

*PROPOSED DRAFT FORM INDIVIDUAL CHAPTER 11 DISCLOSURE STATEMENT  
FOR U.S. BANKRUPTCY COURT FOR DISTRICT OF ARIZONA*

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*By: Names of Responsible Individual Attorney(s) (Bar Number(s))*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:

[NAME OF DEBTOR(S)],

Debtor(s).

Chapter 11 Proceedings

Case No. \_\_\_\_\_<sup>1</sup>

**DISCLOSURE STATEMENT IN  
SUPPORT OF \_\_\_\_\_<sup>2</sup>  
CHAPTER 11 PLAN OF  
REORGANIZATION DATED \_\_\_\_\_<sup>3</sup>  
PROPOSED BY \_\_\_\_\_<sup>4</sup>**

**PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. IT CONTAINS  
INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR  
REJECT THIS \_\_\_\_\_<sup>5</sup> CHAPTER 11 PLAN OF REORGANIZATION  
DATED \_\_\_\_\_. THE PROPONENT BELIEVES THAT THIS PLAN IS IN THE  
BEST INTEREST OF THE CREDITORS AND IS FAIR AND EQUITABLE. THE  
PROponent URGES THE VOTER TO VOTE TO ACCEPT THE PLAN.**

<sup>1</sup> Case Number

<sup>2</sup> Indicate whether plan is one of reorganization or liquidation.

<sup>3</sup> Date of Plan

<sup>4</sup> Insert identity of Plan Proponent

<sup>5</sup> Insert what plan is being described (original, first amended, second amended, etc.)

Dated:

Proponent \_\_\_\_\_

By: \_\_\_\_\_

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**I. INTRODUCTION.**

\_\_\_\_\_ <sup>6</sup> is the debtor in a Chapter 11 bankruptcy case. On \_\_\_\_\_ <sup>7</sup> \_\_\_\_\_ <sup>8</sup> commenced a bankruptcy case by filing a \_\_\_\_\_ <sup>9</sup> Chapter 11 petition under the Bankruptcy Code. This document is the *Disclosure Statement in Support of the Chapter 11 Plan of Reorganization Dated \_\_\_\_\_* (the “Disclosure Statement”), and it is provided to help you understand the *Chapter 11 Plan of Reorganization Dated \_\_\_\_\_* (the “Plan”) attached hereto as **Exhibit A**. Under the Bankruptcy Code, Debtor, and under some circumstances, creditors and other parties in interest, may propose a plan. The Plan may provide for Debtor to reorganize \_\_\_\_\_ <sup>10</sup> debts, to liquidate by selling assets of the estate, or a combination of both. \_\_\_\_\_ <sup>11</sup> is proposing the Plan sent to you along with this document.

This is a \_\_\_\_\_ <sup>12</sup> plan. The Proponent seeks to accomplish payments under the Plan by \_\_\_\_\_. <sup>13</sup> The Effective Date of the proposed Plan is \_\_\_\_\_. <sup>14</sup>

Unless otherwise indicated, capitalized terms herein correspond with capitalized terms in the Plan.

**A. Purpose of this Document.**

This Disclosure Statement summarizes what is in the Plan. It also provides information relating to the Plan and the process the Bankruptcy Court follows to determine whether or not to approve the Plan.

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<sup>6</sup> Debtors’ name(s)

<sup>7</sup> Petition Date

<sup>8</sup> Debtor(s) or petitioning creditor(s)

<sup>9</sup> Voluntary or involuntary

<sup>10</sup> Her, his, its, or their

<sup>11</sup> Plan proponent’s name

<sup>12</sup> “Liquidating,” “reorganizing,” or “combined liquidating and reorganizing”

<sup>13</sup> Provide brief summary of how Proponent will fund the Plan.

<sup>14</sup> Effective date of Plan

**READ THIS DISCLOSURE STATEMENT CAREFULLY TO LEARN**

- (1) WHO CAN VOTE FOR OR AGAINST THE PLAN;**
- (2) WHO CAN OBJECT TO THE PLAN;**
- (3) THE PROPOSED TREATMENT OF YOUR CLAIM, i.e. what you will receive if the Plan is confirmed, AND HOW THIS TREATMENT COMPARES TO WHAT YOU WOULD RECEIVE IN A CHAPTER 7 LIQUIDATION;**
- (4) THE HISTORY OF DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY;**
- (5) WHAT THE BANKRUPTCY COURT WILL CONSIDER WHEN DECIDING WHETHER OR NOT TO CONFIRM THE PLAN**
- (6) THE EFFECT OF CONFIRMING THE PLAN; AND**
- (7) FEASIBILITY OF THE PLAN.**

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

This Disclosure Statement is provided to each creditor whose claim has been scheduled by Debtor or who has filed a proof of claim against Debtor. Under the Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement.

