithstanding anything included in the Schedules or in any Proof of Claim to the contrary.
15 Debtor also may settle any Cure without further notice to or action, order, or approval of the
16 Bankruptcy Court.
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19
20 If a counterparty objects to any Cure or any other matter related to assumption and
21 assignment, the Bankruptcy Court shall determine the Allowed amount of such Cure and any
22 related issues. If there is a dispute regarding such Cure, the ability of Debtor to provide
23 “adequate assurance of future performance” within the meaning of Bankruptcy Code Section
24 365, or any other matter pertaining to assumption, then Cure shall occur as soon as reasonably
25 practicable after entry of an order resolving such dispute, approving such assumption (and, if
26

1 applicable, assignment), or as may be agreed upon by Debtor and the counterparty to the
2 Assumed Contract. Any counterparty to an Assumed Contract that fails to object timely to the
3 proposed assumption and assignment of any such contract or unexpired lease will be deemed
4 to have consented to such assumption and assignment. Debtor reserves the right either to reject
5 or nullify the assumption of any executory contract or unexpired lease no later than thirty (30)
6 days after a Final Order determining the Cure or any request for adequate assurance of future
7 performance required to assume such executory contract or unexpired lease.
8

9 Assumption of any Assumed Contract pursuant to the Plan or otherwise shall result in
10 the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary,
11 including defaults with respect to provisions restricting the change in control or ownership
12 interest composition or other bankruptcy-related defaults against Debtor, arising under any
13 Assumed Contract at any time prior to the effective date of assumption and assignment. Any
14 Proofs of Claim Filed with respect to an Assumed Contract that has been assumed shall be
15 deemed disallowed and expunged, without further notice to or action, order, or approval of the
16 Bankruptcy Court.
17

18 **C. Rejection of Executory Contracts.**

19 Entry of the Confirmation Order shall, subject to and upon the occurrence of the
20 Effective Date, constitute the approval, pursuant to Bankruptcy Code Sections 365(a) and
21 1123(b)(2), of the rejection of all executory contracts and unexpired leases other than the
22 Assumed Contracts, as are more particularly set forth in **Exhibit D** hereto.
23

24 Any Holder of a Claim with a Claim that arises from the rejection of an executory
25 contract or unexpired lease with Debtor shall have the rights of a Holder of an Unsecured Claim
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27

1 and shall receive the treatment provided to Holders of Class 2 General Unsecured Claims as set
2 forth in the Plan.

3 **D. Filing of Rejection Claims.**

4 Any Person or Entity who believes they are entitled to assert a Claim against Debtor by
5 virtue of the rejection of an executory contract or unexpired lease pursuant to this Article IV or
6 a Final Order entered after the Confirmation Date, may File a Claim with the Clerk of the
7 Bankruptcy Court not later than twenty (20) days after the date of any such rejection or such
8 later time as may be set forth for the filing of such Claim in said Final Order. If such Claim is
9 not so Filed, it shall be forever barred from assertion against Debtor. Nothing in this Section
10 shall affect the right of any party-in-interest to object to any Claim, which has been improperly
11 Filed or not Filed on a timely basis.
12
13

14 **E. Modifications, Amendments, Supplements, Restatements, or Other Agreements.**

15 Unless otherwise provided, each Assumed Contract that is assumed and assigned shall
16 include all modifications, amendments, supplements, restatements, or other agreements that in
17 any manner affect such Assumed Contract, and all executory contracts and unexpired leases
18 related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities,
19 options, rights of first refusal, and any other interests, unless any of the foregoing agreements
20 has been previously rejected or repudiated or is rejected or repudiated under the Plan.
21

22 Modifications, amendments, supplements, and restatements to pre-petition executory
23 contracts and unexpired leases that have been executed by Debtor during the Chapter 11 Case
24 shall not be deemed to alter the pre-petition nature of the executory contract or unexpired lease,
25 or the validity, priority, or amount of any Claims that may arise in connection therewith.
26
27

1 **F. Reservation of Rights.**

2 Neither the exclusion nor inclusion of any contract or lease in any Plan Supplement, nor
3 anything contained in the Plan, shall constitute an admission by Debtor that any such contract
4 or lease is in fact an executory contract or unexpired lease or that Debtor has any liability
5 thereunder. If there is a dispute regarding whether a contract or lease is or was executory or
6 unexpired at the time of assumption or rejection, Debtor shall have thirty (30) days following
7 entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.
8

9 **VII. PLAN IMPLEMENTATION**

10 **A. Plan Implementation.**

11 The Plan shall be implemented in all respects in a manner that is consistent with the
12 terms and conditions of the Operative Documents, and the requirements of Section 1123(a) and
13 other applicable provisions of the Bankruptcy Code. Without limiting the generality of the
14 foregoing, the Confirmation Funds shall be used to fund the Plan and shall be distributed or
15 applied in the manner necessary to provide all required Confirmation Funds for Distribution
16 pursuant to the Plan, satisfy the costs, expenses, required payments and entitlements outlined
17 herein on the Effective Date and provide Debtor with working capital and funding for
18 operations and Plan needs.
19

20 Pursuant to the Plan, and as the Debtor's principal Restructuring Transaction, the Debtor
21 seeks to sell the Property in conjunction with the Plan Confirmation process. The Debtor's
22 employed professional realtor will extensively advertise, market and promote the Property.
23 Notwithstanding the foregoing, any proposed transaction respecting the sale of the Debtor's
24 Property is subject to the prior approval of the Bankruptcy Court. All marketing costs, broker's
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1 fees and legal fees incurred with the marketing and sale of the Debtor's Property will be subject
2 to the approval by the Bankruptcy Court.

3 Debtor has focused on developing and executing a strategy to (a) maximize the value of
4 its Estate; (b) address the factors that led to the bankruptcy filing; and (c) enable the Debtor to
5 pay its creditors in full. Specifically, this strategy has primarily focused on resolving the
6 removed State Court Action to quiet title in favor of Debtor and completing the sale of the
7 Debtor's Property in order to pay the Debtor's creditors in full from the Property Sale Proceeds.
8

9 Debtor shall file a motion for authorization to sell the Property and to use the Property
10 Sale Proceeds to pay its creditors.

11 The Effective Date of the Plan shall not occur until a buyer closes on the Property and
12 completes all obligations pursuant to its purchase agreement (as approved by the Bankruptcy
13 Court), including payment of the purchase price to the Debtor.
14

15 Alternatively, in the event the sale of the Debtor's Property fails for any reason, the
16 Debtor may abandon the Property in full satisfaction of Holders of Allowed Secured Claims
17 pursuant section 554 of the Bankruptcy Code. The abandonment, if any, will be approved by
18 the Bankruptcy Court. If approved, the Confirmation Order will constitute the Bankruptcy
19 Court's finding and determination that the abandonment of the Property is: (i) in full satisfaction
20 of the Debtor's Secured Claims; (ii) in the best interests of the Debtor, its Creditors, Estate and
21 parties-in-interest, (iii) fair, equitable and reasonable; (iv) made in good faith; and (v) approved
22 pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 9019.
23
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1 **B. Authority to Execute Operative Documents.**

2 The Confirmation Order shall, among other things, constitute an Order authorizing
3 Debtor to execute and deliver the Operative Documents, as applicable (to the extent they have
4 not already been executed and delivered).

