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8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 In re:

NO. 14-44512

12 PRIUM COMPANIES, LLC,

DEBTOR'S DISCLOSURE STATEMENT

13 Debtor.  
14

15 **I. INTRODUCTION**

16 This is the disclosure statement (“**Disclosure Statement**”) in the Debtor’s chapter 11  
17 case. This Disclosure Statement contains information about Prium Companies, LLC (the  
18 “**Debtor**”) and describes the Debtor’s liquidating plan (the “**Plan**”) filed by the Debtor on  
19 \_\_\_\_\_, 2017. A full copy of the Plan is attached to this Disclosure Statement as **Exhibit A**.  
20 *Your rights may be affected. You should read the Plan and this Disclosure Statement*  
21 *carefully and discuss them with your attorney. If you do not have an attorney, you may wish*  
22 *to consult one. This Disclosure Statement does not constitute and may not be deemed legal,*  
23 *business, financial, or tax advice. Any persons desiring any such advice should consult their*  
24 *own attorneys or advisors. The information provided in this Disclosure Statement is based on*  
25 *the Debtor’s best information and belief.*  
26

1 The proposed distributions under the Plan are discussed in Section IV of this Disclosure  
2 Statement. General unsecured claims comprise the only class of claims under the Plan and  
3 would receive a distribution of approximately 1% of their allowed claims, to be distributed as  
4 follows: (i) an initial distribution, the timing of which would be subject to the Plan  
5 Administrator's business judgment; (ii) if distributable funds remain once certain matters  
6 discussed below are resolved, a final distribution; and (iii) if the Debtor receives cash between  
7 the initial and final distributions, the Plan Administrator would determine whether to make  
8 additional interim distributions.

9 **A. Purpose Of This Document**

10 This Disclosure Statement describes:

- 11 • How the Plan proposes to treat claims of the type you hold; in other words, what  
12 you will receive on your claim if the Plan is confirmed;
- 13 • Who can vote on or object to the Plan;
- 14 • What factors the bankruptcy court (the "**Court**") will consider when deciding  
15 whether to confirm the Plan;
- 16 • Why the Debtor believes the Plan is feasible, and how the treatment of your claim  
17 under the Plan compares to what you would receive on your claim in a  
18 liquidation; and
- 19 • The effect of confirmation of the Plan.

20 Please read the Plan and Disclosure Statement. This Disclosure Statement describes the  
21 Plan, but the Plan, once confirmed, will establish your rights.

22 **B. Deadline For Voting And Objecting; Date Of Plan Confirmation Hearing**

23 The Court has not yet confirmed the Plan described in this Disclosure Statement. This  
24 section describes the procedures pursuant to which the Plan will or will not be confirmed.  
25  
26

1           **1.       Time And Place Of Hearing To Confirm The Plan**

2           The hearing at which the Court will determine whether to confirm the Plan will take  
3 place on \_\_\_\_\_, at \_\_\_\_\_, in the United States Courthouse, Union Station, 1717 Pacific  
4 Avenue S., Tacoma, Washington, Courtroom I.

5           **2.       Deadline For Voting To Accept Or Reject The Plan**

6           If you are entitled to vote to accept or reject the Plan, please vote on the enclosed ballot  
7 and return the ballot to:

8                           CAIRNCROSS & HEMPELMANN, P.S.  
9                           Attn: Ms. Thao Nguyen  
10                          524 Second Avenue, Suite 500  
11                          Seattle, WA 98104-2323

12                         OR VIA EMAIL TO:

13                         [TNguyen@cairncross.com](mailto:TNguyen@cairncross.com)

14           Please refer to Sections IV.A and IX.A below for more information regarding voting  
15 eligibility requirements. Your ballot must be received by \_\_\_\_\_ or it will not be  
16 counted.

17           **3.       Deadline For Objecting To Plan Confirmation**

18           Objections to confirmation must be filed with the Court and served upon the undersigned  
19 by \_\_\_\_\_.

20           **4.       Identity Of Person To Contact For More Information**

21           If you want additional information about the Plan, please contact John Rizzardi of  
22 Cairncross & Hempelmann, P.S., 524 Second Avenue, Suite 500, Seattle, Washington 98104.

