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I.

INTRODUCTION

5 is the Debtor in a Chapter 11 bankruptcy case. On 6, 7 commenced a bankruptcy case by filing 8 Chapter 11 9 petition under the United States Bankruptcy Code (“Code”), 11 U.S.C. §101, et seq., Chapter 11 of the Code allows the Debtor, and under some circumstances, creditors and other parties in interest, to propose a plan of reorganization (“Plan”). The Plan may provide for the Debtor to reorganize by continuing to operate, to liquidate by selling assets of the estate, or a combination of both. 10 is the party proposing the Plan sent to you in the same envelope as this document. **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE PLAN WHICH IS ANNEXED HERETO AS EXHIBIT A.**

This is a 11 plan. In other words, the Proponent seeks to accomplish payments under the Plan by 12. The Effective Date of the proposed Plan is 13.

A. Purpose of This Document

This Disclosure Statement summarizes what is in the Plan, and tells you certain information relating to the Plan and the process the Court follows in determining whether or not to confirm the Plan.

READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW ABOUT:

- (1) **WHO CAN VOTE OR OBJECT,**
- (2) **THE PROPOSED TREATMENT OF YOUR CLAIM (i.e., what your claim will receive if the Plan is confirmed), AND HOW THIS TREATMENT COMPARES TO WHAT YOU WOULD RECEIVE IN LIQUIDATION,**

- (3) THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY,**
- (4) WHAT THE COURT WILL CONSIDER WHEN DECIDING WHETHER TO CONFIRM THE PLAN,**
- (5) THE EFFECT OF CONFIRMATION, AND**
- (6) THE FEASIBILITY OF THE PLAN.**

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

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

Code Section 1125 requires a Disclosure Statement to contain “adequate information” concerning the Plan. The term “adequate information” is defined in Code Section 1125(a) 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. The Bankruptcy Court (“Court”) has determined that the information contained in this Disclosure Statement is adequate, and it has approved this document in accordance with Code Section 1124.

This Disclosure Statement is provided to each creditor whose claim has been scheduled by the Debtor or who has filed a proof of claim against the Debtor and to each interest holder of record as of the date of approval of this Disclosure Statement. Under the Bankruptcy Code, your acceptance

of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to or concurrently with such solicitation.

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 duly scheduled by the Debtor as undisputed, non-contingent and unliquidated, or who, prior to the hearing on confirmation of the Plan, has filed with the Court a proof of claim which has not been disallowed or suspended prior to computation of the votes on the Plan. All shareholders of record as of the date of approval of this Disclosure Statement may vote on the Plan. The Ballot Form that you received does not constitute a proof of claim. If you are uncertain whether your claim has been correctly scheduled, you should check the Debtor's Schedules, which are on file at the office of the Clerk of the Bankruptcy Court located at: United States Bankruptcy Court, U.S. Court House, (insert address). The Clerk of the Bankruptcy Court will not provide this information by telephone.

THE 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. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST HOLDERS IN THIS CASE.

1. Time and Place of the Confirmation Hearing

The hearing at which the Court will determine whether to confirm the Plan will take place on ¹⁴, at {A.M./P.M.}, in Courtroom , {Insert Courthouse Name}, {Insert Full Court Address, City, State, Zip Code}.

2. Deadline For Voting 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 ¹⁵.

Your ballot must be received by ¹⁶ 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 Court and served upon ¹⁷ by ¹⁸.

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

Any interested party desiring further information about the Plan should contact ¹⁹.

C. Disclaimer

The financial data relied upon in formulating the Plan is based on ²⁰. The information contained in this Disclosure Statement is provided by ²¹. The Plan Proponent represents that everything stated in the Disclosure Statement is true to the Proponent's best 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 and History of the Debtor's Business

The Debtor is a 22.

The Debtor is in the business of 23.

The Debtor has been in this business since 24.

B. Principals/Affiliates of Debtor's Business

25.