5 **C. Good Faith and Non Avoidability.**

6 The Confirmation Order shall, among other things, provide that Debtor has acted in
7 good faith.
8

9 **D. Management.**

10 Following the Effective Date, Debtor shall manage its own affairs as to winding up and
11 dissolution of the entity.
12

13 **E. Exemption from Certain Transfer Taxes and Further Transactions.**

14 Pursuant to Bankruptcy Code Section 1146(a), the issuance or exchange of any security,
15 or the making or delivery of any instrument of transfer under, in furtherance, or in connection
16 with the Plan, including, but not limited to, any deeds, bills of sale, assignments or other
17 instruments of transfer (including those with respect to the Properties), shall not be subject to
18 any stamp tax, real estate transfer tax or similar tax.
19

20 **F. Final Decree.**

21 Notwithstanding otherwise applicable law, the Chapter 11 Case shall be closed and a
22 Final Decree entered as soon as possible after the occurrence of the Effective Date, unless and
23 until:
24

- 25 (a) All adversary proceedings and contested matters pending before the Bankruptcy
26 Court have been resolved by a Final Order.
27

1 (b) All Claims have either: (i) become Allowed Claims and payments have begun to
2 be paid in accordance with the treatment to be given such Allowed Claim pursuant to
3 the Plan; (ii) been disallowed by a Final Order or deemed to be a Disallowed Claim, in
4 accordance with the terms of the Plan; (iii) been assumed by Debtor; or (iv) reinstated.

5 **G. Effectuating Documents, Further Transactions.**
6

7 On and after the Effective Date, Debtor is authorized to and may issue, execute, deliver,
8 file, or record such contracts, securities, instruments, releases, and other agreements or
9 documents and take such actions as may be necessary or appropriate to effectuate, implement,
10 and further evidence the terms and conditions of the Plan in the name of and on behalf of Debtor,
11 as applicable, without the need for any approvals, authorizations, or consents except for those
12 expressly required pursuant to the Plan. Such actions may include:
13

- 14 • the execution and delivery of appropriate instruments of transfer, assignment,
15 assumption or delegation of any asset, property, right, liability, debt or
16 obligation on terms consistent with the terms of the Plan and having other terms
17 for which the applicable parties agree;
- 18 • the filing of appropriate certificates or articles of formation, reformation,
19 merger, consolidation, conversion or dissolution pursuant to applicable state
20 law; and
- 21 • all other actions that the applicable Entities determine to be necessary or
22 appropriate, including making filings or recordings that may be required by
23 applicable state law in connection with the Restructuring Transactions.
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1 **VIII. PROVISIONS CONCERNING PLAN DISTRIBUTIONS**

2 **A. Distributions on Account of Claims Allowed as of the Effective Date.**

3 Distributions under the Plan on account of Claims Allowed on or before the Effective
4 Date shall be made on the Effective Date, as otherwise set forth in the Plan, or on the first date
5 thereafter as is reasonably practicable.
6

7 **B. Distributions on Account of Claims Allowed After the Effective Date.**

8 **1. Payments and Distributions on Disputed Administrative and Priority**
9 **Claims.**

10 In the event that there are Disputed Administrative Claims or Disputed Priority Claims
11 requiring adjudication and resolution and such Claims have not become Allowed or Disallowed
12 prior to the Effective Date, then the obligation to satisfy such Claims shall be from the
13 Confirmation Funds which are held for same, but to the extent there are no available
14 Confirmation Funds from which to pay such Claim, the obligation to satisfy such Claims will
15 be assumed by Debtor, subject to Allowance or Disallowance by the Bankruptcy Court. Except
16 as otherwise provided in the Plan, or Final Order, any Disputed Administrative Claim or
17 Disputed Priority Claim that becomes Allowed after the Effective Date shall be satisfied from
18 the Confirmation Funds or performed by Debtor in the ordinary course of business in
19 accordance with the terms and conditions of any controlling agreements, course of dealing,
20 course of business, or industry practice.
21

22 **2. Special Rules for Distributions to Holders of Disputed Claims.**

23 Except as otherwise provided in the Plan and except as otherwise agreed by the relevant
24 parties: (i) no partial payments and no partial Distributions shall be made with respect to a
25
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1 Disputed Claim until all such disputes in connection with such Disputed Claim have been
2 resolved by settlement or Final Order, and (ii) any Entity that holds both an Allowed Claim and
3 a Disputed Claim shall not receive any Distribution on the Allowed Claim unless and until all
4 objections to the Disputed Claim have been resolved by settlement or Final Order and the
5 Claims have been Allowed.

6
7 **C. Manner of Payment Under the Plan.**

8 Distributions of Cash to be made by the Distribution Agent pursuant to the Plan shall
9 be made, at the discretion of the Distribution Agent, by check drawn on the Distribution Agent's
10 bank account or by wire transfer from a domestic bank.

11
12 **D. Whole Dollars.**

13 Any other provision of the Plan to the contrary notwithstanding, no payments of cents
14 will be made. Whenever any payment of cents would otherwise be called for, the actual payment
15 may reflect a rounding of such fraction to the nearest whole dollar (up or down).

16
17 **E. Escheat.**

18 Holders of Allowed Claims shall have three (3) months from the check date to negotiate
19 Distribution checks issued by the Distribution Agent under the terms of the Plan, otherwise
20 payment on such checks may at the Distribution Agent's sole discretion be stopped and the
21 funds shall escheat to the Distribution Agent and shall be promptly distributed to Debtor (in
22 accordance with Bankruptcy Code Section 347).

23
24 **F. Delivery of Distributions.**

25 **1. Record Date for Distributions.**

1 On the Distribution Record Date, the Claims Register shall be closed and any Person
2 responsible for making Distributions shall be authorized and entitled to recognize only those
3 record Holders listed on the Claims Register as of the close of business on the Distribution
4 Record Date. Notwithstanding the foregoing, if a Claim is transferred twenty or fewer days
5 before the Distribution Record Date, the Distribution Agent shall make Distributions to the
6 transferee only to the extent practical and in any event only if the relevant transfer forms
7 contains an unconditional and explicit certification and waiver of any objection to the transfer
8 by the transferor.
9

10 **2. Distribution Agent.**

11 The Distribution Agent shall make all Distributions required under the Plan.
12

13 **3. Delivery of Distributions in General.**

14 Except as otherwise provided in the Plan, and notwithstanding any authority to the
15 contrary, Distributions to all Holders of Allowed Claims shall be made to Holders of record as
16 of the Distribution Record Date by the Distribution Agent:
17

18 (a) In accordance with Federal Rule of Civil Procedure 4, as modified and made
19 applicable by Bankruptcy Rule 7004;

20 (b) To the signatory set forth on any of the Proofs of Claim Filed by such Holder or
21 other representative identified therein (or at the last known addresses of such Holder if
22 no Proof of Claim is Filed or if Debtor has been notified in writing of a change of
23 address);
24

25 (c) To the addresses set forth in any written notices of address changes delivered to
26 Debtor after the date of any related Proof of Claim;
27

1 (d) To the addresses reflected in the Schedules if no Proof of Claim has been Filed and
2 the Distribution Agent has not received a written notice of change of address; or

3 (e) To any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf.