Bankruptcy Code § 1125 requires a Disclosure Statement to contain “adequate information” concerning the Plan. The term “adequate information” is defined as, “information of a kind, and in sufficient detail,” about a debtor and its operations “that would enable a hypothetical reasonable investor typical of holders of claims or interests” of

the debtor to make an informed judgment about accepting or rejecting the Plan. *See* 11 U.S.C. § 1125(a)(1). The Bankruptcy Court has determined that the information contained in this Disclosure Statement is adequate, and it has approved this document in accordance with Bankruptcy Code § 1125(b).

**B. Confirmation Procedures.**

Persons Potentially Eligible to Vote on the Plan

In determining acceptance of the Plan, votes will only be counted if submitted by a Creditor whose Claim is scheduled by Debtor as undisputed, non-contingent, and unliquidated, or who, prior to the hearing on confirmation of the Plan, has filed with the Bankruptcy Court a proof of claim that has not been disallowed or suspended prior to computation of the votes on the Plan. The Ballot Form you received does not constitute a proof of claim. If you are uncertain if your Claim has been correctly scheduled, you should check Debtor's Schedules, which are on file with the Clerk of the Bankruptcy Court. The Clerk of the Bankruptcy Court will not provide this information by telephone.

THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. IF, HOWEVER, THE BANKRUPTCY COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON DEBTOR AND ON ALL CREDITORS IN THIS CASE.

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

The hearing at which the Bankruptcy Court will determine whether to confirm the Plan will take place on \_\_<sup>15</sup>, at \_\_{a.m./p.m.}, in Courtroom \_\_\_\_\_,<sup>16</sup> \_\_\_\_\_.<sup>17</sup>

### **2. Deadline to Vote for or against the Plan**

If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and return the ballot in the enclosed envelope to \_\_\_\_\_.<sup>18</sup> Your ballot must be received by \_\_\_\_\_<sup>19</sup> or it will not be counted.

### **3. Deadline for Objecting to the Confirmation of the Plan**

Objections to the confirmation of the Plan must be filed with the Bankruptcy Court and served upon \_\_\_\_\_<sup>20</sup> by \_\_\_\_\_.<sup>21</sup>

### **4. How to Receive Additional Information about the Plan**

Any interested party desiring further information about the Plan should contact \_\_\_\_\_.<sup>22</sup>

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<sup>15</sup> Date of the confirmation hearing.

<sup>16</sup> Courtroom number.

<sup>17</sup> Insert one of the following: 230 N. 1<sup>st</sup> Avenue, Phoenix, Arizona 85003; 38 S. Scott, Tucson, Arizona 85701; 98 W. 1st Street, Yuma, Arizona 85364; 101 W. Goodwin St., 2nd Floor, Prescott, Arizona 86303; or 123 N. San Francisco St., Flagstaff, Arizona 86001.

<sup>18</sup> The address of the Clerk's Office or name and address of claims processing agent, if one has been retained should be inserted here. If Proponent also wants to receive a copy of the ballot, Proponent should provide that a copy be sent to the Proponent and include name, address, and telephone number of the Proponent or Counsel to the Proponent. A second envelope should be provided for this purpose.

<sup>19</sup> Deadline for receipt of ballots. (Note: This date will be provided by the Court at the hearing where the Court approves the Disclosure Statement.)

<sup>20</sup> Name and address of the Proponent or Counsel to the Proponent.

<sup>21</sup> Deadline for filing and serving any objection to the confirmation of the Plan. (Note: This date will be provided to you by the Court at the hearing where the Court approves the Disclosure Statement.)

<sup>22</sup> Name, address, and telephone number of Plan Proponent or Counsel to the Plan Proponent. In cases where there is a creditor's committee, include the name, address and telephone number of counsel for the creditor's committee.