23           **C.       Disclaimer**

24           *The Court has approved this Disclosure Statement as containing adequate information*  
25 *to enable parties affected by the Plan to make an informed judgment about its terms. The*  
26 *Court has yet to determine whether the Plan meets the legal requirements for confirmation,*

1 *and the fact that the Court approved the Disclosure Statement does not constitute an*  
2 *endorsement of the Plan by the Court, or a recommendation that it be accepted.*

3 **II. RECOMMENDATION**

4 The Debtor believes the Plan provides the best feasible recoveries to creditors and,  
5 therefore, urges you to vote to accept the Plan and to return a timely ballot.

6 **III. BACKGROUND**

7 To give you the proper context to make an informed decision on the Plan, the Debtor  
8 offers the following background information:

9 **A. The Debtor**

10 On August 15, 2014 (the “**Petition Date**”), the Debtor filed a voluntary chapter 11  
11 bankruptcy petition. Prior to the Petition Date, the Debtor was a Washington state limited  
12 liability company whose members were Thomas Price (42.5%), Hyun Um (42.5%), and William  
13 Stegeman (15%). Thomas and Patricia Price (“**Price**”) and Hyun and Jin Um (“**Um**”) are  
14 debtors in separate chapter 11 cases, jointly administered as Case No. 10-46731 (the “**Price/Um**  
15 **Case**”).

16 The Debtor was a holding company that owned individual percentages in various  
17 investment limited liability companies. The Debtor’s portfolio consisted primarily of  
18 commercial buildings. In some instances, the Debtor, through its subsidiaries, owned 100% of  
19 the real estate in its portfolio; in other instances, ownership was shared with outside partners.

20 The collapse of the real estate market in 2008-09 rendered the Debtor’s business  
21 untenable. In 2010, the Debtor’s members were found liable for a \$5.8 million judgment. By  
22 2011, with some of its subsidiaries and members embroiled in their own chapter 11 proceedings,  
23 the Debtor’s bankruptcy filing was inevitable.

1 **B. This Chapter 11 Case**

2 Eric D. Orse (“**Mr. Orse**”) is the plan administrator in the Price/Um Case, wherein Mr.  
3 Orse was named the management representative of the Debtor. As acting manager of the Debtor,  
4 Mr. Orse filed the Debtor’s voluntary chapter 11 petition.

5 **1. *Claims Reconciliation And Settlement Agreements***

6 **(a) *Claims Reconciliation Process Complete***

7 As of October 24, 2016, the claims reconciliation process is complete. Subject to one  
8 final claim issue, all other claims against the Estate have either been allowed, settled or  
9 disallowed. The only remaining claim issue concerns a recently amended proof of claim filed by  
10 the Internal Revenue Service.

11 On September 18, 2014, the Internal Revenue Service (the “**Service**”) filed its original  
12 \$1,688,358.79 proof of claim. Claim No. 5. On September 22, 2014, the Service amended its  
13 claim to \$1,695,058.79. Claim No. 5-2. The claims bar date for all claims, but for claims arising  
14 from the rejection of executory contracts or unexpired leases, was October 10, 2014. ECF No. 9.

15 On June 28, 2016, the Debtor moved to disallow the Service’s claim. ECF No. 409. The  
16 Service failed to respond. On July 25, 2016, the Court disallowed any claim of the Service. ECF  
17 No. 428. Nevertheless, on February 1, 2017, the Service filed an amended claim for \$35,100  
18 based on “Penalty to date of petition on unsecured priority claims (including interest thereon).”  
19 Claim No. 5-3.

20 The Debtor submits that the Service’s attempt to run an end-around the Bankruptcy Code  
21 will fail. First, the Court disallowed any claim of the Service existing on July 25, 2016.  
22 Accordingly, there can be no claim for a penalty on an unsecured priority claim. Second,  
23 because Claim Number 5 was effectively expunged from the claims register on July 25, 2016,  
24 the Service holds no claim to amend. In other words, despite labeling the proof of claim as an  
25 amendment, the Service filed a new claim. Because the claim bar date was over two years ago,  
26

1 any newly filed claim is time-barred. Accordingly, the Service still has no claim against the  
2 Debtor or the Estate. The claims reconciliation process remains complete.