4 Except as otherwise provided in the Plan, Distributions under the Plan, made on account
5 of Allowed Claims, shall not be subject to levy, garnishment, attachment, or like legal process.
6 Each Holder of an Allowed Claim shall have and receive the benefit of the Distributions in the
7 manner set forth in the Plan. Absent willful misconduct or gross negligence, Debtor and
8 Distribution Agent, as applicable, shall not incur any liability on account of any Distributions
9 made under the Plan.
10

11 **4. Returned Distributions.**

12
13 In the case of Distributions to the Holders of Allowed Claims that are returned to the
14 Distribution Agent due to an incorrect or incomplete address, the Distribution Agent shall retain
15 any such returned Distribution in a segregated account established by the Distribution Agent to
16 keep track of any returned Distributions. Unless the Holder of the Allowed Claim relating to
17 any such returned Distribution contacts the Distribution Agent (or its designee) within three (3)
18 months from the date on which such Distribution was returned and provides the Distribution
19 Agent (or its designee) with acceptable proof of identity and an accurate address, such Holder
20 shall forfeit all rights thereto, and to any and all future Distributions or rights under the Plan. In
21 such event, the Claim for which such Distributions was issued shall be treated as a Disallowed
22 Claim and the Distribution on account of such Disallowed Claim shall promptly be distributed
23 to Debtor.
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1 **IX. REQUIREMENTS FOR PLAN CONFIRMATION**

2 **A. Best Interest Test/Liquidation Analysis.**

3 To confirm a Plan, the Court must find that all Creditors who do not accept the Plan will
4 receive at least as much under the Plan as such Claim Holders would receive in Chapter 7
5 liquidation. This is known as the “Best Interest Test,” which requires a liquidation analysis.
6

7 In a Chapter 7 case, Debtor’s Assets are usually sold by a Chapter 7 trustee. Secured
8 Creditors are paid first from the sales proceeds of properties on which the Secured Creditor has
9 a Lien. Administrative Claims are paid next. Next, General Unsecured Creditors are paid from
10 any remaining sales proceeds, according to their rights to priority. General Unsecured Creditors
11 with the same priority share in proportion to the amount of their allowed claim in relationship
12 to the amount of total Allowed General Unsecured Creditors. Finally, Interest Holders receive
13 the balance that remains after all Creditors are paid, if any.
14

15 For the Court to be able to confirm this Plan, the Court must find that all creditors and
16 interest holders who do not accept the Plan will receive at least as much under the Plan as such
17 holders would receive under Chapter 7 liquidation.
18

19 A Liquidation Analysis, in balance sheet format, is attached as **Exhibit E**. The
20 Liquidation Analysis illustrates that all Creditors and Interest Holders will receive at least as
21 much under the Plan as such Creditors and Interest Holders would receive under Chapter 7
22 liquidation. This information is provided by Debtor and Debtor’s counsel.
23

24 **B. Feasibility.**

25 Another requirement for Confirmation involves the feasibility of the Plan, which means
26 that Confirmation of the Plan is not likely to be followed by the liquidation, or the need for
27

1 further financial reorganization, of Debtor or any successor to Debtor under the Plan, unless
2 such liquidation or reorganization is proposed in the Plan.

3 There are at least two important aspects of a feasibility analysis. The first aspect
4 considers whether Debtor will have enough cash on hand on the Effective Date of the Plan to
5 pay all the Claims and Expenses which are entitled to be paid on such date. Debtor maintains
6 that this aspect of feasibility is satisfied as illustrated here. The cash that Debtor will have on
7 hand by the Effective Date will be from the Sale Proceeds of the Property, in an amount
8 sufficient to cover the Claims and Expenses due on the Effective Date.
9

10 The second aspect of feasibility considers whether the Proponent will have enough cash
11 over the life of the Plan to make the required Plan payments. Given that this is a liquidating
12 plan, there are no ongoing Plan payments to consider.
13

14 **YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR**
15 **FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE**
16 **FINANCIAL STATEMENTS.**
17

18 In summary, most Plan payments will be paid upon approval from the Bankruptcy Court
19 to distribute the Sale Proceeds of the Property. The Plan Proponent contends that Debtor's
20 financial projections are feasible.

21 **C. Confirmation Without Acceptance by All Impaired Classes.**
22

23 Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan
24 even if all impaired classes entitled to vote on the plan have not accepted it, provided that the
25 plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the
26 Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the
27

1 plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly
2 known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and
3 equitable" with respect to each class of claims or equity interests that is impaired under, and
4 has not accepted, the plan.

5 **1. No Unfair Discrimination.**

6 This test applies to classes of claims or equity interests that are of equal priority and are
7 receiving different treatment under the Plan. The test does not require that the treatment be the
8 same or equivalent for all such classes, but that such treatment be "fair." In general, bankruptcy
9 courts consider whether a plan discriminates unfairly in its treatment of classes of claims of
10 equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account
11 a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a
12 plan could treat two classes of unsecured creditors differently without unfairly discriminating
13 against either class.
14
15

16 **2. Fair and Equitable Test.**

17 This test applies to classes of different priority and status (e.g., secured versus
18 unsecured) and includes the general requirement that no class of claims receive more than 100%
19 of the amount of the allowed claims in such class. As to the dissenting class, the test sets
20 different standards depending on the type of claims or equity interests in such class:
21

- 22 • Secured Claims. The condition that a plan be "fair and equitable" to a
23 non-accepting class of secured claims includes the requirements that: (a)
24 the holders of such secured claims retain the liens securing such claims
25 to the extent of the allowed amount of the claims, whether the property
26

1 subject to the liens is retained by the debtor or transferred to another
2 entity under the plan; and (b) each holder of a secured claim in the class
3 receives deferred Cash payments totaling at least the allowed amount of
4 such claim with a present value, as of the effective date of the plan, at
5 least equivalent to the value of the secured claimant's interest in the
6 debtor's property subject to the liens.
7

- 8 • Unsecured Claims. The condition that a plan be "fair and equitable" to a
9 non-accepting class of unsecured claims includes the following
10 requirement that either: (a) the plan provides that each holder of a claim
11 of such class receive or retain on account of such claim property of a
12 value, as of the effective date of the plan, equal to the allowed amount of
13 such claim; or (b) the holder of any claim or any equity interest that is
14 junior to the claims of such class will not receive or retain under the plan
15 on account of such junior claim or junior equity interest any property.
16
17

18 To the extent that any of the Voting Classes vote to reject the Plan, Debtor reserves the
19 right to seek (a) Confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or
20 (b) to modify the Plan accordingly.