**C. Disclaimers.**

The financial data relied upon in formulating the Plan is based on \_\_\_.<sup>23</sup> The information contained in this Disclosure Statement is provided by \_\_\_.<sup>24</sup> The Proponent represents that everything stated in the Disclosure Statement is true and correct to the best of Proponent's knowledge.

**PLEASE NOTE THAT THE APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A RULING ON THE MERITS, FEASIBILITY OR DESIRABILITY OF THE PLAN.**

**II. BACKGROUND.**

**A. Description Debtor's Employment and/or Business.**

Debtor is a \_\_\_.<sup>25</sup> Debtor is in the business of \_\_\_.<sup>26</sup>

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

Here is a brief summary of the circumstances that led to the filing of this Chapter 11 case: \_\_\_.<sup>27</sup>

**C. Significant Events during the Bankruptcy.**

**1. Bankruptcy Proceedings**

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<sup>23</sup> Insert documents such as Debtor's books and records, financial statements such as projections, appraisals, and evaluations, as well as who provided these documents.

<sup>24</sup> Identify by name and title the party providing the financial information (i.e., corporate officer, managing agent, accountant, accounting firm, bookkeeper, etc.). Accountants who assist clients in the preparation of financial statements should consult Statement of Position 90-7, Financial Reporting by Entities in Reorganization under the Bankruptcy Code, dated November 19, 1990 and prepared by the AICPA Task Force on Financial Reporting by Entities in Reorganization Under the Bankruptcy Code.

<sup>25</sup> Insert the applicable term: (i) corporation; (ii) partnership; (iii) individual

<sup>26</sup> List: (i) Debtor's employer and description of the employer's type of business; (ii) length of Debtor's employment; (iii) Debtor's position, including title, number of hours worked, salaried or hourly; (iv) description of Debtor's duties; and (v) amount of Debtor's compensation.

<sup>27</sup> Discuss the specific events and dates which led Debtor to file bankruptcy. Proponent must disclose the receipt of any notices from any governmental agency relating in any manner to actual or potential liability on the part of Debtor for any environmental or toxic waste hazards, whether or not occurring on Debtor's premises.

The following is a chronological list of significant events which have occurred during this case: \_\_.<sup>28</sup>

The Bankruptcy Court has approved the employment of the following professionals: \_\_\_\_\_.<sup>29</sup>

Currently, the following significant adversary proceedings and motions are still pending: \_\_\_\_.<sup>30</sup>

## **2. Other Legal Proceedings**

In addition to the proceedings discussed above, Debtor is currently involved in the following non-bankruptcy legal proceedings: \_\_.<sup>31</sup>

## **3. Actual and Projected Recovery of Preferential or Fraudulent Transfers<sup>32</sup>**

\_\_\_\_\_ <sup>33</sup> is estimated to be realized from the recovery of fraudulent and preferential transfers. The following is a summary of the fraudulent conveyance and preference actions filed or to be filed in this case: \_\_.<sup>34</sup>

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<sup>28</sup> In chronological order, list the significant events and orders that have been entered in this case and the entry dates of the orders. Also, give a brief description of the proceedings that led to the entry of the orders.

<sup>29</sup> Detailed list of the professionals who have obtained Bankruptcy Court approval of their employment, including: (i) the professional's name, (ii) scope of employment, and (iii) date Court approved the employment; and (iv) estimate of amount owed.

<sup>30</sup> Brief description of the following: (i) each significant adversary proceeding or motion that is still pending, including objections to claims; (ii) the status of each matter; (iii) the effects winning or losing the matter will have on the Plan; and (iv) the anticipated cost of pursuing or defending the matter.

<sup>31</sup> Brief description of the following: (i) each significant matter that is still pending in other courts; (ii) status of each matter, (i.e. whether the matter is stayed); (iii) effect the outcome of the matter will have on the Plan; and (iv) the anticipated cost of pursuing or defending the matter.

<sup>32</sup> If no preference or fraudulent conveyance actions exist and none are expected to be filed, then insert an affirmative statement to that effect and delete the rest of the text under this heading.

<sup>33</sup> Estimated total recovery in dollar amount from avoiding preferential and fraudulent transfers and anticipated total expense of pursuing those matters

<sup>34</sup> Provide a brief summary of each fraudulent conveyance or preference action. For each action, include the name of the defendant, summary of the underlying facts, status of the action, and the estimated amount of recovery.