C. Management of the Debtor Before and After the Bankruptcy 26.

D. Events Leading to Chapter 11 Filing

Here is a brief summary of the circumstances that led to the filing of this Chapter 11 case:

27.

E. Significant Events During the Bankruptcy

1. Bankruptcy Proceedings

The following is a chronological list of significant events which have occurred during this case: 28.

The Court has approved the employment of the following professionals: 29.

Currently, the following significant adversary proceedings and motions are still pending:

30.

2. Other Legal Proceedings

In addition to the proceedings discussed above, the Debtor is currently involved in the following non-bankruptcy legal proceedings: 31.

3. Actual and Projected Recovery of Preferential or Fraudulent Transfers³²

 ³³ 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: ³⁴.

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: ³⁵.

5. Current and Historical Financial Conditions ³⁶.

(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

A. What Creditors and Interest Holders Will Receive Under the Proposed Plan

The Plan classifies claims and interests in various classes. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive.

B. Unclassified Claims

Certain types of claims are not placed into voting classes. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment

provided for them in the Bankruptcy Code. As such, the Proponent has not placed the following claims in a class:

1. Administrative Expenses and Fees

Administrative expenses are claims for fees, costs or expenses of administering the Debtor’s Chapter 11 case which are allowed under Code Section 507(a)(1), including all professional compensation requests pursuant to Sections 330 and 331 of the Code. The Code requires that all administrative expenses including fees payable to the Bankruptcy Court and the Office of the United States Trustee which were incurred during the pendency of the case must be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.³⁷

The following chart lists all of the Debtor’s unpaid administrative fees and expenses ("Compensation"), an estimate of future professional fees and other administrative claims and fees and their treatment under the Plan³⁸:

<u>NAME</u>	<u>AMOUNT ESTIMATED</u>	<u>TREATMENT</u>	<u>TYPE OF CLAIM</u>
Clerk’s Office Fees		Paid in full on Effective Date	
Office of U.S. Trustee Fees		Paid in full on Effective Date	
	TOTAL		

Court Approval of Professional Compensation Required:

Pursuant to the Bankruptcy Code, the Court must rule on all professional compensation and expenses listed in this chart before the compensation and expenses will be owed. The professional

in question must file and serve a properly noticed fee application for compensation and reimbursement of expenses and the Court must rule on the application. Only the amount of compensation and reimbursement of expenses allowed by the Court will be owed and required to be paid under this Plan as an administrative claim.

Each professional person who asserts a further administrative claim that accrues before the confirmation date shall file with the Bankruptcy Court, and serve on all parties required to receive notice, an application for compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date of the Plan. Failure to file such an application timely shall result in the professional person's claim being forever barred and discharged. Each and every other person asserting an administrative claim shall be entitled to file a motion for allowance of the asserted administrative claim within ninety days of the Effective Date of the Plan, or such administrative claim shall be deemed forever barred and discharged. No motion or application is required to fix the fees payable to the Clerk's Office or Office of the United States Trustee. Such fees are determined by statute.

As indicated above, the Debtor will need to pay 39 worth of administrative claims and fees on the Effective Date of the Plan unless a claimant has agreed to be paid later or the Court has not yet ruled on the claim.

2. Priority Tax Claims

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8)⁴⁰. The Code requires that each holder of such a Section 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding six years from the date of the assessment of such tax.

The following chart lists all of the Debtor's Section 507(a)(8)⁴¹ priority tax claims and their

treatment under the Plan:

Description	Amount Owed	Treatment ⁴²
<ul style="list-style-type: none"> • Name = • Type of tax = • Date tax assessed = 		<ul style="list-style-type: none"> • Pymt interval⁴³ = • Pymt amt/interval⁴⁴ = • Begin date⁴⁵ = • End date⁴⁶ = • Interest Rate%⁴⁷ = • Total Payout Amount _%⁴⁸ =
<ul style="list-style-type: none"> • Name = • Type of tax = • Date tax assessed = 		<ul style="list-style-type: none"> • Pymt interval = • Pymt amt/interval = • Begin date = • End date = • Interest Rate % = • Total Payout Amount _% =