21 The Debtor does not believe that the Plan discriminates unfairly against any Impaired
22 Class of Claims. The Debtor believes that the Plan and the treatment of all Classes of Claims
23 under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.
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1 **X. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

2 **A. Objection to and Resolution of Claims.**

3 Except as to applications for allowance of compensation and reimbursement of expenses
4 under Bankruptcy Code Sections 330, 331 and/or 503, Debtor shall, on and after the Effective
5 Date, have the exclusive right to make and file objections to Claims (“Disputed Claims”). On
6 and after the Effective Date, Debtor shall have the authority to compromise, settle, otherwise
7 resolve or withdraw any objections to any Claims and compromise, settle or otherwise resolve
8 Disputed Claims without approval of the Bankruptcy Court. Unless otherwise ordered by the
9 Bankruptcy Court, Debtor and, on and after the Effective Date, Debtor, shall file all objections
10 to Claims that are the subject of Proofs of Claim or requests for payment filed with the
11 Bankruptcy Court (other than applications for allowances of compensation and reimbursement
12 of expenses with respect to Professional Fee Claims) and serve such objections upon the Holder
13 of the Claim as to which the objection is made as soon as is practicable, but in no event later
14 than one (1) year after the Effective Date or such later date as may be approved by the
15 Bankruptcy Court.
16
17

18 **B. Payments.**

19 Payments and Distributions to each Holder of a Disputed Claim that ultimately becomes
20 an Allowed Claim shall be made in accordance with the provision of the Plan with respect to
21 the Class of Creditors to which the respective Holder of an Allowed Claim belongs. Without
22 limiting the generality of the foregoing, Debtor shall not be required to object to any Claim
23 irrespective of whether such Claim is Allowed or Disputed, whether in whole or in part.
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1 **C. Contingent Claims.**

2 Until such time as a contingent Claim or a contingent portion of an Allowed Claim
3 becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim for
4 all purposes related to Distributions under the Plan. The Holder of a contingent Claim will only
5 be entitled to a Distribution under the Plan when and if such contingent Claim becomes an
6 Allowed Claim.
7

8 **D. Personal Injury Claims.**

9 All objections to Claims Filed for personal injury tort damages, if any, shall be
10 determined by the United States District Court for the District of Nevada.
11

12 **E. Estimation of Claims.**

13 Debtor shall be permitted, at any time, to request that the Bankruptcy Court estimate
14 any contingent or unliquidated Claim pursuant to Section Bankruptcy Code 502(c), regardless
15 of whether Debtor previously had objected to such Claim or whether the Bankruptcy Court had
16 ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any
17 Claim at any time during any litigation concerning any objection to such Claim, including
18 during the pendency of any appeal relating to such objection. In the event that the Bankruptcy
19 Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute
20 either the Allowed amount of such Claim or a maximum limitation on such Claim, as
21 determined by the Bankruptcy Court. If such estimated amount constitutes a maximum
22 limitation on the amount of such Claim, Debtor may elect to pursue any supplemental
23 proceedings to object to the allowance of such Claim.
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1 **F. Reserve for Disputed Claims.**

2 On and after the Effective Date, the Distribution Agent shall hold in segregated reserve
3 accounts (the "Reserve"), Cash in an aggregate amount sufficient to make Distributions to each
4 Holder of a Disputed Claim at the time distributions are made pursuant to the Plan in the amount
5 that such Holder would have been entitled to receive if such Claim had been an Allowed Claim
6 on the Effective Date. Nothing contained herein shall be deemed to entitle the Holder of a
7 Disputed Claim to post-Petition Date interest on such Claim. Any funds remaining in the
8 Reserve after all Distributions on account of Allowed Claims have been made shall be promptly
9 distributed to Debtor.
10

11 **XI. RESERVATION OF RIGHTS**

12 **A. Withdrawal of Plan; Rights if Plan Not Confirmed; Effective Date Does Not**
13 **Occur.**

14
15 Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date
16 and to File subsequent plans of reorganization. If Debtor revokes or withdraws the Plan, or if
17 Confirmation of the Plan or the Effective Date does not ultimately occur, then: (1) the Plan shall
18 be null and void in all respects; (2) any settlement or compromise embodied in the Plan
19 (including the fixing or limiting to an amount certain of any Claim or Class of Claims),
20 assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any
21 document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3)
22 nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests
23 by or against Debtor or any Person or Entity; (b) prejudice in any manner the rights of Debtor
24 or any other Person or Entity in any further proceedings involving Debtor; or (c) constitute an
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1 admission, acknowledgment, offer, or undertaking of any sort by Debtor or any other Person or
2 Entity.

3 **B. No Admissions or Waiver.**

4 Without limiting the generality of any similar provision in the Plan, notwithstanding
5 anything in the Plan to the contrary, nothing contained in the Plan, any Plan Supplement or in
6 the Disclosure Statement shall be deemed an admission by Debtor or any Person or Entity with
7 respect to any matter set forth herein. If Confirmation of the Plan or the Effective Date does not
8 ultimately occur, no statement contained in the Plan, any Plan Supplement or in the Disclosure
9 Statement may be used or relied on in any manner in any suit, action, proceeding or controversy
10 within or outside of the Chapter 11 Case against Debtor. Without in any way limiting the
11 provisions set forth in Section X, Subpart A., Debtor reserves any and all of their rights as
12 against all Persons and Entities in the event Confirmation of the Plan or the Effective Date does
13 not ultimately occur.
14
15

16 **C. Term of Bankruptcy Injunction or Stays.**

17 All injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362
18 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain
19 in full force and effect until the Effective Date unless the Bankruptcy Court shall order
20 otherwise.
21

22 **XII. CONDITIONS TO EFFECTIVE DATE**

23 **A. Conditions to Occurrence of Effective Date.**

24 Each of the following is a condition to be met on or before the Effective Date, which
25 conditions must be satisfied or waived in writing by Debtor:
26

1 (a) That the Confirmation Order shall be entered by the Bankruptcy Court and shall have
2 become a Final Order;

3 (b) A buyer closes on the Property and completes all obligations pursuant to its purchase
4 agreement (as approved by the Bankruptcy Court), including payment of the purchase price to
5 the Debtor;

6 (c) The required amount of Confirmation Funds have been paid and turned over to the
7 Distribution Agent for Distribution in accordance with the Plan; and

8 (d) Any outstanding U.S. Trustee Fees shall have been paid in full.
9 Debtor, in its sole discretion, may waive the Final Order condition in subpart (a) above at any
10 time from and after the Confirmation Date. In that event, Debtor will be entitled to render any
11 or all performance under the Plan prior to what otherwise would be the Effective Date if the
12 above-referenced conditions were not waived; including, but not limited to, the right to perform
13 under any circumstances which would moot any appeal, review or other challenge of any kind
14 to the Confirmation Order if the Confirmation Order is not stayed pending such appeal, review
15 or other challenge.
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19 **XIII. RETENTION OF JURISDICTION**

