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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 11

RCR CAR CARE, LLC,

Case No. 16-71074-REG

Debtor.

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**DISCLOSURE STATEMENT FOR THE PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR**

This Disclosure Statement ("Disclosure Statement") is being provided by RCR CAR CARE, LLC (the "Debtor"), pursuant to the requirements of Section 1125 of the Bankruptcy Code (the "Bankruptcy Code"), to those known holders of a claim or interest who are entitled to vote on the confirmation of the Plan of Reorganization (the "Plan") proposed by the Debtor in order to disclose adequate information, deemed to be material, important and necessary for the Debtor's creditors ("Creditor") to make an informed judgment and an informed decision in exercising their right to vote on the Plan.

Along with this Disclosure Statement, you will receive a copy of the proposed Plan, a Ballot, an Order conditionally approving the Disclosure Statement and a Notice fixing a date for a hearing on the final approval of the Disclosure Statement and confirmation of the Plan. Annexed to this Disclosure Statement are the following exhibits:

- Exhibit "A": Debtor's Plan of Reorganization;
- Exhibit "B": Most Recent Filed Operating Report (without attachments);
- Exhibit "C": Pro Forma Income and Expense Projections;
- Exhibit "D": Form of Ballot and Voting Instructions;
- Exhibit "E": Liquidation Analysis;
- Exhibit "F": Schedule of Class 2 General Unsecured Claims

The Bankruptcy Court has scheduled a hearing to consider final approval of the adequacy of this Disclosure Statement and Confirmation of the Plan. Details of the hearing will be found in the "Notice Fixing a Date for a Hearing on Confirmation", which accompanies this notice.

The Bankruptcy Court has scheduled February 27, 2017 at 1:30 p.m. as the date and time of the hearing for final approval of the Disclosure Statement and Confirmation of the Plan and objections thereto, which hearing will be held before Robert E. Grossman, United States

Bankruptcy Judge in the United States Bankruptcy Court for the Eastern District of New York, 290 Federal Plaza, Central Islip, New York 11722, Courtroom 860. Creditors of and holders of interests in, the Debtor may attend such hearing. The Bankruptcy Court has fixed February 20, 2017 at 4:00p.m. as the date and time by which all ballots and/or written objections to Confirmation of the Plan shall be actually filed with the Bankruptcy Court and actually received by the attorneys for the Debtor and the United States Trustee. Ballots and objections may be emailed or faxed to the Attorneys for the Debtor at [gfischoff@bfslawfirm.com](mailto:gfischoff@bfslawfirm.com) and (516) 747-0382, respectively.

You are urged to review the plan and this disclosure statement with counsel of your choice.

The Debtor and its counsel have prepared the Chapter 11 Plan and submit that this Plan is in the best interest of Creditors generally and recommend acceptance of the Plan by those Creditors who are entitled vote. This Disclosure Statement has been conditionally approved by the Court as containing information of a kind and in sufficient detail that will enable Creditors to make an informed judgment about the Plan, and the Debtor has been authorized to use this Disclosure Statement in connection with the solicitation of ballots on the Plan. At a hearing on confirmation the Court will consider whether the Plan is feasible, and whether it is in the best interests of the Creditors.

## **PART I** **DEFINITIONS**

For the purposes of this Disclosure Statement, the terms used herein shall be defined as they are defined in the Debtor's Plan of Reorganization.

## **PART II** **PRELIMINARY STATEMENT**

On March 14, 2016, the Debtor filed its petition pursuant to Chapter 11 of Title 11 of the United States Code ("Petition Date"). The Debtor is a small business, debtor-in-possession. It has continued in the operation and management of its business. A committee of unsecured creditors has not been appointed. No operating trustee been appointed.

## **PART III** **RETENTION OF PROFESSIONALS**

On or about, March 13, 2016, the Debtor retained Berger, Fischhoff & Shumer, LLP. as counsel to the Debtor. An order for authority to retain that firm as counsel to the debtor-in-possession was filed with the Court on March 15, 2016.

**PART IV**  
**REPRESENTATIONS AND SCOPE OF STATEMENT**

The information contained herein provided by the Debtor has not been subject to a certified audit, and accordingly, the Debtor is unable to warrant or represent that the information contained herein is without any inaccuracies. The Debtor believes that the information contained herein is accurate.

**PART V**  
**DESCRIPTION OF THE DEBTOR AND ITS RESPECTIVE BUSINESS**

The Debtor is a limited liability company, formed and existing under the laws of the State of New York. The principal place of business for the Debtor is 1165 East Main Street, Riverhead, New York 11901. The Debtor is a motor vehicle repair facility.