#### **4. Procedures Implemented to Resolve Financial Problems**

In an effort to remedy the problems that led to the bankruptcy filing, Debtor has implemented the following procedures: \_\_.<sup>35</sup>

#### **5. Current and Historical Financial Conditions \_\_.**<sup>36</sup>

(Include description, valuation, means for valuation and documentary support for the valuation approach taken.)

(For historical data, attach last monthly operating report filed by Debtor.)

### **III. SUMMARY OF THE PLAN OF REORGANIZATION.**

The Plan classifies Claims in various Classes. The Plan states whether each Class of Claims is Impaired or unimpaired. The Plan provides the treatment each Class will receive as follows:

#### **A. Non-Voting Classes.**

Certain types of Claims are not placed into voting Classes; instead they are unclassified. They are not considered Impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them under the Bankruptcy Code. As such, the Proponent has not placed the following Claims in a Class. The treatment of these Claims is provided below.

#### **1. Administrative Expenses and Fees**

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<sup>35</sup> Describe with specificity the post-petition efforts Debtor made to remedy the problems that led to the filing of bankruptcy. Also describe the goals Debtor had in mind when implementing these procedures (e.g., reduce expenses, increase income).

<sup>36</sup> The Proponent should provide a textual discussion pertaining to Debtor's historical current financial condition. This discussion should inform the reader about Debtor's current income and expenses and whether Debtor's operations, if any, are currently profitable and whether Debtor is current with post-petition expenses. If not, the Proponent should include a schedule of post-petition obligations. Each document shall identify (i) the accounting method used (e.g. cash or accrual), (ii) whether the financial statements are prepared in conformity with generally accepted accounting principles, and (iii) if the financial statements have been audited.

Administrative Expenses are Claims for costs or expenses of administering Debtor’s Chapter 11 case, which are allowed under Bankruptcy Code § 503(b). Fees payable to the Clerk of the Bankruptcy Court and the Office of the United States Trustee were also incurred during the Chapter 11 Case.

The Bankruptcy Code requires that all administrative expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to different treatment. The Bankruptcy Court must approve all professional compensation and expenses. Each Professional Person requesting compensation in the case pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 503(b) and/or 1103 shall file an application for allowance of final compensation and reimbursement of expenses not later than ninety (90) days after the Confirmation Date. Nothing herein shall prohibit each Professional Person from requesting interim compensation during the course of this case pending Confirmation of this Plan. No motion or application is required to fix fees payable to the Clerk’s Office or the Office of the United States Trustee, as those fees are determined by statute.

**B. Classified Claims and Interests.**

**1. Classes of Secured Claims**

Secured Claims are Claims secured by liens on property of the estate.

The following represents all Classes containing pre-petition Secured Claims and their treatment under this Plan:

**Property to Be Surrendered**

<b>Class</b>	<b>Name of Creditor</b>	<b>Description of Collateral</b>

Debtor will surrender the above collateral on the Effective Date of the Plan. The

Confirmation Order will constitute an order for relief from stay. Any Secured Claim in this category is satisfied in full through surrender of collateral. Any remaining deficiency Claim is a general Unsecured Claim and will be treated in Section (B)(5) below. **These Secured Claims are not Impaired and are not entitled to vote.**

**Property to Be Sold**

Class	Name of Creditor	Description of Collateral	Value of Collateral	Payment Terms

Debtor will sell the above collateral after the Effective Date of the Plan. Any Secured Claim will be satisfied in full through sale of the collateral. Any remaining deficiency Claim is a general Unsecured Claim and will be treated in Section (B)(5) below. **These Secured Claims are Impaired and are entitled to vote.**

**Creditors’ Rights Remain Unchanged**

Class	Name of Creditor	Description of Collateral	Payment Terms

These Creditors’ legal, equitable, and contractual rights remain unchanged with respect to the above collateral. Creditors in these Classes shall retain their interest in the collateral until paid in full. **These Secured Claims are not Impaired and are not entitled to vote.**

**Debtor to Make Regular Payments and Pay Arrears over Time**

Class	Name of Creditor	Description of Collateral	Payment Terms

**These Secured Claims are Impaired and entitled to vote.**

**Debtor to Strip Lien to Value of Collateral and Pay over Time**

Class	Name of Creditor	Description of Collateral	Payment Terms

Debtor contends the value of the collateral is less than the amount of the Claim. Debtor will pay as a Secured Claim the amount equal to the value of the collateral as established by Bankruptcy Court order or stipulation. Debtor will pay the above Secured Claim in full with interest from the Effective Date through \_\_\_\_<sup>37</sup> equal payments. Payments will be due on the \_\_<sup>38</sup> day of the month, starting on \_\_.<sup>39</sup> Any remaining amount due is a general Unsecured Claim and will be treated in Section (B)(5) below.