20 **A. Retention of Jurisdiction.**

21 Except to the extent otherwise expressly set forth herein, the Bankruptcy Court shall
22 retain jurisdiction of the Chapter 11 Case following the Confirmation Date for the following
23 purposes, it being expressly intended that such retention of jurisdiction shall in all cases
24 hereafter set forth, extend to any actions or proceedings commenced prior or subsequent to the
25 Confirmation Date and/or the Effective Date whether by Debtor, or the parties specified herein:
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1 (a) To hear and determine any objections to the allowance of Claims, including any
2 objections by Debtor with respect to any Claims which have been reinstated or assumed in
3 accordance with the terms of the Plan;

4 (b) To determine any and all applications for compensation for any Professionals and
5 similar fees to the extent made specifically subject to a hearing under the Plan and applicable
6 provisions of the Bankruptcy Code;
7

8 (c) To determine any and all applications for the rejection or assumption and assignment
9 of executory contracts or for the rejection or assumption and assignment, as the case may be,
10 of unexpired leases to which Debtor is a party or with respect to which it may be liable, and to
11 hear and determine, and if need be to liquidate, any and all Claims arising therefrom;
12

13 (d) To modify the Plan pursuant to Bankruptcy Code Section 1127 or to remedy any
14 defect or omission or reconcile any inconsistency in the Confirmation Order to the extent
15 authorized by the Bankruptcy Code;

16 (e) To hear and determine all controversies, suits and disputes, if any, as may arise in
17 connection with the interpretation or enforcement of the Plan;
18

19 (f) To hear and determine all controversies, suits and disputes, if any, as may arise with
20 regard to orders of this Bankruptcy Court entered in the Chapter 11 Case;

21 (g) To adjudicate all controversies concerning the classification of any Claim;

22 (h) To liquidate damages in connection with any disputed, contingent or unliquidated
23 Claim;
24

25 (i) To adjudicate all Claims to a security or ownership interest in any of the Assets, or
26 in any proceeds thereof,
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1 (j) To adjudicate all Claims or controversies arising out of any purchases, sales or
2 contracts made or undertaken by Debtor;

3 (k) To determine all questions and disputes regarding recovery of and entitlement to any
4 property of Debtor, or in any proceeds thereof;

5 (l) To adjudicate all Causes of Action with respect to which Debtor is a party, whether
6 or not such Claim or controversy is raised or filed before or after the Effective Date;

7 (m) To determine issues and disputes concerning entitlement to Distributions to be made
8 under and pursuant to the Plan;

9 (n) To enter any order, including injunctions, necessary to enforce the title, rights and
10 powers of Debtor's limitations, restrictions, terms and conditions on such title, rights and
11 powers as the Bankruptcy Court may deem necessary or appropriate;

12 (o) To determine such other matters as may be provided for in the Confirmation Order
13 and the Plan, or as may from time to time be authorized under the provisions of the Bankruptcy
14 Code or any other applicable law;

15 (p) To enter a Final Decree closing the Chapter 11 Case;

16 (q) To enforce the provisions of any Administrative Claim Bar Date entered by the
17 Bankruptcy Court;

18 (r) To make such orders as are necessary or appropriate to carry out the provisions of
19 the Plan, including but not limited to orders interpreting, clarifying or enforcing the provisions
20 thereof;

21 (s) To determine issues and disputes with respect to the Refinanced Secured Loan
22 Documents as required by the Plan arising after the Effective Date; and
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1 (t) Without limiting the generality of any of the foregoing, to hear and determine matters
2 concerning state, local, and federal taxes in accordance with Bankruptcy Code Sections 345,
3 505, and 1146.

4 **B. Jurisdiction Unaffected.**

5 The occurrence of the Effective Date and/or the entry of a Final Decree shall not divest
6 the Bankruptcy Court of any jurisdiction otherwise retained under this Article or the
7 Confirmation Order.
8

9 **C. Failure of Bankruptcy Court To Exercise Jurisdiction.**

10 If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or
11 is otherwise without jurisdiction over any matter arising under, arising in or related to the
12 Bankruptcy Case, including any of the matters set forth in the Plan, the Plan shall not prohibit
13 or limit the exercise of jurisdiction by any other court of competent jurisdiction with respect to
14 such matter.
15

16 **XIV. EFFECT OF CONFIRMATION OF PLAN**

17 **A. . Binding Effect of Plan/Injunction.**

18 (a) UPON THE EFFECTIVE DATE, BANKRUPTCY CODE SECTION
19 1141 SHALL BECOME APPLICABLE WITH RESPECT TO THE
20 PLAN AND THE PLAN SHALL BE BINDING ON ALL PARTIES TO
21 THE FULLEST EXTENT PERMITTED BY BANKRUPTCY CODE
22 SECTION 1141(A). IN ACCORDANCE WITH BANKRUPTCY CODE
23 SECTION 1141, ALL OF DEBTOR'S PROPERTY SHALL BE
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1 VESTED IN DEBTOR FREE AND CLEAR OF ALL CLAIMS, LIENS AND
2 INTERESTS OF CREDITORS AND EQUITY INTEREST
3 HOLDERS.

4 (b) UPON THE EFFECTIVE DATE, ALL PERSONS AND ENTITIES
5 SHALL BE PERMANENTLY ENJOINED BY THE PLAN FROM (i)
6 COMMENCING OR CONTINUING ANY ACTION, EMPLOYING
7 ANY PROCESS, ASSERTING OR UNDERTAKING AN ACT TO
8 ANY PROCESS, ASSERTING OR UNDERTAKING AN ACT TO
9 COLLECT, RECOVER, OR OFFSET, DIRECTLY OR INDIRECTLY,
10 ANY CLAIM, RIGHTS, CAUSES OF ACTION, LIABILITIES, OR
11 INTERESTS IN OR AGAINST ANY PROPERTY DISTRIBUTED OR
12 TO BE DISTRIBUTED UNDER THE PLAN, OR VESTED IN
13 DEBTOR, BASED UPON ANY ACT, OMISSION, TRANSACTION,
14 OR OTHER ACTIVITY THAT OCCURRED BEFORE THE
15 EFFECTIVE DATE, (ii) CREATING, PERFECTING OR ENFORCING
16 ANY LIEN OR ENCUMBRANCE AGAINST ANY PROPERTY
17 DISTRIBUTED OR TO BE DISTRIBUTED UNDER THE PLAN
18 OTHER THAN AS PERMITTED UNDER THE PLAN, AND (iii)
19 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,
20 ASSERTING ANY CLAIMS AGAINST DEBTOR BASED ON
21 SUCCESSOR LIABILITY OR SIMILAR OR RELATED THEORY,
22 EXCEPT TO THE EXTENT A PERSON OR ENTITY HOLDS AN
23 ALLOWED CLAIM UNDER THE PLAN AND IS ENTITLED TO A
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1 DISTRIBUTION AND/OR LIEN UNDER THE PLAN IN
2 ACCORDANCE WITH ITS TERMS, AND TO ENFORCE ITS RIGHTS
3 TO DISTRIBUTION UNDER THE PLAN.

4 (c) ON AND AFTER THE EFFECTIVE DATE, EACH HOLDER OF ANY
5 CLAIM AGAINST OR INTEREST IN DEBTOR IS PERMANENTLY
6 ENJOINED FROM TAKING OR PARTICIPATING IN ANY ACTION
7 THAT WOULD INTERFERE OR OTHERWISE HINDER DEBTOR FROM
8 IMPLEMENTING THE PLAN, THE CONFIRMATION
9 ORDER OR ANY OPERATIVE DOCUMENTS IN ACCORDANCE
10 WITH THE TERMS THEREOF.