C. Classified Claims and Interests

1. Classes of Secured Claims

Secured claims are claims secured by liens on property of the estate. The following chart lists all classes of creditors containing the holders of the Debtor's secured pre-petition claims and their treatment under this Plan⁴⁹:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>INSIDERS</u> (Y/N)	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	Secured Claim of: <ul style="list-style-type: none"> • Name = • Collateral description = • Collateral value = • Claimed Priority of security int. = • Principal owed = • Pre-pet. arrearage amount = • Post-pet. arrearage amount = • Total claim amount = 		⁵⁰	<ul style="list-style-type: none"> • Pymt interval = • Pymt amt/interval = • Balloon pymt⁵¹ = • Begin date = • End date = • Interest rate % = • Total payout⁵²_% = • Treatment of lien =
	Secured Claim of: <ul style="list-style-type: none"> • Name = • Collateral description = • Collateral value = • Claimed Priority of security int. = • Principal owed = • Pre-pet. arrearage amount = • Post-pet. arrearage amount = • Total claim amount = 			<ul style="list-style-type: none"> • Pymt interval = • Pymt amt/interval = • Balloon pymt = • Begin date = • End date = • Interest rate % = • Total payout_% = • Treatment of lien =

2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Code Sections 507(a)(3), (4), (5), (6), and (7)⁵³ are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims.

The following chart lists all classes containing Debtor's 507(a)(3), (a)(4), (a)(5), (a)(6), and (a)(7)⁵⁴ priority unsecured claims and their treatment under this Plan:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	Priority unsecured claim pursuant to <u>55</u> • Total amt of claims = <u>56</u>		• Paid in full in cash on Effective Date ⁵⁷
	Priority unsecured claim pursuant to <u>58</u> • Total amt of claims = <u>59</u>		• Paid in full in cash on Effective Date

3. Class of General Unsecured Claims

General unsecured claims are uncollateralized claims not entitled to priority under Code Section 507(a). The following chart identifies this Plan's treatment of the class containing all of Debtor's general unsecured claims:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	General unsecured claims • Total amt of claims =	⁶⁰	• Pymt interval = • Pymt amt/interval = • Begin date = • End date = • Interest rate % = • Total payout ⁶¹ % =

4. Class(es) of Interest Holders

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. If the Debtor is a corporation, entities holding preferred or common stock in the Debtor are interest holders. If the Debtor is a partnership, the interest holders include both general and limited partners. If the Debtor is an individual, the Debtor is the interest holder. The following chart identifies the Plan's treatment of the class⁶² of interest holders:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	Interest holders	⁶³	

D. Means of Effectuating the Plan

1. Funding for the Plan

The Plan will be funded by the following: ⁶⁴.

2. Post-confirmation Management ⁶⁵.

3. Disbursing Agent

⁶⁶ shall act as the disbursing agent for the purpose of making all distributions provided for under the Plan. The Disbursing Agent shall be compensated as set forth in the Plan.

E. Other Provisions of the Plan

1. Executory Contracts and Unexpired Leases

The Plan provides that all Executory Contracts and Unexpired Leases, except for those specifically assumed by the Debtor in writing or previously assumed by Court Order, shall be deemed rejected. All proofs of claim with respect to claims arising from said rejection must be filed with the Bankruptcy Court within the earlier of (i) the date set forth for filing claims in any order of the Bankruptcy Court approving such rejection or (ii) thirty (30) days after the Confirmation Date. Any such claims, proofs of which are not filed timely, will be barred forever from assertion.

2. Changes in Rates Subject to Regulatory Commission Approval

This Debtor is/is not subject to governmental regulatory commission approval of its rates.⁶⁷

3. Retention of Jurisdiction

The Court will retain jurisdiction as provided in Section __ of the Plan.