3 **(b) Court-Approved Settlements**

4 The Court has approved the following claim settlements: On July 26, 2016, the Court  
5 entered an order approving the settlement agreements between the Debtor and the Sharon  
6 Bingham 2007 Trust, Centrum Financial Services, Inc., Queen High Full House, LLC, and  
7 Spokane Rock 1, LLC. ECF No. 431. On August 30, 2016, the Court entered an order  
8 approving the settlement agreements between the Debtor and Upside Management, LLC, and  
9 Union Bank. ECF No. 443.

10 **2. Remaining Issues**

11 Although the claims reconciliation process is complete, there are a few remaining  
12 unresolved issues. In some instances, other proceedings, such as the bankruptcy cases of the  
13 Debtor's members or subsidiaries, may result in additional claims against the Debtor. As set  
14 forth below, the Debtor believes such claims are unlikely. The following present issues that  
15 remain unresolved, or were recently resolved, some of which may reduce distributable funds:

16 **(a) Potential Claims Against Century Investment Associates**

17 The Debtor is the sole member and manager of Century Investment Associates, LLC  
18 ("**Century**"), a Delaware limited liability company. Prior to April 1, 2016, Century owned  
19 interests in, among other things, real property located at 1120 North Edison Street, Kennewick,  
20 Washington (the "**Kennewick Property**"), and 4710 Auto Center Boulevard, Bremerton,  
21 Washington (the "**Bremerton Property**").

22 Century previously leased the Kennewick Property to Washington State Department of  
23 Health and Human Services ("**DSHS**"). DSHS has been sued based on a slip and fall that  
24 purportedly occurred at the Kennewick Property on November 20, 2012 (the "**Kennewick**  
25 **Incident**"). Benton County Superior Court Case No. 15-2-02587-0. DSHS successfully joined  
26

1 Century as a third-party defendant. Century's insurer has agreed to defend Century in that  
2 lawsuit.

3 Century previously leased the Bremerton Property to DSHS. On November 23, 2015, a  
4 DSHS employee filed an injury incident report, claiming to have fallen on black ice in the  
5 parking lot of the Bremerton Property (the "**Bremerton Incident**"). As of the date of this filing,  
6 no lawsuit has been filed based on the Bremerton Incident.

7 To augment distributable funds in this Case, Century transferred \$601,501.27 to the  
8 Estate. The Debtor believes it highly unlikely that it would be held liable for damages based on  
9 the Kennewick and Bremerton Incidents, and in the event there is liability, available insurance  
10 should provide adequate coverage for damages; however, in an abundance of caution, the Plan  
11 proposes holding back approximately \$601,501.27 from distributable funds until these claims, if  
12 any, are resolved.

13 **(b) Sale Of CDC Properties**

14 The Debtor is the sole member and manager of CDC Acquisition Company I, LLC, a  
15 Delaware limited liability company, which in turn is the sole member and manager of CDC  
16 Properties I, LLC ("**CDC**"), a Delaware limited liability company. CDC's separate chapter 11  
17 case before the bankruptcy court for the Western District of Washington at Tacoma, Case No.  
18 11-41010 ("**CDC Case**"), was closed on February 21, 2012 following confirmation of a plan of  
19 reorganization (the "**CDC Plan**").

20 CDC sold its real property to four tenant-in-common purchasers for the sum of \$100,000  
21 on or about September 28, 2016 (the "**CDC Sale**"). The purchase funds remain in escrow. The  
22 noteholder with a purported security interest in the purchased real property filed concurrent  
23 motions to reopen the CDC Case and to enforce the CDC Plan, which, the noteholder alleges,  
24 does not contemplate the sale of the real property absent full payment to, and consent of, the  
25 noteholder. The purchasers filed their own individual chapter 11 cases in the bankruptcy court  
26 for the Eastern District of New York, which cases have been administratively consolidated into a

1 single lead case (the “**New York Case**”). There, the Bankruptcy Court for the Eastern District of  
2 New York ruled that the automatic stay prevents the noteholder from reopening the CDC Case to  
3 enforce its interest in the real property because such property belongs to the purchasers’  
4 bankruptcy estates. On March 10, 2017, the purchasers filed a joint disclosure statement and  
5 plan of reorganization (the “**New York Plan**”).