**These Claims are Impaired and entitled to vote on Confirmation of the Plan.**

**Debtor to Strip Lien**

Class	Name of Creditor	Description of	Payment Terms

<sup>37</sup> Number of payments.

<sup>38</sup> Date of the month.

<sup>39</sup> Payment start date.

		<b>Collateral</b>	

Any Claim of a Creditor whose lien is stripped is a general Unsecured Claim and will be treated in Section (B)(5) below. **These Claims are Impaired and entitled to vote.**

**Debtor to Adjust Terms and Pay Amount in Full over Time**

<b>Class</b>	<b>Name of Creditor</b>	<b>Collateral</b>	<b>Amount Due /</b>	<b>Interest Rate</b>	<b>Monthly Payment</b>	<b>Term</b>

**These Claims are Impaired and entitled to vote on Confirmation of the Plan.**

**2. Bankruptcy Code § 1111(b) Analysis**

**Deadline for Bankruptcy Code § 1111(b) Election.** Creditors with an Allowed Secured Claim can make a timely election under Bankruptcy Code § 1111(b) no later than 14 days before the first date set for the hearing on Plan Confirmation. If any of the above-referenced Classes of Secured Creditors with Claims secured by a lien on property of the estate make the Bankruptcy Code § 1111(b) election, then the following terms apply instead of those stated above:

<b>Class</b>	<b>Name of Creditor</b>	<b>Description of Collateral</b>	<b>Section 1111(b) Payment Terms</b>

**These Claims are Impaired and entitled to vote on Confirmation of the Plan.**

### 3. Priority Non-Tax Claims<sup>40</sup>

Certain Priority Non-Tax Claims referred to under Bankruptcy Code §§ 507(a)(1)-(7) are entitled to priority treatment. These Claims are to be treated as follows:

Class	Name of Creditor	Payment Terms

**These Claims are Impaired and entitled to vote on Confirmation.**

### 4. Priority Tax Claims

Priority Tax Claims are Claims of governmental units for certain income, employment and other taxes described under Bankruptcy Code § 507(a)(8). These Claims are entitled to priority and must be paid pursuant to Bankruptcy Code § 1129(a)(9)(C)-(D). These Claims are to be treated as follows:

Class	Name of Creditor	Payment Terms

**These Claims are Impaired and entitled to vote.**

### 5. Class of General Unsecured Claims

General Unsecured Claims are not entitled to priority under Bankruptcy Code § 507(a). These Claims are to be treated as follows:

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<sup>40</sup> **NOTE:** There may need to be separate Classes for different categories of Priority Non-Tax Claims since they may require different treatment under the Plan. *See* Bankruptcy Code § 1129(a)(9)(A)-(B).



Class	Name of Creditor	Payment Terms

Under Bankruptcy Code § 1129(a)(15), if an unsecured creditor objects to Confirmation, an individual debtor must either pay the present value of that Unsecured Claim in full or make distributions under the Plan totaling at least the value of Debtor’s net disposable income over the greater of: (i) five years; or (ii) the time period during which the Plan provides for payments. Bankruptcy Code § 1129(a)(15) should be read and applied in conjunction with Bankruptcy Code § 1123(a)(4), which provides that Plan must provide the same treatment for each Claim in the particular Class. **These Claims are Impaired and entitled to vote.**

#### 6. Cramdown and Absolute Priority Rule

If a Class of Creditors does not accept the Plan, Debtor will seek to obtain Confirmation through the cramdown provisions of Bankruptcy Code § 1129(b). This means that the Plan must be fair and equitable to the Class that does not accept the Plan. The test for whether the Plan is fair and equitable is found under Bankruptcy Code § 1129(b).

The balance of this section only applies if a Class of Unsecured Claims does not accept the Plan. In that instance, Debtor seeks Confirmation of the Plan pursuant to Bankruptcy Code § 1129(b). The law is unclear whether the Absolute Priority Rule would apply in this individual Chapter 11 case. The Absolute Priority Rule is contained in Bankruptcy Code § 1129(b)(2)(B). If a Class of Unsecured Claims has not voted to accept the Plan, the Absolute Priority Rule provides that Debtor may not retain property unless the holders of Claims in the Class are paid in full.