The Debtor, until December 2, 2016, operated as a franchised Meineke Repair Shop. The Debtor in its sound business judgment, determined that the costs of being a franchised Meineke facility outweighed the benefits. Accordingly on September 16, 2016 the Debtor filed a Motion to Reject its franchise agreement. On December 6, 2016 the Court granted the Debtor's motion, thereby authorizing the Debtor to reject its franchise agreement with Meineke. The Debtor now operates as a private label auto repair facility – RCR Car Care.

**PART VI**  
**SUMMARY OF EVENTS DURING THE CHAPTER 11 CASE**

1. **Commencement of the Case**

On March 14, 2016 (the "Petition Date"), the Debtor filed its Chapter 11 proceeding to be afforded an opportunity to work out its debts and to propose a plan of reorganization to repay its debts and restructure its business.

2. **Employment of the Debtor's Professionals**

On March 15, 2016, the Debtor filed an application to retain Berger, Fischhoff & Shumer, LLP, as its bankruptcy counsel. No other professionals have been utilized by the Debtor for its reorganization process.

3. **Filing of Schedules of Assets and Liabilities and Statement of Financial Affairs**

On March 14, 2016, the Debtor filed its Schedules of Assets and Liabilities, together with its Statement of Financial Affairs (collectively, the "Schedules"). The Debtor's Schedules are available on the Bankruptcy Court's website: [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov).

4. **Establishment of a Claims Bar Date and Claims Process**

On December 6, 2016, the Court entered an Order which established February 1, 2017 as the last date by which creditors could file proofs of claim against the Debtor in its Chapter 11 Cases, except as otherwise provided in the Bar Date Order (“Bar Date Order”).

5. **Establishment of an Administrative Bar Date and Claims Process**

On December 6, 2016, the Court entered an Order which established February 1, 2017 as the last date by which creditors could file administrative proofs of claim against the Debtor in its Chapter 11 Cases, except as otherwise provided in the Administrative Bar Date Order (“Administrative Bar Order”).

6. **Post Petition Operations**

The Debtor has continued to operate its business since the filing of the petition. Since the filing of the petition the Debtor has been operating overall at a slight loss. Now that it does not have to pay the fees associated with being a Meineke franchise, the Debtor expects to operate profitably.

**PART VII**  
**DESCRIPTION OF THE PLAN**

THIS PART PRESENTS ONLY A SUMMARY OF THE PLAN OF REORGANIZATION PROPOSED BY THE DEBTOR. CREDITORS ARE URGED TO READ THE PLAN IN FULL AND TO CONSULT WITH COUNSEL AS TO ITS CONTENT. THE PLAN REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BETWEEN THE DEBTOR AND ITS CREDITORS.

1. **TREATMENT OF CLAIMS**

The claims of the United States Trustee, pursuant to statute, 28 U.S.C. 1930(b) are included in this category. All outstanding quarterly fees owed to the Office of the United States Trustee have been paid and any outstanding amounts shall be paid in full on the Effective Date of the Plan. In addition, the Debtor shall continue to incur quarterly fees until the entry of the “Final Decree.” These will also be paid by the Debtor as due. This category also includes the statutory fees due the Clerk of the Court.

The Debtor shall pay all United States Trustee quarterly fees under 28 U.S.C. §1930(a)(6), plus interest, if any due and payable under 31 U.S.C. §3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtor’s business, until the entry of a Final Order, dismissal of the Chapter 11 Case or conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.

## 2. ADMINISTRATION CLAIMS

Upon the Distribution Date, or as soon thereafter as is practicable (and if such claim is for professional fees or expenses, upon determination by the Court that such fees are reasonable and allowable) each holder of an Allowed Administration Claim shall be paid in cash in full an amount equal to 100% of each such Allowed Claim. Administrative Claims include Berger, Fischhoff & Shumer, LLP, attorneys for the Debtor for legal fees. Administration claims by Vendors or others providing goods and services to the Debtor incurred post petition in the ordinary course of business shall continue to be paid in the ordinary course by the Debtor. It is estimated that by the Confirmation date, the Debtor will owe approximately \$40,000.00 in legal fees less the prepetition retainer of \$21,727.00. The balance of professional fees not paid upon Confirmation will be paid by arrangement between the parties.

## 3. §507(a)(8) PRIORITY CLAIMS

New York State Department of Taxation and Finance – for unpaid sales tax	\$10,458.07
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This claim will be paid 100% plus interest calculated in accordance with the applicable non bankruptcy law. The claim will be paid in sixty equal, consecutive, monthly payments commencing thirty (30) days after the Effective Date of the Plan. These payments will be \$174.30 per month plus interest.