6 Notwithstanding the New York Case, on December 8, 2016, a party-in-interest filed an ex  
7 parte motion to reopen the CDC Case on the grounds that it never received payment per the CDC  
8 Plan’s terms, the conditions precedent to the CDC Sale were never satisfied, and under the CDC  
9 Plan, the Court retains exclusive jurisdiction to resolve disputes regarding the default and cure of  
10 CDC Plan payments. On December 12, 2016, the Court entered an order granting the ex parte  
11 motion and reopening the CDC Case.

12 The \$100,000 in sale proceeds (the “**CDC Sale Proceeds**”) may eventually be available  
13 for distribution to the Debtor’s creditors if a court does not void or rescind the CDC Sale. On the  
14 other hand, if a court voids or rescinds the CDC Sale, the CDC Sale Proceeds may be returned to  
15 the purchasers. The Plan proposes that the Debtor continue to hold the CDC Sale Proceeds in  
16 trust until any court having jurisdiction over these issues, whether in Tacoma, Washington, or  
17 New York, directs that these funds be released. The Plan proposes that this Court retain  
18 jurisdiction to direct the release of the CDC Sale Proceeds, if required. At the time of submitting  
19 this Disclosure Statement, the Debtor has no opinion on whether the CDC Sale Proceeds will be  
20 available for distribution to the Debtor’s creditors.

21 **(c) Winthrop Sale And Assessment**

22 The Debtor is the sole member and manager of Winthrop Hotel, L.L.C. (“**Winthrop**”), a  
23 Washington limited liability company, which owned a multi-family apartment building in  
24 Tacoma, Washington. On May 5, 2015, Winthrop sold its real property for \$8.5 million and the  
25 net proceeds of the sale, after payment of all Winthrop’s creditors, were transferred to the Estate.  
26



1 At the time of the sale, there was owed to the City of Tacoma, a yet to be assessed  
2 amount for improvements to sidewalks and street-lighting on and near this property. The City  
3 of Tacoma notified Winthrop, and the buyer, of a preliminary assessment, in the estimated  
4 amount of \$343,577.24, charged to the property owner. In order to close the sale, Winthrop  
5 placed \$443,577 into escrow to cover any levied assessment pursuant to a written agreement  
6 between Winthrop and the buyer.

7 The City of Tacoma finalized the assessment, and although the assessed amount is higher  
8 than the amount held in escrow, neither Winthrop nor the Debtor is obligated to provide  
9 additional funds. In short, the Debtor does not anticipate cash flowing in or out of the estate  
10 based on this finalized assessment.

11 **(d) Equity In Orchard Hills**

12 The Debtor is the sole member and manager of P & U Capital Partners I, LLC (“P/U I”),  
13 a Washington limited liability company. As of the Petition Date, one of the assets of P/U I was  
14 an interest in Prium Orchard Hills, LLC (“Orchard Hills”), a Washington limited liability  
15 company, which owned a low-income housing project financed under Section 42 of the  
16 Department of Housing and Urban Development’s Low Income Housing Tax Credit Program.  
17 Prior to Petition Date, both P/U I and the Debtor were sued by the investor limited partner for  
18 multiple alleged defaults under the limited partnership agreement and a related guaranty. The  
19 parties subsequently entered into a court-approved settlement agreement under the terms of  
20 which both P/U I and the Debtor were relieved of any monetary obligations under the Orchard  
21 Hills limited liability company agreement. Additionally, the parties agreed to the appointment of  
22 a new managing partner but P/U I retained its 0.01% equity interest in the limited liability  
23 company. The Debtor has been unable to find a buyer for this interest. If confirmed, the Plan  
24 would allow for the Debtor’s abandonment of any interest the Debtor holds in Orchard Hills.

1                   (e)     **Prium Development–Auburn Sewer Hook-Up Fees**

2           One of the Debtor’s subsidiaries, Prium Development Company, LLC (“PDC”), is a  
3 party to a May 16, 2011 agreement with the City of Auburn (the “Payback  
4 **Agreement**”). Pursuant to the Payback Agreement, PDC is entitled to receive payments from  
5 the City of Auburn when property owners in a defined North Tapps Estate development area  
6 connect to sewer facilities. For each connection made during the fifteen-year term, PDC is  
7 entitled to \$1,353.14. The Payback Agreement capped the total payments to PDC at  
8 \$565,612.52, and to date, PDC has been paid \$362,479.81. PDC sold its interest in the Payback  
9 Agreement to a purchaser for \$10,000.