If a Class of Unsecured Claims does not accept this Plan, Debtor will (mark all that

apply):

\_\_\_\_\_ Allege that the Absolute Priority Rule does not apply in a Chapter 11 case in which the debtors are individuals.

\_\_\_\_\_ Withdraw this Plan.

\_\_\_\_\_ Sell or surrender all of their non-exempt property and pay any resulting proceeds to Creditors.

\_\_\_\_\_ Increase the distribution to the holders of Unsecured Claims such that each holder is paid in full.

\_\_\_\_\_ Other. Describe: \_\_\_\_\_

**C. Acceptance or Rejection of Plan.**

Each Impaired Class of Creditors with Claims against Debtor’s estate shall be entitled to vote separately to accept or reject the Plan. A Class of Creditors shall have accepted the Plan if the Plan is accepted by at least two-thirds in the aggregate dollar amount and more than one-half in number of holders of the Allowed Claims of such Class that have accepted or rejected the Plan.

In the event that any Impaired Class of Creditors or Interest holders shall fail to accept the Plan in accordance with Bankruptcy Code § 1129(a), the Proponent reserves the right to request that the Bankruptcy Court confirm the Plan in accordance with Bankruptcy Code § 1129(b).

**D. Means of Effectuating the Plan.**

**1. Funding for the Plan**

The Plan will be funded as follows:

\$ \_\_\_\_\_<sup>41</sup> of cash available on the Effective Date;

A sale of property(ies) identified below, which is estimated to produce net proceeds of \$ \_\_\_\_\_<sup>42</sup> no later than \_\_\_\_\_;<sup>43</sup>

<sup>41</sup> Amount of money available to fund the Plan.

<sup>42</sup> Amount of money available to fund the Plan through property sales.

projected net/disposable income of not less than \$\_\_\_\_\_ <sup>44</sup> per month for a term of \_\_\_\_\_ <sup>45</sup> months as calculated and set forth in greater detail in the Exhibit 4 to the Plan; and/or

other sources of funding in the amount of \$ \_\_\_\_\_, <sup>46</sup> to be paid

in whole on the Effective Date;

in whole no later than \_\_\_\_\_; <sup>47</sup> or

in partial amounts not less than \$ \_\_\_\_\_ <sup>48</sup> per month for a term of \_\_\_\_\_ <sup>49</sup> months.

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## 2. Feasibility

A requirement for Confirmation is that the Plan must be feasible, which means that Plan Confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses that are entitled to be paid on the Effective Date. The second aspect considers whether the Proponent will have enough cash over the life of the Plan to make the required Plan payments. The Effective Date feasibility of Debtor's

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<sup>43</sup> Date.

<sup>44</sup> Amount of monthly projected disposable income.

<sup>45</sup> Number of months.

<sup>46</sup> Amount of money from other funding sources.

<sup>47</sup> Date.

<sup>48</sup> Amount of partial monthly payments.

<sup>49</sup> Number of months.

<sup>50</sup> Provide additional discussion regarding plan funding, if necessary.

Plan is set forth in Exhibit 5 to the Plan.

The Proponent contends that Debtor's financial projections are feasible in light of the financial records maintained by the Debtor prior to and during the pendency of the bankruptcy case. As shown by Debtor's historical financial statements, Debtor's average income, after paying expenses and post-confirmation taxes, in the three years preceding the filing of this bankruptcy case is \_\_\_\_\_.<sup>51</sup> Debtor's average \_\_\_\_\_<sup>52</sup> income, after paying expenses and post-confirmation taxes, during the bankruptcy case is \_\_\_\_\_.<sup>53</sup> Furthermore, as discussed above, Debtor has implemented procedures to \_\_\_\_\_.<sup>54</sup> Accordingly, the Proponent believes, on the basis of the foregoing, that the Plan is feasible.

### **3. Liquidation Analysis**

A requirement for confirmation is the "Best Interest of Creditors Test," which requires the Proponent to provide a liquidation analysis. Under this test, if a claimant is in an Impaired Class and that claimant does not vote to accept the Plan, then that claimant must receive or retain under the Plan property of a value not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

In a Chapter 7 case, the Debtor's assets are usually sold by a Chapter 7 trustee. Secured Creditors are paid first from the sales proceeds of properties on which the Secured Creditor has a lien. Administrative claims are paid next. Then Unsecured Creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured Creditors with the same priority share in proportion to the amount of their Allowed Claims.