This class is not impaired for the purposes of §1124 of the Bankruptcy Code and is not entitled to vote pursuant to Section 1126(a) of the Bankruptcy Code.

## 4. CLASS 1 – CLAIMS AGAINST THE DEBTOR AS GUARANTOR

On August 23, 2015 RCR Realty, LLC, an affiliate of the Debtor borrowed \$395,000.00 from Empire State Certified Development Corporation as servicer for the U.S. Small Business Administration. This loan was used by RCR Realty, LLC to purchase the property from which the Debtor operates. The Debtor pays rent of \$8,000.00 a month to RCR Realty, which in turn pays the loan payments on both the Empire State loan and NYBD loan described below as well as the real estate tax payments. The Debtor is current on the rent and RCR Realty in turn is current on the payments due on this loan and will continue to make the required payments as they come due. The Debtor reaffirms its obligations under the guarantee, and all of the terms and conditions are incorporated herein by reference.

On August 23, 2015 RCR Realty, LLC borrowed \$477,500.00 from New York Business Development Corp. in connection with the purchase of the property from which the Debtor operates. The loan was guaranteed by the Debtor, as well as by RCR Business Group, LLC an

affiliate of the Debtor and Richard C. Roberts, the principal of the Debtor. The borrower is current on the loan payments and will continue to make the monthly payments in accordance with the terms of the loan. The Debtor reaffirms its obligations under the guarantee and all of the terms and conditions are incorporated herein by reference. In the event, either of the obligors on these loans are unable to make their payments, then the Debtor will face claims as a guarantor which would likely force the Debtor to cease operations. Richard Roberts also personally guaranteed both of these loans.

The members of this class are not impaired for the purpose of Section 1124 of the Bankruptcy Code and are not entitled to vote pursuant to Section 1126(a) of the Bankruptcy Code.

**5. CLASS 2 - GENERAL UNSECURED CLAIMS**

Class 2 General Unsecured Claims- This class consists of all general unsecured claims. The total claims including undisputed, scheduled debts and filed claims totals \$205,812.13. Attached hereto as “Exhibit F” is a schedule of members of this Class and the proposed treatment.

This class shall be paid \$25,000.00 as follows: \$5,000.00 within 20 days of the Effective Date of the Plan and \$20,000.00 paid as follows: Twenty (20) equal, consecutive, quarterly payments of \$1,000.00 each over a period of five years. Each allowed claim in this class will receive a pro rata payment. Each holder of an Allowed Class 2 General Unsecured Claim shall be paid an amount equal to approximately 12.5% of such Allowed Claim. Payment shall commence thirty (30) days after the Effective Date and continuing on the date that is 120 days after the first payment, and each 120 days thereafter for nineteen (19) additional quarterly payments. To the extent additional general unsecured claims are filed before the Claims Bar Date of February 1, 2017, the pro rata payment to each individual class member may decrease.

This Class includes the general unsecured claim of Richard Roberts in the amount of \$34,500.00 and RCR Business Group, Inc., an affiliate of the Debtor in the amount of \$15,000.00. These claims will not receive a distribution as they are waiving payment as part of the member’s new capital contribution.

The Class 2 creditors are impaired for purposes of Section 1124 of the Bankruptcy Code and are entitled to vote pursuant to Section 1126(a) of the Bankruptcy Code.

**6. CLASS 3 - CLAIMS OF INTEREST HELD AS OF THE FILING DATE**

Allowed Class 3 Interest – the holders of member interests will retain their interest subject to the Debtor’s obligation to meet its Plan payments.

The Class 3 Interest is not impaired for purposes of Section 1124 of the Bankruptcy Code and is not entitled to vote pursuant to Section 1126(a) of the Bankruptcy Code.

7. **MEANS OF EFFECTUATING THE PLAN**

The Plan shall be effectuated as follows:

- (a) \$5,000.00 being contributed by Richard Roberts upon confirmation and cash flow from the Debtor to fund the periodic payments to the Priority claims and Class 2 claims.
- (b) The waiver by the Member of his pro rata portion of Class 2 payments that he would be entitled to receive had he not waived payment, as well as his waiver of his post petition cash infusion of at least \$27,000.00.

8. **CLAIMS IMPAIRED BY THE PLAN**

The claims in Class 2 are impaired and entitled to vote upon the Plan.