10           3.     ***Motion To Dismiss Case And Disburse Funds To Creditors***

11           On October 28, 2016, the Debtor moved the Court to enter an order authorizing  
12 distributions and dismissing the Case. Although there were no objections by creditors to the  
13 motion, the Court denied the Debtor’s motion on November 22, 2016 because of the foregoing  
14 issues—all of which remained unresolved at the time.

15     **C.     Current Financial Condition**

16           As of March 1, 2017, the Debtor holds \$2.3 million in distributable funds, subject to the  
17 continuing expenditures for the fees of Mr. Orse, his professionals, out of pocket costs, insurance  
18 premiums, the quarterly fees of the United States Trustee and any other allowed disbursements.

19   **IV.     PLAN SUMMARY**

20           The following Plan Summary is intended to provide you with a context for understanding  
21 the remainder of this Disclosure Statement.

22     **A.     Classification of Claims and Interests**

23           A chapter 11 plan of reorganization sets forth the manner in which a debtor will repay  
24 creditors’ claims. Generally, a plan places similarly-situated claims into classes, proposes how  
25 the classes will be repaid, and the timeframe for doing so.

1 Under 11 U.S.C. § 1123(b)(1), a plan of reorganization may impair classes of claims or  
2 interests. Among other things, 11 U.S.C. § 1123(a)(5) permits a plan of reorganization to extend  
3 due dates, modify indentures (agreements that protect certain creditors), and to modify *any* lien.  
4 Section 1123(b)(5) explicitly authorizes a plan to modify a secured or unsecured claimant's  
5 rights. The Code, however, balances this broad discretion granted to plan proponents by  
6 empowering impaired classes with some control over plan confirmation. For example, in order  
7 to be confirmed, at least one class that is "impaired" must vote in favor of the Plan.

8 Here, the Plan proposes a single class of claims, and all claims within the class are  
9 impaired; meaning, all claimants who hold allowed claims against the Estate are entitled to vote  
10 on whether to accept or reject the Plan.

11 ***1. Class 1: Allowed Unsecured Claims***

12 This is the sole class of claims proposed by the Plan. Claimants in this Class hold  
13 allowed unsecured claims against the Estate. Each claimant in this Class and the percentage of  
14 total distributions each claimant will receive are listed in Subsection B below. The Plan  
15 proposes to distribute funds to claimants in this Class as detailed below in Subsection C.

16 This Class is impaired and may vote on the Plan.

17 ***2. Unclassified Claims: Administrative Expense Claims***

18 The Plan proposes to pay holders of allowed administrative expense claims under 11  
19 U.S.C. § 507(a)(2) on the Effective Date from the Estate's distributable funds. Allowed  
20 administrative expense claims would only include Pierce County Budget & Finance's \$241.24  
21 claim for postpetition personal property tax.

22 **B. Claims Participating In The Plan**

23 As mentioned above, the claims reconciliation process is complete. The following table  
24 shows the allowed unsecured claims in this Case, and each allowed claimant's percentage of  
25 distributable funds:  
26

<u>Claimant</u>	<u>Allowed Amount</u>	<u>Percentage of Total Distribution (Pro Rata Share)</u>
Robert L. Christie	\$226,804.42	0.10498%
Sherwin Williams Company	\$85,226.55	0.03945%
Mueller & Patin	\$21,167.61	0.00980%
WF Capital, Inc.	\$24,408,939.35	11.29790%
Centrum Financial Services, Inc.	\$60,000,000.00	27.77155%
Umpqua Bank Successor-in-Interest to Intervest	\$1,862,000.00	0.86184%
Robert Malden Hughes	\$10,332.48	0.00129%
Onyx Resolution LLC	\$3,153,717.69	1.45973%
Doty, Beardsley, Rosengren & Co., P.S.	\$59,489.47	0.02754%
Spokane Rock I, LLC	\$16,172,363.55	7.48553%
MUFG Union Bank, N.A.	\$1,428,000.00	0.66096%
Queen High Full House LLC	\$18,374,542.20	8.50482%
McKittrick, Inc., Receiver for Velocity	\$14,160,376.08	6.55426%
William Stegeman	\$10.00	0.00000%
Sharon Graham Bingham 2007 Trust	\$60,000,000.00	27.77155%
Bader Martin P.S.	\$33,305.98	0.01542%
Lorraine A. Olson Rev. Trust	\$138,000.00	0.06387%
Mendi Sakamoto	\$38,610.00	0.01787%
Naegeli Deposition and Trial	\$675.63	0.00031%
Orlandini & Waldron	\$14,385.00	0.00666%
Shillito & Giske	\$12,130.00	0.00561%
Starkovich Reporting Services	\$2,163.80	0.00100%
Sterling Bank	\$1,860,000.00	0.86092%
Teris - Seattle, LLC	\$15,196.68	0.00703%
Terrametric Inc.	\$14,599.71	0.00676%
Upside Management LLC	<u>\$13,956,425.01</u>	6.45986%
<b>\$216,048,461.21</b>		