An analysis of the liquidation values and expenses is attached as Exhibit 2 to the

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<sup>51</sup> Amount of actual average income per Plan payment interval, after paying expenses and post-confirmation taxes, for the three years preceding the filing of this bankruptcy case.

<sup>52</sup> Plan payment interval (e.g., monthly, yearly, quarterly).

<sup>53</sup> Debtor's average income per Plan payment interval, after paying expenses and post-confirmation taxes, during the bankruptcy case.

<sup>54</sup> Select one: (i) decrease costs; (ii) increase costs; (iii) decrease costs and increase income.

Plan. For the Bankruptcy Court to confirm this Plan, it must find that all Creditors who do not accept the Plan will receive at least as much under the Plan as such holders would receive under Chapter 7 liquidation. The Proponent maintains that this requirement is met here for the following reasons\_\_\_\_\_.<sup>55</sup>

**4. Disbursing Agent**

\_\_\_\_\_<sup>56</sup> shall act as the disbursing agent for the purpose of making all distributions provided for under the Plan. The Disbursing Agent shall serve \_\_\_\_\_<sup>57</sup> bond and shall receive \_\_\_\_\_<sup>58</sup> for distribution services rendered and expenses incurred pursuant to the Plan.

**IV. TREATMENT OF MISCELLANEOUS ITEMS.**

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

**1. Assumptions**

The following are the unexpired leases and executory contracts to be assumed as obligations of the Reorganized Debtor under the Plan:

**Executory Contracts and Unexpired Leases Assumed**

Counterparty	Description of Agreement	Payment Terms

**Executory Contracts and Unexpired Leases Rejected**

<sup>55</sup> Describe bases by which the liquidation analysis is satisfied.

<sup>56</sup> Name and identify of disbursing agent.

<sup>57</sup> “with” or “without”

<sup>58</sup> Explain whether disbursing agent will be compensated or reimbursed for services and expenses rendered and incurred in connection with making distributions under the Plan. If the Disbursing Agent will be compensated or reimbursed, specify the exact amount and the interval of payment.

Counterparty	Description of Agreement

On the Effective Date, each of the unexpired leases and executory contracts listed above shall be assumed as obligations of the Reorganized Debtor. The Order of the Bankruptcy Court confirming the Plan shall constitute an Order approving the assumption of each lease and contract listed above. If you are a party to a lease or contract to be assumed and you object to the assumption of your lease or contract, you must file and serve your objection to the Plan within the deadline for objecting to the Confirmation of the Plan.

## 2. Rejections

On the Effective Date, all executory contracts not assumed shall be deemed to be rejected. The Order confirming the Plan shall constitute an order approving the rejection of the lease or contract. If you are a party to a contract or lease to be rejected and you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the Confirmation of the Plan. *See* Section I(B)(2) above for the deadline to object to Plan Confirmation. **THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS \_\_\_\_\_.**<sup>59</sup> Any Claim based on the rejection of an executory contract or unexpired lease will be barred if the proof of Claim is not timely filed, unless the Bankruptcy Court later orders otherwise.

## 3. Disputed Claims Reserve

Debtor disputes the following Claims:

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<sup>59</sup> Deadline for filing proof of claim based on a Claim arising from the rejection of contract or lease is fixed by FED. R. BANKR. P. 3003.

Class	Name of Creditor	Amount According to Creditor	Amount According to Debtor

Debtor must create a reserve for disputed Claims in the amount of the Claim, unless the Claim is estimated for distribution in a different amount under Bankruptcy Code § 502(c). Each time Debtor makes a distribution to the holders of Allowed Claims, Debtor will place into a reserve the amount that would have been distributed to the holders of disputed Claims if such Claims had been Allowed in the full amount claimed. Debtor must file objections to disputed Claims no later than 180 days after entry of the Confirmation Order. If a disputed Claim becomes an Allowed Claim, Debtor must immediately distribute to the claimant from the reserve an amount equal to all distributions due to date under the Plan calculated using the amount of the Allowed Claim. Any funds no longer needed in reserve must be \_\_\_\_\_.<sup>60</sup>

**B. Retention of Jurisdiction.**

The Bankruptcy Court shall retain jurisdiction of this case pursuant to the provisions of the Bankruptcy Code, pending the final allowance or disallowance of all Claims affected by the Plan, and to make such orders as are necessary or appropriate to carry out the provisions of this Plan.