9. **VOTING AND ACCEPTANCE**

All members of impaired classes which hold Allowed Claims shall be entitled to vote. A class will have accepted the Plan if more than one half the number of members voting accepts the Plan and more than 2/3 of the total dollar amount voting accepts the Plan.

**PART VIII**  
**PROVISIONS CONCERNING DISTRIBUTIONS**

- 1. Manner of payments under the Plan. Payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank. The Reorganized Debtor shall act as the Distributing Agent on all distributions.
- 2. Rounding to the nearest dollar. Any other provision of the Plan to the contrary withstanding, no payments of portions of a dollar will be made. Whenever any payment of a portion of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down).
- 3. Unclaimed cash. Except as otherwise provided herein, in the event any claimant fails to claim any cash within ninety (90) days from the date such cash is distributed, such claimant shall forfeit all rights thereof, and to any and all future payments, and thereafter the claim for which such cash was distributed shall be treated as a Disallowed Claim. In this regard, distributions to claimants entitled thereto shall be sent to its last known address set forth on a proof of claim filed with the Court or, if no proof of claim is filed, on the schedules filed by the Debtor, or to such other address as may be designated by a claimant in a writing delivered to the Debtor, with a copy to the Debtor's counsel at least one week prior to the distribution. All unclaimed cash shall become the property of the Debtor.

4. Distributed payments or distribution. In the event of any dispute between and among claimants (including the entity or entities asserting the right to receive the disputed payment or distribution) as to the right of any entity to receive or retain any payment or distribution to be made to such entity under the Plan, they may, in lieu of making such payment or distribution to such entity, make it instead into an escrow account or to a disbursing agent, for payment or distribution as ordered by a court of competent jurisdiction or as the interested parties to such dispute may otherwise agree among themselves.

## **PART IX**

### **TREATMENT OF EXECUTORY CONTRACTS**

1. Except as provided herein, any and all executory contracts or leases of the Debtor which have not been rejected by Order of the Bankruptcy Court are hereby assumed. The Disclosure Statement and this Plan shall constitute due and sufficient notice of the intention of the Debtor to assume all of its respective executory contracts and unexpired leases that are not otherwise rejected. The Debtor has no executory contracts to assume.

2. Bar Date for Rejection Damage Claims. Unless otherwise provided by an Order of the Bankruptcy Court entered prior to Confirmation, any claim arising from the rejection of an executory contract or lease must be filed with the Bankruptcy Court (a) within the time period established by the Bankruptcy Court approving such rejection or (b) if no such time period is established, within fifteen (15) days from the entry of such order of the Bankruptcy Court approving such rejection. Any Entity that fails to file such a Claim within the period set forth above shall be forever barred from asserting such Claim against the Debtor, Reorganized Debtor or any property or interests of the Debtor or Reorganized Debtor. All Allowed Claims arising out of the rejection of an executory contract or lease shall be classified and treated as a Class 2, General Unsecured Claim under this Plan.

## **PART X**

### **FULL AND FINAL SATISFACTION**

1. Except as otherwise provided in the Plan, all payments, distributions and transfers of cash or property under the Plan are in full and final satisfaction, settlement and release of all claims against the Debtor and its estate of any nature whatsoever existing at the confirmation date.

2. Except as otherwise provided in the Plan, the Confirmation Order or such other order of the Bankruptcy Court that may be applicable, on the latest to occur of (a) the Effective Date, (b) the entry of a Final Order resolving all Claims in the Chapter 11 Case and (c) the final distribution made to holders of Allowed Claims in accordance with the Plan, all Claims against the Debtor and Debtor in Possession, shall be discharged and released in full; provided, however, that, the Bankruptcy Court may, upon request by the Reorganized Debtor, and notice and a hearing, enter an order setting forth that such Claims shall be deemed discharged and released on such earlier date as determined by the Bankruptcy Court. Except as otherwise provided in the



Plan all Persons and Entities shall be precluded from asserting against the Debtor, the Debtor in Possession, its successors or assigns, including, without limitation, the Reorganized Debtor, its agents and employees, or their respective assets, properties or interests in property, any other or further Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date, whether or not the facts or legal bases therefore were known or existed prior to the Confirmation Date regardless of whether a proof of Claim was filed, whether the holder thereof voted to accept or reject the Plan or whether the Claim is an Allowed Claim.