4. Procedures for Resolving Contested Claims.

The Debtor and/or the Disbursing Agent shall have 60 days subsequent to confirmation to object to the allowance of claims. The Proponent has reviewed the claims that have been filed. The Proponent intends to object or cause the Disbursing Agent to object to the following number and amounts of claims in each class.⁶⁸

5. Effective Date

The Plan will become effective on the Effective Date which is the date on which the order of confirmation becomes final.⁶⁹

6. Modification

The Plan Proponent may alter, amend or modify the Plan at any time prior to the Confirmation Date and thereafter as provided in Section 1127(b) of the Bankruptcy Code.

F. Tax Consequences of Plan

CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of possible tax consequences is intended solely for the purpose of alerting readers to possible tax issues this Plan may present to the Debtor. The Proponent CANNOT and DOES NOT represent that the tax consequences contained below are the only tax consequences of the Plan because the Tax Code embodies many complicated rules which make it difficult to state completely and accurately all the tax implications of any action.

The following are the tax consequences that the Plan will have on the Debtor's tax liability:

G. Risk Factors

The following discussion is intended to be a non-exclusive summary of certain risks attendant upon the consummation of the Plan. You are encouraged to supplement this summary with your own analysis and evaluation of the Plan and Disclosure Statement, in their entirety, and in consultation with your own advisors. Based on the analysis of the risks summarized below, the Plan Proponent believes that the Plan is viable and will meet all requirements of confirmation:

IV.

CONFIRMATION REQUIREMENTS AND PROCEDURES

PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THIS PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended solely for the purpose of alerting readers about basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing claims. The proponent CANNOT and DOES NOT represent that the discussion contained below is a complete summary of the law on this topic.

Many requirements must be met before the Court can confirm a Plan. Some of the requirements include that the Plan must be proposed in good faith, that creditors or interest holders have accepted the Plan, that the Plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and that the Plan is feasible. These requirements are not the only requirements for confirmation.

A. Who May Vote or Object

1. Who May Object to Confirmation of the Plan

Any party in interest may object to the confirmation of the Plan, but as explained below not everyone is entitled to vote to accept or reject the Plan.

2. Who May Vote to Accept/Reject the Plan

A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest holder has a claim that is both (1) allowed or allowed for voting purposes and (2) classified in an impaired class.

a. What Is an Allowed Claim/Interest

As noted above, a creditor or interest holder must first have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest brings a motion objecting to the claim. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS ⁷¹.

A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtor's schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest.

b. What Is an Impaired Claim/Interest

As noted above, an allowed claim or interest only has the right to vote if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class. For example, a class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that class 100% of their claim plus interest.

In this case, the Proponent believes that classes 72 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Proponent believes that classes 73 are unimpaired and that holders of claims in each of these classes therefore do not have the right to vote to accept or reject the Plan. Parties who dispute the Proponent's characterization of their claim or interest as being impaired or unimpaired may file an objection to the Plan contending that the Proponent has incorrectly characterized the class.

3. Who Is Not Entitled to Vote

The following four types of claims are not entitled to vote: (1) claims that have been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to Code Section 507(a)(1), (a)(2), and (a)(8)⁷⁴; and (4) claims in classes that do not receive or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to Code Section 507(a)(1), (a)(2), and (a)(7) are not entitled to vote because such claims are not placed in classes and they are required to receive certain treatment specified by the Code. Claims in classes that do not receive or retain any value under the Plan do not vote because such classes are deemed to have rejected the Plan. **EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.**

4. Who Can Vote in More Than One Class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim is entitled to accept or reject a Plan in both capacities by casting one ballot for the secured part of the claim and another ballot for the unsecured claim.

5. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cramdown” on non-accepting classes, as discussed later in Section (IV.A.8.).