11 (d) THE DISCHARGE OF THE RESPECTIVE DEBTOR, AS SET FORTH
12 IN THE PLAN, SHALL NOT RELEASE OR DISCHARGE ANY
13 THIRD-PARTY GUARNTORS FROM ANY PERSONAL
14 OBLIGATIONS THEY MAY HAVE TO ANY SECURED LENDER OR
15 OTHER CREDITOR UNDER ANY PERSONAL GUARANTY OR
16 OTHERWISE.

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20 **C. Injunction Against Interference With Plan.**

21 Upon the Effective Date, all Holders of Claims against or Interests in Debtor and their
22 respective Representatives and any of their successors or assigns shall be enjoined from taking
23 any actions to interfere with the implementation or consummation of the Plan.

24
25 **D. Adequate Protection Liens; Cash Collateral Orders.**

1 As of the Effective Date, any replacement Liens granted as adequate protection pursuant
2 to the terms of any Cash Collateral Orders shall be deemed to be terminated, discharged,
3 eliminated and of no further force and effect.

4 As of the Effective Date, Debtor's obligations under all Cash Collateral Orders shall be
5 deemed to be fully satisfied, released, discharged and terminated, and such Cash Collateral
6 Orders shall be of no further force and effect.

7
8 **E. Modification of Debt Instruments.**

9 On the Effective Date, all instruments evidencing indebtedness of Debtor held by
10 Holders of Claims that are Impaired by the Plan or have been paid in full pursuant thereto shall
11 be deemed modified or canceled as against Debtor as set forth in the Plan.

12
13 **F. Judgments Void.**

14 Any judgment obtained before or after the Effective Date in any court other than the
15 Bankruptcy Court shall be null and void as a determination of liability of Debtor with respect
16 to any debt treated by the Plan.

17
18 **G. Revesting of Assets in Debtor.**

19 Except as otherwise expressly provided herein or in the Confirmation Order, on the
20 Effective Date, but retroactive to the Confirmation Date, without any further action, Debtor will
21 be vested with all of the property of the Estate, wherever situate, free and clear of all Claims
22 and Liens (except for Liens provided or authorized pursuant to the Plan and Permitted
23 Encumbrances). Without limiting the generality of the foregoing, on and after the Effective
24 Date, Debtor shall be vested with all of the property of the Estate, wherever situate, free and
25 clear of any Claims based on any form of successor liability or similar or related theory of
26

1 liability. On and after the Effective Date, (i) Debtor shall be free of any restrictions imposed by
2 the Bankruptcy Code or Bankruptcy Court, may operate their business and may use, acquire or
3 dispose of their assets (including the Properties) free of any restrictions imposed by the
4 Bankruptcy Code and the Bankruptcy Rules and without supervision or approval by the
5 Bankruptcy Court, other than the obligations set forth in the Plan, or the Confirmation Order.
6 Without limiting the generality of the foregoing and except as otherwise expressly provided
7 herein or in the Confirmation Order, any Causes of Action will be preserved and retained solely
8 for Debtor's commencement, prosecution, use and benefit.
9

10 **H. Preservation of Causes of Action.**

11 Pursuant to Bankruptcy Code Section 1123(b), Debtor shall retain and reserve the right
12 to enforce all rights to commence and pursue Causes of Action whether arising prior to or after
13 the Petition Date, and whether pending as of or Filed after the Effective Date, in any court or
14 other tribunal. Unless a Cause of Action is expressly waived, relinquished, released,
15 compromised or settled in the Plan, or any Final Order, Debtor on behalf of themselves
16 expressly reserve all Causes of Action for later adjudication and, therefore, no preclusion
17 doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue
18 preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to
19 any Causes of Action upon Confirmation or the Effective Date. No entity may rely on the
20 absence of a specific reference in the Plan, any Plan Supplement, or the Disclosure Statement
21 to any Cause of Action against them as an indication that Debtor, will not pursue any and all
22 available Causes of Action against them.
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1 Debtor expressly reserves all rights to prosecute any and all Causes of Action against
2 any Entity, except as otherwise expressly provided in the Plan.

3 **I. Maintenance of Administrative Claim Status Post Discharge.**

4 Notwithstanding any discharge granted to Debtor, Allowed Administrative Claims shall
5 maintain their administrative priority status under Bankruptcy Code Section 507(a)(2) until paid
6 in full.
7

8 **J. No Limitation on Effect of Confirmation.**

9 Nothing contained in the Plan or the Disclosure Statement will limit, waive or restrict
10 in any way the effect of Confirmation as set forth in Bankruptcy Code Section 1141.
11 Confirmation will bind Debtor, all Creditors, Equity Interest Holders and other parties in
12 interest to the provisions of the Plan, whether or not the Claim or Equity Interest of such
13 Creditor or Equity Interest Holder is Impaired under the Plan and whether or not such Creditor
14 or Equity Interest Holder has accepted the Plan and whether or not a proof of Claim or Equity
15 Interest has been filed or deemed to have been filed under Bankruptcy Code Sections 501 or
16 1111(a), or such Claim or Equity Interest is allowed under Bankruptcy Code Section 502.
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19 **XV. MISCELLANEOUS PROVISIONS**

20 **A. Modification of the Plan.**

21 Debtor may alter, amend or modify the Plan at any time before the entry of the
22 Confirmation Order, provided that the Plan, as altered, amended or modified, satisfies the
23 conditions of Bankruptcy Code Sections 1122 and 1123, and Debtor shall have complied with
24 Bankruptcy Code Section 1125. However, the Bankruptcy Court may require a new disclosure
25 statement and/or re-voting on the Plan if Debtor modifies the plan before Confirmation.
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1 Debtor may also seek to alter, amend or modify the Plan at any time after Confirmation
2 so long as (i) the Plan has not been substantially consummated, (ii) as altered, amended or
3 modified the Plan satisfies the conditions of Bankruptcy Code Sections 1122 and 1123, and (iii)
4 the Bankruptcy Court authorizes the proposed modification after notice and a hearing under
5 Bankruptcy Code Section 1129.
6

7 A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the
8 Plan, as altered, amended or modified, if the proposed alteration, amendment or modification
9 does not materially and adversely change the treatment of the Claim of such Holder. Prior to
10 the Effective Date, Debtor may make appropriate technical non-material modifications to the
11 Plan or the Disclosure Statement without further order or approval of the Bankruptcy Court,
12 provided that such technical modifications do not adversely affect the treatment of Holders of
13 Claims or Equity Interest.
14

15 Debtor further reserves the right to modify the treatment of any Allowed Claims at any
16 time after the Effective Date of the Plan upon the consent of the Creditor whose Allowed Claim
17 treatment is being modified, so long as no other Creditors are materially adversely affected.
18