3. Except as otherwise expressly provided in the Plan, the Confirmation Order or such other order of the Bankruptcy Court that may be applicable, all Persons or Entities who have held, hold or may hold Claims or any other debt or liability that is discharged, terminated or cancelled pursuant to the Plan are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or other debt or liability that is terminated or cancelled pursuant to the Plan against the Debtor, the Debtor in Possession or the Reorganized Debtor, the Debtor's estate, or its properties or interests in properties, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtor, the Debtor in Possession or the Reorganized Debtor, the Debtor's estates, or their respective properties or interests in properties (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, the Debtor in Possession or the Reorganized Debtor, or against its respective property or interests in property, and (d) except to the extent provided, permitted or preserved by sections 553, 555, 556, 559 or 560 of the Bankruptcy Code or pursuant to the common law right of recoupment, asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor, the Debtor in Possession or the Reorganized Debtor, or against their respective property or interests in property, with respect to any such Claim or other debt or liability that is discharged that is terminated or cancelled pursuant to the Plan. Nothing contained herein shall release the Guarantor or any other person who, prior to the Petition Date, personally guaranteed a corporate obligation of the Debtor.

4. Nothing in the Plan shall limit the liability of the Debtor or any of its agents, assigns, or professionals for acts of gross negligence, willful misconduct, breach of fiduciary duty, criminal conduct, and/or any disclosure of confidential information that causes damages.

5. Nothing in the Plan shall limit the liability of any professionals retained by the Debtor to their respective clients, including pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.

## **PART XI**

### **METHOD FOR DETERMINATION OF ALLOWED CLAIMS**

1. The Plan provides for payment to be made only to holders of "allowed" claims, in the various classes. As to the claims incurred prior to the filing date, there are two avenues by which such claims may become "allowed" claims entitled to payment under the Plan. First, if a claim is

listed in Debtor's Chapter 11 schedules (as previously filed with the Court, it is automatically allowed unless those schedules denominate that particular claim as "contingent," unliquidated," or "disputed," or unless an objection thereto is filed with the Court and served upon the claimant. If an objection is interposed, the validity and amount of the claim will be determined by the Bankruptcy Court, following a hearing.

Objections to claims must be filed by the Debtor not more than 30 days after the Confirmation of the Plan.

The second method by which a claim may be allowed is by the filing of a "proof of claim" with the Bankruptcy Court. If the claim is not disputed or objected to, it is deemed allowed. Such filing is required in order to assert any claim not included in the schedules, and for any claim denominated therein as "contingent," "unliquidated," or "disputed."

Annexed hereto as Exhibit "F" is a list of filed claims and claims which were scheduled as undisputed - the schedule also indicates which claims the Debtor intends to object, and the basis therefore. This schedule does not include claims which were scheduled as disputed and for which no claim was filed, as they are automatically disallowed.

## **PART XII**

### **VOTING, IMPAIRMENT, CONFIRMATION AND CRAMDOWN**

#### 1. Voting:

Claimants with allowed claims in impaired classes are entitled to vote to accept or reject the Plan. A claimant who fails to vote to either accept or reject the Plan will not be included in the calculations regarding the acceptance or rejection of the Plan. The proponent believes that the Creditors in Class 2 are impaired.

Impaired classes will receive ballots. Instructions for completing and returning the ballots are set forth thereon and should be reviewed at length. The Plan will be confirmed by the Bankruptcy Court and made binding upon all claimants if, with respect to all classes of impaired claimants, the Plan is accepted by the holders of two-thirds (2/3) in amount and more than one half (1/2) in number of allowed claims in each such classes of the respective Debtor, voting upon the plan.

2. Estimation of Claims. Unless otherwise limited by an order of the Bankruptcy Court, the Reorganized Debtor may at any time, before Confirmation of the Plan, request the Bankruptcy Court to estimate for final distribution purposes any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Reorganized Debtor previously objected to such Claim, and the Bankruptcy Court will retain

jurisdiction to consider any request to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Unless otherwise provided in an order of the Bankruptcy Court, in the event that the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the estimated amount shall constitute either the allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court; provided, however, that, if the estimate constitutes the maximum limitation on such Claim, the Debtor or the Reorganized Debtor, as the case may be, may elect to pursue supplemental proceedings to object to any ultimate allowance of such Claim; and, provided, further, that the foregoing is not intended to limit the rights granted by section 502(j) of the Bankruptcy Code. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another

3. Confirmation Without Acceptance by All Impaired Classes, Cramdown.

Generally, if a Plan is not accepted by all impaired classes, it may nevertheless be confirmed by the Bankruptcy Court if (i) the Plan is accepted by at least one impaired class and it meets all of the other requirements of Section 1129(a) of the Bankruptcy Code; (ii) the Plan does not discriminate unfairly; and (iii) the Plan is fair and equitable to the rejecting classes. Such a finding would require a determination by the Bankruptcy Court that the Plan meets the requirements of Section 1129(b) of the Bankruptcy Code, including that no holder of any claim or interest junior to the claims of the rejecting class is receiving or retaining any property or payment under the Plan solely on account of such claim or interests. This requirement is generally referred to as the "absolute priority rule".