**C. Holdbacks And Distributions**

Because the Estate may be exposed to potential claims for damages in the Kennewick and Bremerton Incidents, the Plan proposes to hold back \$601,501.27 from distributable funds until these potential liabilities are resolved (the “**Holdback**”). Moreover, the CDC Sale Proceeds will be held<sup>1</sup> pending the outcome of that dispute or order of this Court.

<sup>1</sup> The CDC Sale Proceeds are not part of distributable funds.

1 The Plan contemplates at least one distribution to claimants in Class 1. The Plan  
2 Administrator, on behalf of the Debtor, would make an initial distribution based on each Class 1  
3 claimant's pro rata share, as listed above, the timing of which would be subject to the Plan  
4 Administrator's business judgment. This initial distribution would not include the Holdback  
5 unless any contingencies to distributing such funds have been resolved. If and when all of the  
6 matters mentioned in Section III.B.2, above, are resolved, the Debtor would make a final  
7 distribution from any remaining distributable funds to claimants in Class 1 according to their pro  
8 rata share. The Plan Administrator would have full discretion as to the timing, frequency and  
9 amounts of any distribution.

10 **D. Price And Um Distributions**

11 On November 22, 2016, Mr. Orse, in his role as Plan Administrator of the Price/Um  
12 Case, moved the bankruptcy court for an order authorizing final distributions and closing that  
13 case. Pursuant to that proposed order, any cash flowing into the Price/Um estate after the final  
14 decree closing the Price/Um Case will be held by the Debtor's counsel. The Plan Administrator  
15 would distribute such funds to the claimants who hold allowed claims in that case, as authorized  
16 by the Plan. As of the time of filing, the Court has yet to enter any order on that motion.

17 **E. Executory Contracts And Unexpired Leases**

18 At this time, other than general liability insurance, the Debtor is unaware of any  
19 executory contracts or unexpired leases, but to the extent there are any, they shall be rejected as  
20 of the Plan's Effective Date.

21 **F. Liability Insurance**

22 The Plan contemplates that the Debtor will maintain general liability insurance coverage  
23 until Mr. Orse deems further coverage unnecessary. Any insurance premiums shall be paid by  
24 the Plan Administrator from the Debtor's funds.

1 **G. Exculpatory, Release, and Injunctive Clauses**

2 The Plan includes provisions (1) exculpating Mr. Orse from liability for acts or omissions  
3 in the Price/Um Case, the CDC Case, and this Case, undertaken by Mr. Orse as trustee,  
4 management representative, or plan administrator; (2) releasing the Debtor and its professionals  
5 from liability with respect to creditor's claims; and (3) barring suit against the Debtor or its  
6 professionals.

7 **1. *Exculpatory Clause***

8 The Plan Administrator and any professionals employed by the Debtor or Plan  
9 Administrator shall have no liability for the outcome of any decision or course of action by the  
10 Plan Administrator in this Case, the Price/Um Case, or the CDC Case, except for any damages  
11 caused by willful misconduct or gross negligence.

12 **2. *Release Clause***

13 The Debtor, the Plan Administrator, and any professionals employed in this Case,  
14 including attorneys and accountants, shall be deemed released from all claims, actions, claims for  
15 relief, causes of action, suits, debts, covenants, agreements and demands of any nature  
16 whatsoever, in law or equity, that any creditor may have had, has, or may have.