19 Debtor reserves the right, in accordance with the Bankruptcy Code, to amend or modify
20 the Plan before or after the Confirmation Date, including making any amendments or
21 modifications to satisfy the requirements of Bankruptcy Code Section 1129(b), if necessary.
22

23 **B. Notices.**

24 Except as otherwise set forth below, all notices, requests, elections or demands in
25 connection with the Plan, including any change of address of any Holder of a Claim for the
26 purposes of receiving any Distributions under the Plan, shall be in writing and shall be delivered
27

1 personally or by facsimile, electronic mail or overnight courier (confirmed by first class mail
2 or express mail) or mailed by first class mail. Such notice shall be deemed to have been given
3 when received or, if mailed by first class mail, seven (7) days after the date of mailing, or if
4 express mailed, the next Business Day following the date of mailing and addressed to the
5 following:

6 **If to Debtor, to:**

7
8 PROMETHEUS & ATLAS REAL ESTATE DEVELOPMENT, LLC
9 321 S. Casino Center Blvd.
10 Las Vegas, NV 89101

11 with copies to:

12 Ghandi Deeter Blackham Law Offices
13 NEDDA GHANDI, ESQ.
14 725 South 8th St. Suite 100
15 Las Vegas, Nevada 89101
16 Telephone: (702) 878-1115
17 Facsimile: (702) 447-9995

18 All notices and requests to Holders of Claims of any Class shall be sent to them at their
19 known address. Any Holder of a Claim of any Class may designate in writing any other address
20 for purposes of this Section, which designation shall be effective upon receipt.

21 **C. Limitation of Notice.**

22 Debtor shall give the following notice with regard to the following matters, which notice
23 shall be deemed to be good and sufficient notice of such matters, with no requirement for any
24 additional or further notice:

25 (a) Notice of Entry of Confirmation Order. Notice of the entry of the Confirmation
26 Order shall be sufficient if mailed to all known Holders of Claims (which have not become
27

1 Disallowed Claims) and Interests within five (5) Business Days of the entry of Confirmation
2 Order.

3 (b) Post-Confirmation Date Service List - Additional Persons Entitled to Notice. Except
4 as set forth in Section XIV, Subpart(B) hereof, from and after the date the Confirmation Order
5 becomes a Final Order, notices of appearances and demands for service of process Filed with
6 the Bankruptcy Court prior to such date shall no longer be effective, and no further notices,
7 other than Notice of Confirmation Order, shall be required to be sent to such parties, unless
8 such parties File a new notice of appearance and demand for service of process dated subsequent
9 to the Effective Date, which subsequent notice and demand must be Filed with the Bankruptcy
10 Court and served upon the Persons and Entities listed in Section 15(B) above.
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13 (c) Subordination - Nothing in the Plan shall in any way be deemed to have Impaired,
14 altered or otherwise affected the rights of Debtor to enforce any right of subordination that may
15 exist by agreement or otherwise, including under Bankruptcy Code Section 510.
16

17 **D. Requisite Secured Lender's Approval.**

18 Wherever the approval of a Secured Lender with respect to a Secured Loan or is referred
19 to anywhere in the Plan, the Person or Entity seeking such approval shall be entitled to direct
20 the request for approval solely to that Secured Lender named herein with respect to such
21 Secured Loan on behalf of other Holders of Claims with respect to such Secured Loan and such
22 Secured Lender shall then be responsible for determining and communicating in writing
23 whether or not such approval has or has not been obtained. Any written statement by such
24 Secured Lender to any other Person or Entity concerning any consent or approval of the Secured
25

1 Lender and Related Secured Claim Holders required hereunder may be relied upon by such
2 Person or Entity.

3 **E. Headings.**

4 The headings used in the Plan are inserted for convenience only and do not constitute a
5 portion of the Plan nor in any manner affect the provisions of the Plan.
6

7 **F. Exhibits.**

8 All exhibits and documents included in the Disclosure Statement are incorporated into
9 and are a part of the Plan, as if set forth in full in the Plan. After the exhibits and documents are
10 Filed, copies of such exhibits and documents shall have been available upon written request to
11 Debtor's counsel at the address above or by downloading such exhibits and documents from
12 the Bankruptcy Court's website at <http://www.nvb.uscourts.gov>. To the extent any exhibit or
13 document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy
14 Court, the non-exhibit or non-document portion of the Plan shall control.
15

16 **G. Nonseverability of Plan Provisions.**

17 If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy
18 Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power, at the
19 request of Debtor and subject to the consent of any party adversely affected thereby, to alter
20 and interpret such term or provision to make it valid or enforceable to the maximum extent
21 practicable, consistent with the original purpose of the term or provision held to be invalid,
22 void, or unenforceable, and such term or provision shall then be applicable as altered or
23 interpreted.
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1 Notwithstanding any such holding, alteration, or interpretation, the remainder of the
2 terms and provisions of the Plan will remain in full force and effect and will in no way be
3 affected, Impaired, or invalidated by such holding, alteration, or interpretation. The
4 Confirmation Order shall constitute a judicial determination and shall provide that each term
5 and provision of the Plan, as it may have been altered or interpreted in accordance with the
6 foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may
7 not be deleted or modified without the consent of Debtor and any other Person or Entity affected
8 by such provision; and (c) nonseverable and mutually dependent.

10 **H. Waiver or Estoppel.**

11 Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert
12 any argument, including the right to argue that its Claim or Interest should be Allowed in a
13 certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement
14 made with Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the
15 Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the
16 Confirmation Date.
17

18 **I. Conflicts.**

19 (a) To the extent that any provision of the Disclosure Statement, any Plan Supplement
20 (other than any amendments to the Plan or any Refinanced Secured Loan Documents), or any
21 other order (other than the Confirmation Order) referenced in the Plan (or any exhibits,
22 schedules, appendices, supplements or amendments to any of the foregoing), conflict with or
23 are in any inconsistent with any provision of the Plan, the Plan shall govern and control, unless
24 expressly set forth herein.
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1 **J. Computation of Time.**

2 In computing any period of time prescribed or allowed by the Plan, the provisions of
3 Bankruptcy Rule 9006(a) shall apply.

4 **K. Governing Law.**

5 Except to the extent that the Bankruptcy Code or any other Federal law is applicable,
6 the rights and obligations arising under the Plan shall be governed by, and construed and
7 enforced in accordance with, the laws of the State of Nevada.

8 **L. Successors and Assigns.**

9 The rights and obligations of any Person or Entity named or referred to in the Plan shall
10 be binding upon, and shall inure to the benefit of, the successors and assigns of such Person or
11 Entity.
12

13 **M. Good Faith.**

14 Confirmation of the Plan will constitute a finding that the Plan has been proposed in
15 good faith and in compliance with all applicable provisions of the Bankruptcy Code.
16

17 **N. Post-Confirmation Conversion or Dismissal.**

18 A creditor or party in interest may bring a motion to convert or dismiss the Chapter 11
19 Cases under Bankruptcy Code Section 1112(b), after the Plan is confirmed, if there is a default
20 in performance of the Plan or if cause exists under Bankruptcy Code Section 1112(b). If the
21 Bankruptcy Court orders the case converted to Chapter 7 after the Plan is confirmed, then all
22 property that had been property of the Estate, and that has not been disbursed or distributed
23 pursuant to the Plan, will revert in the Chapter 7 estate, and the automatic stay will be re-
24 imposed upon the re-vested property only to the extent that relief from stay was not previously
25

1 granted by the Bankruptcy Court during these Chapter 11 Cases. In addition, any Allowed
2 Administrative Claims which are not paid on the Effective Date shall continue to be entitled to
3 administrative priority, under Bankruptcy Code Section 507(a)(1) in any such subsequent
4 Chapter 7 case to which this case is converted.