6. Votes Necessary for a Class to Accept the Plan

A class of claims is considered to have accepted the Plan when more than one-half ($\frac{1}{2}$) in number and at least two-thirds ($\frac{2}{3}$) in dollar amount of the allowed claims that actually voted, voted in favor of the Plan. A class of interests is considered to have accepted the Plan when at least two-thirds ($\frac{2}{3}$) in amount of the allowed interest-holders of such class which actually voted, voted to accept the Plan.

7. Treatment of Nonaccepting Classes

As noted above, even if all impaired classes do not accept the proposed Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner required by the Code. The process by which nonaccepting classes are forced to be bound by the terms of the Plan is commonly referred to as “cramdown”. The Code allows the Plan to be “crammed down” on nonaccepting classes of claims or interests if it meets all consensual requirements except the voting requirements of Section 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and

equitable” toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. §1129(b) and applicable case law.

8. Request for Confirmation Despite Nonacceptance by Impaired Class(es)

The party proposing this Plan asks the Court to confirm this Plan by cramdown on impaired classes if any of these classes do not vote to accept the Plan.

B. Liquidation Analysis

Another confirmation requirement is the “Best Interest Test”, which requires a liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder 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. Next, 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. Finally, interest holders receive the balance that remains after all creditors are paid, if any.

In order for the Court to be able to confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a Chapter 7 liquidation. The Plan Proponent maintains that this requirement is met here for the following reasons: 75.

Below is a demonstration, in balance sheet format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or interest holder would receive under a Chapter 7 liquidation:

Assets⁷⁶

Real Property		\$ _____
Minus: 1 st Mortgage	\$ _____	
2 nd Mortgage	\$ _____	
Any exemption	\$ _____	
Costs of sale	\$ _____	
Net equity		\$ _____
Personal Property [segregate by type]	\$ _____	
Total assets		\$ _____

Liabilities

Priority Claims:

Chapter 7 admin. expenses	\$ _____	
Chapter 11 admin. expenses	\$ _____	
Other priority claims	\$ _____	
Total priority claims		\$ _____

Amount available for unsecured claims
(total assets minus priority claims) \$ _____

Total unsecured claims	\$ _____
Estimated dividend in Chapter 7 (amount available - unsecured claims)	_____ %

C. Feasibility

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan 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 such date. The Plan Proponent maintains that this aspect of feasibility is satisfied as illustrated here:

Cash Debtor will have on hand by Effective Date⁷⁷ \$_____

To Pay: Administrative claims - _____

To Pay: Statutory costs & charges - _____

To Pay: Other Plan Payments due on Effective Date - _____

Balance after paying these amounts \$_____

The sources of the cash Debtor will have on hand by the Effective Date, as shown above are:

\$_____ Cash in DIP Account now

+_____ Additional cash DIP will accumulate from
net earnings between now and Effective
Date

+_____ Borrowing

+_____ Capital Contributions

+_____ Other

\$_____ Total⁷⁸

Borrowing is from ⁷⁹ and will be paid back as follows: ⁸⁰.

The second aspect considers whether the Proponent will have enough cash over the life of the Plan to make the required Plan payments.

The Proponent believes that this second aspect of the feasibility requirement is met for the following reasons: ⁸¹.

In summary, the Plan proposes to pay 82 each 83. As Debtor's financial projections demonstrate, Debtor will have an average cash flow, after paying operating expenses and post-confirmation taxes, of 84 each 85 for the life of the Plan. The final Plan payment is expected to be paid on 86. The Plan 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 87 cash flow, after paying operating expenses and post-confirmation taxes, in the three years preceding the filing of this bankruptcy case is 88. Debtor's average 89 cash flow, after paying operating expenses and post-confirmation taxes, during the bankruptcy case is 90. Furthermore, as discussed earlier in the Disclosure Statement at Section (II.E.4), Debtor has implemented procedures to 91.

Accordingly, the Plan Proponent believes, on the basis of the foregoing, that the Plan is feasible.

V.