17 **3. *Injunction***

18 Confirmation of the Plan would bar any and all persons who have held, hold, or may hold  
19 claims against the Debtor from initiating any of the following: (a) any suit, action or other  
20 proceeding of any kind against the Debtor or its assets; (b) the enforcement, attachment,  
21 collection or any other recovery action with respect to a judgment, award, decree or order against  
22 the Debtor or its assets; (c) the creation, perfection or any other enforcement of any encumbrance  
23 of any kind against the Debtor or its assets; and (d) the assertion of any right of subrogation,  
24 setoff, or recoupment of any kind against any obligation due the Debtor or its assets.

1 **V. AVOIDANCE ACTIONS**

2 There are two types of Avoidance Actions: Preferential Transfers and Fraudulent  
3 Transfers. Preferential Transfers: Under 11 U.S.C. § 547(b), a debtor-in-possession or trustee  
4 may avoid any transfer that the debtor made to a creditor within ninety days of the Petition  
5 Date—or within one year, if the creditor was an insider—to the extent that the transfer would  
6 allow the creditor to receive more through the transfer than if the transfer had not been made and  
7 the case were to proceed under chapter 7.

8 Fraudulent Transfers: Section 548 of the Bankruptcy Code defines and governs the  
9 treatment of fraudulent conveyances in bankruptcy cases. Section 548 coexists and operates in  
10 conjunction with state law; typically, iterations of the Uniform Fraudulent Transfer Act. Under §  
11 548(a)(1), a debtor-in-possession may avoid transfers made within two years of the date the  
12 bankruptcy petition was filed if such transfer was (A) made with actual intent to hinder, delay or  
13 defraud creditors, or (B) in exchange for less than reasonably equivalent value and the debtor (1)  
14 was insolvent at the time of the transfer or became insolvent as a result thereof, (2) was left with  
15 unreasonably small capital, (3) intended to or believed it would incur debt beyond its ability to  
16 pay as such debt matured, or (4) made such transfer for the benefit of an insider.

17 At this time, the Debtor is unaware of any Avoidance Action and does not intend to assert  
18 same. The Debtor will not be requesting that the Plan reserve any rights in the Debtor to assert  
19 any Avoidance Action.

20 **VI. CLAIMS RESOLUTION**

21 The Debtor is not aware of any claims other than those listed in Section IV.B above, and  
22 all claims have been resolved.

23 **VII. LIQUIDATION ANALYSIS**

24 If less than all claimants within each impaired class vote to accept the Plan, then the Plan  
25 must satisfy the requirement set forth in 11 U.S.C. § 1129(a)(7)(A)(ii). In other words, at the  
26 Plan confirmation hearing, the Court must find that the Estate’s creditors would receive or retain

1 under the Plan—as of the Effective Date—property of a value not less than the amount they  
2 would receive or retain if the Debtor were liquidated under title 11, chapter 7.<sup>2</sup>

3 Here, the Debtor proposes a liquidating plan. All Estate assets have been monetized,  
4 leaving the Estate with one asset—distributable funds. If the Estate were liquidated in a chapter  
5 7 proceeding, creditors would receive the same *percentage* of distributable funds as they would  
6 under the Plan. In a chapter 7 liquidation, distributable funds would not increase in size as there  
7 would be no more assets to monetize; however, the amount of distributable funds could  
8 potentially *decrease* due to, among other things, the chapter 7 trustee’s costs, professional fees  
9 and compensation. Accordingly, the Debtor believes that all creditors would receive under the  
10 Plan on account of their claims, property having a value that is not less than the amount that such  
11 creditors would receive if the Debtor were liquidated under chapter 7.

## 12 VIII. RISK

13 The successful implementation of the Plan is contingent upon many assumptions, some  
14 or all of which could fail to meet expectations and preclude the Plan from being confirmed or  
15 producing the anticipated results. While the Debtor views its liquidating Plan as conservative,  
16 some of the more significant risks include:

17 1. There is no guarantee that the Plan will be confirmed. Delay in confirmation—  
18 and delay in creditor distributions, generally—may result in decreased recoveries for creditors.

19 2. The Debtor has not done any investigation as to the tax consequences for  
20 creditors under the Plan. There may be adverse tax consequences for creditors. Creditors with  
21 such concerns should consult their tax advisor.