In this case absolute priority rule applies to the owner of the company, Richard Roberts. The rule says he cannot keep the equity in the business if any creditors are not being paid in full, unless the equity holder contributes new value. During the course of the Chapter 11 proceeding Mr. Roberts has funded the monthly cash flow deficits in the combined amount of approximately \$27,000.00. These contributions are reflected in the monthly operating reports filed with the Court. Of these contributions, \$11,000.00 was funded in December 2016. Under the Plan, the equity owner is contributing new capital of \$5,000.00 upon confirmation plus the \$27,000.00 contributed to the Debtor during the course of the proceeding. He is also waiving any distribution as a Class 2 creditor. At confirmation, the Debtor must establish that this contribution of capital is sufficient to satisfy the new value exception to the absolute priority rule set forth in 11 U.S.C. §1129(b)(2)(B)(ii).

The "cramdown" provisions for confirmation of a Plan despite the non-acceptance of one or more impaired classes of the claims or interest are set forth in Section 1129(b) of the Bankruptcy Code. Section 1129(b)(1) of the Bankruptcy Code states:

"Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to the Plan, the Court, on request of the proponent of the Plan, shall confirm the Plan notwithstanding the requirements of such paragraph if the Plan does not

discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the Plan."

The Debtor intends to invoke the cramdown provisions of the Code, if necessary. The proponent does not represent that the "cramdown" provisions would allow the confirmation of the Debtor's Plan. That determination should be made after a review of the information contained herein.

#### 4. The Confirmation Hearing

The Bankruptcy Court has scheduled a Confirmation Hearing. The Confirmation Hearing will be held before United States Bankruptcy Judge, Robert E. Grossman or another Judge of that Court sitting in his absence, at the United States Bankruptcy Court, Eastern District of New York, 290 Federal Plaza, Central Islip, New York 11722, Courtroom 860 on February 27, 2017 at 1:30 p.m. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of such adjournment in open Court. At the Confirmation Hearing, or at any adjourned hearing thereof, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of holders of claims and interests. The Bankruptcy Court will also receive and consider a certification of ballots prepared on behalf of the Debtor concerning the results of the vote.

4.1. Feasibility – As a condition of confirmation the debtor must establish for the Court that the proposed plan is "feasible". That is the Debtor will be able to execute on its business plan, make the payments to creditors as proposed and the reorganization will not be followed by liquidation. The Debtor believes that the business as it exists and on a going forward basis will be able to make all payments as proposed. Annexed as Exhibit "C" is cash flow projection for five years which indicates the Debtor will have sufficient funds to make the proposed plan payments.

### **PART XIII**

#### **POTENTIAL AVOIDANCE AND OTHER SIMILAR ACTIONS**

1. The Debtor has conducted a review of their books and records, as are available, for the purpose of determining the estate's right to the recovery, if any, of:

(a) fraudulent conveyances pursuant to Section 548 (fraudulent transfers and obligations) and Section 550 (transferee liability), or claims or actions under the Uniform Fraudulent Conveyance Law of New York State, and the other fraudulent conveyance laws extent in the State of New York;

(b) preferential payments, pursuant to Section 547 of the Bankruptcy Code, which includes a payment or payments in excess of \$5,850.00 made (i) within ninety (90) days prior to the filing of the original petition for relief under the Bankruptcy Code (or one year in the case of

an insider); (ii) that was for prior obligations of the Debtor, not paid within the time prescribed in the terms usually employed between the Debtor and the Creditors receiving the payment; (iii) made while the Debtor was insolvent; (iv) which allowed the Creditors to receive more than it would have in a liquidation of the Debtor's estate;

(c) insider preferential payments, pursuant to Section 547 of the Bankruptcy Code, which includes a preferential payment made by an "insider" within one (1) year prior to the filing of the Petition, instead of ninety (90) days as in the case of all others.

A review of the Debtor's books and records by the Debtor indicates that the Debtor does not have any recoverable, preferential payments or fraudulent conveyances.