In addition, the Bankruptcy Court shall retain jurisdiction to implement the provisions of the Plan in the manner as provided under Bankruptcy Code § 1142(a)-(b). If the Bankruptcy Court abstains from exercising, or declines to exercise jurisdiction, or is

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<sup>60</sup> Insert one of the following: (i) returned to Debtor; or (ii) distributed *pro rata* among Allowed Claims in this Class.

otherwise without jurisdiction over any matter set forth in this Section, or if Debtor or the Reorganized Debtor elect to bring an action or proceeding in any other forum, then this Section shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court, public authority or commission having competent jurisdiction over such matters.

**C. Procedures for Resolving Contested Claims.**

Objections to Claims and Interests, except for those Claims more specifically deemed Allowed in the Plan, may be filed by Reorganized Debtor or any party in interest up to and including sixty (60) days following the entry of the Confirmation Order. With respect to disputed Claims or Interests, the Disbursing Agent will hold in a separate interest bearing reserve account such funds as would be necessary to make the required distribution on the Claim or Interest, as listed either in Debtor's schedules or the filed proof(s) of claim.

**D. Notices under the Plan.**

All notices, requests or demands with respect to this Plan shall be in writing and shall be deemed to have been received within five (5) days of the date of mailing, provided they are sent by registered mail or certified mail, postage prepaid, return receipt requested, and if sent to the Proponent, addressed to: \_\_\_\_\_.<sup>61</sup>

**V. EFFECT OF CONFIRMATION OF PLAN.**

**A. Discharge.**

This Plan provides that upon Confirmation of the Plan, Debtor shall be discharged of liability for payment of debts incurred before Confirmation, to the extent specified in Bankruptcy Code § 1141. Any liability imposed by the Plan, however, will not be discharged.

Under Bankruptcy Code § 1141(d)(5), an individual Debtor will not be discharged

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<sup>61</sup> Address and telephone number of Proponent



from any debts unless and until: (i) Debtor completes all payments under the Plan and obtains an order of the Bankruptcy Court granting a discharge; (ii) the Bankruptcy Court grants a limited (“hardship”) discharge as allowed under Bankruptcy Code § 1141(d)(5)(B); or (iii) the Bankruptcy Court orders otherwise for cause. Notwithstanding the other terms of this paragraph, non-dischargeable debts under Bankruptcy Code § 523 will not be discharged.

If Confirmation of this Plan does not occur, the Plan shall be deemed null and void. In such event, nothing contained in this Plan shall be deemed to constitute a waiver or release of any Claims against Debtor or its estate or any other Persons, or to prejudice in any manner the rights of Debtor or its estate or any Person in any further proceeding involving Debtor or its estate. The provisions of this Plan shall be binding upon Debtor and all Creditors, regardless of whether such Claims are Impaired or whether such parties accept this Plan, upon Confirmation thereof.

**B. Re-vesting of Property in Debtor.**

Except as provided in Section V(D) below, and except as provided elsewhere in the Plan, the Confirmation re-vests all of the property of the estate in Debtor.

**C. Modification of Plan.**

The Proponent may modify the Plan at any time before Confirmation. The Bankruptcy Court, however, may require a new disclosure statement or re-voting on the Plan if the Proponent modifies the Plan before Confirmation. The Proponent may also seek to modify the Plan at any time after Confirmation as long as: (i) the Plan has not been substantially consummated; and (ii) the Bankruptcy Court authorizes the proposed modification after notice and a hearing.

**D. Post-Confirmation Conversion/Dismissal.**

A creditor or party in interest may bring a motion to convert or dismiss the case under Bankruptcy Code § 1112(b), after the Plan is confirmed, if there is a default in

performing under the Plan. If the Bankruptcy Court orders the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7 estate, and the automatic stay will be re-imposed upon the re-vested property only to the extent that relief from stay was not previously granted by the Bankruptcy Court during this case.

**E. Post-Confirmation Quarterly Fees.**

Quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) continue to be payable to the office of the United States Trustee post-Confirmation until such time as the case is converted, dismissed, or closed pursuant to a final decree.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Proponent