## 22 IX. CONFIRMATION

### 23 A. Voting Procedures

24 Under the Bankruptcy Code, impaired classes of claims are eligible to vote whether to  
25 accept or reject a plan. A class of claims is impaired when a plan proposes to alter the legal or  
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<sup>2</sup> In a chapter 7 liquidation, a trustee is appointed to liquidate assets of a debtor’s estate.



1 equitable rights of the claimants. Here, the Plan proposes only one class of claims. Because the  
2 Plan proposes to pay claimants a fraction of what they are owed on account of their claims, that  
3 single class of claims is impaired. Accordingly, all claimants listed in Section IV.B above are  
4 entitled to vote.

5 A ballot to be used for voting on the Plan accompanies this Disclosure Statement.  
6 Holders of claims should read the instructions carefully, complete, date and sign the ballot, and  
7 send it to the indicated address. To be counted, your ballot must be received at the indicated  
8 address no later than the deadline set forth in this Disclosure Statement. Failure to vote or a vote  
9 to reject the Plan will not affect the treatment to be accorded a claim if the Plan is nevertheless  
10 confirmed.

11 If more than one-half (1/2) the number of claimants voting and at least two-thirds (2/3) in  
12 amount of the allowed claims of such claimants in each impaired class vote to accept the Plan,  
13 such classes will be deemed to have accepted the Plan. For purposes of determining whether a  
14 class has accepted or rejected the Plan, only the votes of those who have timely returned their  
15 ballots will be considered. If a voting class does not accept the Plan, the Debtor will seek  
16 confirmation under 11 U.S.C. § 1129(b). Section 1129(b) generally requires the Plan not to  
17 discriminate unfairly, and to provide fair and equitable treatment, with respect to each class of  
18 claims or interests that is impaired under, and has not accepted, the Plan.

19 **B. Hearing on Confirmation**

20 The hearing on Plan confirmation has been set for \_\_\_\_\_ at \_\_\_\_ before the  
21 Honorable Brian D. Lynch, United States Bankruptcy Judge, United States Courthouse,  
22 Courtroom I, 1717 Pacific Avenue S., Tacoma, Washington 98402. The bankruptcy court shall  
23 confirm the Plan at the hearing only if the requirements of 11 U.S.C. § 1129 are satisfied.

24 **C. Chapter 7**

25 To satisfy one of the requirements of 11 U.S.C. § 1129, the Debtor must establish that  
26 with respect to each class, each holder of a claim or interest in that class has accepted the Plan or

1 will receive or retain under the Plan, on account of such claim or interest, property of a value that  
2 is not less than the amount that such holder would receive if the Debtor was liquidated under title  
3 11, chapter 7. As discussed in Section VII above, the Debtor believes that the Plan satisfies this  
4 test. The Debtor anticipates the Court will make this determination at the confirmation hearing.

5 **D. Feasibility**

6 The Debtor believes its liquidating Plan is reasonable and can be achieved; accordingly,  
7 the Debtor believes the Plan is feasible as defined by the Bankruptcy Code.

8 **E. Dissent**

9 The Bankruptcy Code requires the Court to find that the Plan does not discriminate  
10 unfairly, and is fair and equitable, with respect to each class of claims or interests that is  
11 impaired under, and has not accepted, the Plan. Upon such a finding, the Court may confirm the  
12 Plan despite the objections of a dissenting class.

13 **F. Confirmation Binding**

14 The Plan shall bind the Debtor and all other parties-in-interest, including any creditor,  
15 whether such creditor is impaired under the Plan and whether such creditor has accepted the  
16 Plan.

17 **G. Failure to Confirm**

18 If the requirements for confirmation are not met, the Debtor intends to amend the Plan in  
19 a manner that would make confirmation possible. If the Plan as amended cannot be confirmed, it  
20 would likely be necessary to convert the Case to chapter 7 or dismiss the Case.

21 **H. Required Disclosures**

22 The Bankruptcy Code requires disclosure of certain information:

23 1. There are no prepetition payments or promises of any kind specified in 11 U.S.C.  
24 § 1129(a)(4), including payments to attorneys or accountants, that will not be subject to approval  
25 by the bankruptcy court.