#### **PART XIV** **DISCUSSION OF COMPARATIVE RECOVERIES**

In the event the Debtor proposes to pay creditors less than their allowed claims, the creditors will be entitled to an analysis of comparative recoveries, -that is how much is being proposed to be paid compared to how much creditors would receive under a hypothetical Chapter 7 liquidation. Annexed hereto as Exhibit "E" is a schedule indicating that the value of the Debtor's assets if it was liquidated, based upon the Debtor's estimated value. The analysis indicates that upon liquidation, there would be at best there would be no more than \$500.00 available for distribution to unsecured creditors because payment of administrative and priority claims would consume all of the Debtor's assets. Accordingly, the Debtor believes that the proposed dividend of \$25,000.00 or approximately 12.5% exceeds the minimal distribution in the event of liquidation.

#### **PART XV** **TAX CONSEQUENCES**

The Debtor is not aware of any tax consequences that may result from the confirmation of this Plan. Creditors are instructed to consult their own tax advisors. The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and to certain holders of Claims, the following summary is based on the IRC, Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the IRS, all as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary generally does not address foreign, state or local tax consequences of the Plan, nor does it address the U.S. federal income

tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker-dealers, banks, mutual funds, insurance companies, other financial institutions, small business investment companies, regulated investment companies, tax-exempt organizations, persons holding an equity interest as part of an integrated constructive sale or straddle, and investors in pass-through entities).

a. Tax Consequences of the Debtor: The Debtor may not recognize income as a result of the discharge of a debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that tax payers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its “tax attributes” by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

b. Tax Consequences to Unsecured Creditors. An unsecured creditor that receives Cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor’s basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the Cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the creditor’s hands. A creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor’s Claim is a capital asset in it hands.

**Accordingly, the following summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of a Claim.**

**IRS Circular 230 Notice: To ensure compliance with IRS Circular 230, holders of Claims are hereby notified that: (A) any discussion of U.S. federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by holders of Claims for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the Debtor of the transactions or matters addressed herein; and (c) holders of Claims should seek advice based on their particular circumstances from an independent tax advisor.**

## **PART XVI**

### **UNCLAIMED DIVIDENDS**

Except as otherwise provided herein, in the event any claimant fails to claim any cash within thirty (30) days from the date such cash is distributed, such claimant shall forfeit all rights thereof, and to any and all future payments, and thereafter the claim for which such cash was distributed shall be treated as a Disallowed Claim. In this regard, distributions to claimants

entitled thereto shall be sent to their last known address set forth on a proof of claim filed with the Court or, if no proof of claim is filed, on the schedules filed by the Debtor or to such other address as may be designated by a claimant in a writing delivered to the Debtor, with a copy to the Debtor's counsel at least one week prior to the distribution. All unclaimed cash shall become property of the Debtor.

**PART XVII**  
**RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction of the Debtor's cases pursuant to and for the purposes set forth in 1127(b) of the Bankruptcy Code and, *inter alia*, for the following purposes:

- (i) To determine any and all objections to the allowance of claims or interests
- (ii) To determine any and all applications for compensation and reimbursement of expenses for professional fees and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code;
- (iii) To amend or modify the Plan to remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary or advisable to carry out the purposes and intent of the Plan to the extent authorized by the Bankruptcy Code or the Bankruptcy Rules;
- (iv) To determine any and all controversies and disputes arising under or related to the Plan;
- (v) To construe and enforce any and all provisions of the Plan;
- (vi) To determine any and all applications, motions, adversary proceedings and contested or litigated matters brought before the Bankruptcy Court concerning the administration of the estate, or its property;
- (vii) To determine any and all controversies and disputes arising under or related to any settlement of an adversary proceeding or contested matter approved by the Bankruptcy Court, either before or after the Confirmation date.
- (viii) To hear and determine adversary proceedings seeking the avoidance or recovery of preferential payments and/or fraudulent conveyances or seeking the recovery of money, assets or property of the estate;
- (ix) To enter a final Order or decree in the Debtor's Chapter 11 case.

**PART XVIII**  
**OPERATION OF THE REORGANIZED DEBTOR**

The Reorganized Debtor will be managed by Richard Roberts as manager of the business. He will continue to receive compensation substantially equivalent to his compensation during the pendency of the Chapter 11, in the approximate amount of \$35,000.00 per annum.