5 **O. Post Confirmation Reports and Quarterly Fees.**

6
7 Until the entry of the final decree, Debtor shall file with the clerk, not later than twenty
8 (20) days after the end of the calendar quarter which occurs after the entry of this order, and
9 every three (3) months thereafter, a report of the action taken by the Reorganized Debtor and
10 the progress made toward consummation of the Confirmed Plan. Said report shall include, at a
11 minimum, the following information:

12
13 (A) A schedule of any personal property costing more than \$5,000 and any real property
14 acquired, sold or disposed of since confirmation of the plan and the price paid for each;

15 (B) A schedule listing each debt, the total amount required to be paid under the plan,
16 the amount required to be paid to date, the amount actually paid to date, and the amount unpaid;

17 (C) A schedule of executory contracts entered into after plan confirmation;

18 (D) A statement listing each post-petition tax (i.e., income, payroll, property, sales), and
19 payee and the amount actually paid;

20 (E) The progress toward completion of the confirmed plan and a list and status of any
21 pending adversary proceedings or motion and resolution expected; and

22 (F) A statement regarding the status of payment of both pre-confirmation and post
23 confirmation United States trustee quarterly fees.
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1 U.S. Trustee Fees continue to be payable to the Office of the United States Trustee
2 postconfirmation until such time as the case is converted, dismissed, or closed pursuant to Final
3 Decree.

4 **P. Entire Agreement.**

5 The Plan, as described herein, the Disclosure Statement and exhibits thereto, and any
6 Plan Supplements set forth the entire agreement and understanding of the parties hereto relating
7 to the subject matter hereof and supersede all prior discussions and documents. No party hereto
8 shall be bound by any terms, conditions, definitions, warrants, understandings or
9 representations with respect to the subject matter hereof, other than as in expressly provided for
10 herein or as may hereafter be agreed by the parties in writing.
11

12 Respectfully submitted,
13

14 Submitted by:

15 **GHANDI DEETER BLACKHAM**

16 /s/ Nedda Ghandi
17 NEDDA GHANDI, ESQ.
18 Nevada Bar No. 11137
19 725 South 8th Street Suite 100
20 Las Vegas, Nevada 89101
21 (702) 878-1115
22 Attorneys for Debtor
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EXHIBIT A

Assets

5 Acres undeveloped land. APN 137-12-301-009

Legal Description

The West Half (W 1/2) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) of Section 12, Township 20 South. Range 59 East, M.D.B.&M., Clark County, Nevada

Appraised value: \$2,600,000.00

Cash on hand in Debtor's DIP account: \$50.00 as of 7/31/17.

EXHIBIT B

FINANCIAL STATEMENTS

Statement of Debtor's Financial Condition has been filed along with Debtor's other schedules and these statements give a fair approximation of the condition of Debtor. Monthly Operating Reports shall be filed with the Bankruptcy Court throughout the Case.

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EXHIBIT C

UNEXPIRED LEASES/EXECUTORY CONTRACTS TO BE ASSUMED

None.

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EXHIBIT D

UNEXPIRED LEASES/EXECUTORY CONTRACTS TO BE REJECTED

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EXHIBIT E**LIQUIDATION ANALYSIS**

TOTAL ASSETS, as shown in Exhibit A:	\$2,600,000.00
Less: Chapter 7 trustee fees and expenses ¹	(\$260,000.00)
Less: Chapter 11 administrative expenses (estimated)	(\$ 209,750.00)
Less: Priority claims, excluding admin. expense claims	\$0.00
TOTAL ASSETS LESS ADMIN. EXPENSES/CLAIMS:	\$ 2,130,250.00
Less: Estimated balance of secured claims	(\$2,257,301.65 .00)
Remaining Balance for Unsecured Claims:	\$ (127,051.65)
Estimated Total Amount of Allowed Unsecured Claims	unknown
<u>Summary:</u>	
Funds Which Unsecured Creditors Could Receive or Retain in a Ch. 7 Liquidation, After Chapter 7 Estimated Costs:	\$ (127,051.65)
Total Estimated Funds Which Unsecured Creditors Could Receive or Retain Under This Plan in Pro Rata Distribution: (No Chapter 7 trustee fees and expenses incurred)	\$ 132,948.35

¹ **Chapter 7 Liquidation Costs.** These are estimated at 10% of Non-Exempt Estate Assets. Pursuant to section 726 of the Bankruptcy Code, the allowed administrative expenses incurred by a Chapter 7 trustee, including, but not limited to, expenses affiliated with selling Debtor's assets, will be entitled to payment in full prior to any distribution to Chapter 11 administrative and other priority claims.

EXHIBIT F**LIST OF ADMINISTRATIVE EXPENSE CLAIMS****UNCLASSIFIED CLAIMS: ADMINISTRATIVE CLAIMS**

TYPE	ESTIMATED AMOUNT
Expenses Arising in the Ordinary Course of Business Post-Petition	Unknown
Professional Fees, as approved by the Court	\$200,000.00±
Office of the U.S. Trustee Fees	\$ 9,750.00±
Clerk's Office Fees	Unknown
Other Administrative Expenses	Unknown
TOTAL ESTIMATED AMOUNT:	\$± 209,750.00

EXHIBIT G

LIST OF PRIORITY UNSECURED CLAIMS

UNCLASSIFIED CLAIMS: PRIORITY TAX CLAIMS

TYPE	ESTIMATED AMOUNT	POC#	Disputed?
None			

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EXHIBIT H**LIST OF SECURED CLAIMS**

TYPE	ESTIMATED AMOUNT	Disputed?
Eliot A. Alper Revocable Trust	\$1,595,143.09	No
John Irving Trust of 2008	\$662,158.56	No
Total:	\$ 2,257,301.65	

EXHIBIT I**LIST OF GENERAL UNSECURED CLAIMS**

Name	Estimated Amount	Disputed?
<u>As Scheduled:</u>		
State Court Action	Unknown	Yes
City of Las Vegas, City Clerk	\$0 (Notice Purposes)	
Clark County Treasurer	\$0 (Notice Purposes)	
IRS	\$0 (Notice Purposes)	
Nevada Dept. of Taxation, Bankruptcy	\$0 (Notice Purposes)	
<u>Potential Undersecured Claims:</u>		
Eliot A. Alper Revocable Trust	\$0	
John Irving Trust of 2008	\$0	
<u>POC Filed:</u>		
3-1 Caballos De Oro Estates LLC	\$4,950,000	Yes

**Total Estimated General
Unsecured Claims: Unknown**