**PART XIX**  
**FINANCIAL INFORMATION**

a) **Debtor Schedules of Assets and Liabilities.**

The Debtor has filed with the Bankruptcy Court monthly operating reports. A copy of the Debtor's most recent reports filed with the Court are annexed hereto as Exhibit "B". In addition, this financial information may be examined on line at the Court's Web Site through PACER. Annexed as Exhibit C is a copy of the Debtor pro forma projections of income and expenses from January 1, 2017 to December 31, 2021.

b) **The Estimated Amount Required on Confirmation.**

The Debtor will require \$5,000.00 upon confirmation which is being funded by Richard Roberts. The monthly plan payments after confirmation will be approximately \$510.00.

c) **Liquidation Analysis.**

The analysis annexed hereto as Exhibit "E" illustrates that if the Debtor's business was closed and its assets liquidated, the payments to the administration and priority creditors would consume substantially all of the liquidation proceeds. This would leave no more than \$500.00 available for distribution to general unsecured creditors. Accordingly, the proposed distribution under the Plan provides a greater recovery than would be realized through liquidation.

d) **Payments Under the Plan**

1. **Manner of payments under the Plan.** Payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank. The Reorganized Debtor shall act as the Distributing Agent on all distributions.

2. **Rounding to the nearest dollar.** Any other provision of the Plan to the contrary notwithstanding, no payments of portions of a dollar will be made. Whenever any payment of a portion of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down).



3. Unclaimed cash. Except as otherwise provided herein, in the event any claimant fails to claim any cash within ninety (90) days from the date such cash is distributed, such claimant shall forfeit all rights thereof, and to any and all future payments, and thereafter the claim for which such cash was distributed shall be treated as a Disallowed Claim. In this regard, distributions to claimants entitled thereto shall be sent to its last known address set forth on a proof of claim filed with the Court or, if no proof of claim is filed, on the schedules filed by the Debtor, or to such other address as may be designated by a claimant in a writing delivered to the Debtor, with a copy to the Debtor's counsel at least one week prior to the distribution. All unclaimed cash shall become the property of the Debtor.

4. Distributed payments or distribution. In the event of any dispute between and among claimants (including the entity or entities asserting the right to receive the disputed payment or distribution) as to the right of any entity to receive or retain any payment or distribution to be made to such entity under the Plan, they may, in lieu of making such payment or distribution to such entity, make it instead into an escrow account or to a disbursing agent, for payment or distribution as ordered by a court of competent jurisdiction or as the interested parties to such dispute may otherwise agree among themselves.

**PART XX**  
**EFFECT OF CONFIRMATION**  
**PURSUANT TO SECTION 1141 OF BANKRUPTCY CODE**

Section 1141 of the Bankruptcy Code provides that the provisions of a confirmed chapter 11 plan bind the Debtor, equity security holders of the Debtor, creditors and certain other parties in interest, to the terms of the confirmed plan regardless of whether or not the claim or interest of such party is impaired under the plan and whether or not such party accepted the plan.

**1) Injunctions**

Except as otherwise expressly provided in the Plan, any and all entities who have held, hold or may hold Claims or Interests against or in the Debtor shall, as of the Effective Date, be enjoined from:

(a) commencing, conducting, or continuing, in any manner, any suit, action, or other proceeding of any kind (including, without limitation, in any judicial, arbitral, administrative or other forum) against the Debtor arising out of any act or omission of the Debtor;

(b) enforcing, levying, attaching (including without any limitation, any pre-judgment attachment), collection or otherwise recovering by any manner or means, whether directly or indirectly, or any judgment, award, decree, or order against the Debtor with regard to such entities' Claim against the Debtor;

(c) creating, perfecting or otherwise enforcing, in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the property of the Debtor, or any successor-in interest to the Debtor;

(d) asserting any set off, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due the Debtor, the property of the Debtor, or any successor-in-interest to the Debtor;

(e) acting in any manner, in any place whatsoever, that does not confirm to or comply with the provisions of the Plan.

**2) Full and Final Satisfaction**

Except or otherwise provided in the Plan, pursuant to the Plan, all payments and all distributions shall be in full and final satisfaction, settlement, release and discharge of all Claims against the Debtor.

**PART XXI  
CONCLUSION**

No representations concerning the Debtor or the Plan are authorized other than as set forth in this Disclosure Statement. Any representation or inducements made to secure acceptances, other than those contained in this Statement, should not be relied upon by any claimants in arriving at their decision as to whether to accept or reject the Plan. The information contained in this Disclosure Statement has not been subject to a certified audit. Debtor are unable to warrant that the information contained herein is without any inaccuracy, although great effort has been made to insure that the information set forth in this Disclosure Statement is true and accurate.

Dated: Syosset, New York  
January 23, 2017

**RCR CAR CARE, LLC**

By: /s/ Richard Roberts  
Richard Roberts, Managing Member

**Berger, Fischhoff & Shumer, LLP**

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