EFFECT OF CONFIRMATION OF PLAN

A. Discharge

The Plan provides that upon confirmation of the Plan, the Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan, to the extent specified in 11 U.S.C. §1141. However, any liability imposed by the Plan will not be discharged. If Confirmation of the Plan does not occur or if, after Confirmation occurs, the Debtor elects to terminate the Plan, the Plan shall be deemed null and void. In such event, nothing contained in the Plan shall be deemed to constitute a waiver or release of any claims against the Debtor or its estate or any other persons,

or to prejudice in any manner the rights of the Debtor or its estate or any person in any further proceeding involving the Debtor or its estate. The provisions of the Plan shall be binding upon Debtor, all Creditors and all Equity Interest Holders, regardless of whether such Claims or Equity Interest holders are impaired or whether such parties accept the Plan, upon Confirmation thereof.

B. Revesting of Property in the Debtor

Except as provided in the Plan, the confirmation of the Plan revests all of the property of the estate in the Debtor.

C. Modification of Plan

The Proponent may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or revoting on the Plan if Proponent modifies the plan before confirmation.

The Proponent may also seek to modify the Plan at any time after confirmation so long as (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modification after notice and a hearing. Proponent further reserves the right to modify the treatment of any Allowed Claims at any time after the Effective Date of the Plan upon the consent of the Creditor whose Allowed Claim treatment is being modified, so long as no other Creditors are materially adversely affected.

D. Post-Confirmation Conversion/Dismissal

A creditor or party in interest may bring a motion to convert or dismiss the case under Section 1112(b), after the Plan is confirmed, if there is a default in performance of the Plan or if cause exists under Section 1112(b). If the 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 reimposed upon the reverted property only to the extent that relief from stay was not previously granted by the Court during this case.

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.⁹²

Date: _____

Name of Plan Proponent

CROSS REFERENCE KEY

1. Put which version of Disclosure Statement (Original, First Amended, Second Amended Disclosure Statement). Do not use the term “Modified” when describing any version subsequent to the Original.
2. D.N.J. LBR 3016-1(b)(1) and 3016-2(c) require that title indicate whether the plan is one of reorganization or liquidation and that any modified plan indicate its relationship to the original.
3. Insert identity of Plan Proponent(Debtor, Trustee, Official Committee of Unsecured Creditors, etc.).
4. Insert what Plan is being described (original, First Amended, Second Amended, etc.).
5. Debtor’s name.
6. Petition date.
7. Insert the applicable information, depending on who filed the petition:
 - (a) Debtor’s name
 - (b) Names of the petitioning creditors
8. Insert one of the following:
 - (a) a voluntary
 - (b) an involuntary
9. If case was commenced in a chapter other than Chapter 11 and later converted to Chapter 11, so state and state date of conversion to Chapter 11.
10. Proponent’s name.
11. Insert the applicable phrases:
 - (a) liquidating
 - (b) reorganizing
 - (c) combined liquidating and reorganizing
12. Provide a brief summary of how Proponent proposes to fund the Plan. If applicable, include statement that this plan is a joint plan, or is otherwise related to a plan in another bankruptcy case, or is a consensual plan between one or more parties to this Chapter 11 case.
13. Effective date of the Plan. D.N.J. LBR 3016-1(a) establishes the effective date unless the Proponent specifies an alternate date.

- 14 . Date of the confirmation hearing.
- 15 . 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 Plan Proponent or Counsel to the Plan Proponent. A second envelope should be provided for this purpose.

If applicable, the Disclosure Statement should indicate that there are two or more competing plans, and should tell readers to look at their ballots for special instructions on marking them. The ballots should be modified to contain any applicable special instructions.

- 16 . Deadline for receipt of ballots. (**Note:** This date will be provided by the Court at the hearing where the Court approves the Disclosure Statement.)
- 17 . Name and address of the Plan Proponent or Counsel to the Plan Proponent.
- 18 . 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.)
- 19 . 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.
- 20 . Insert documents such as Debtor's books and records, financial statements such as projections, appraisals, and evaluations, as well as who provided these documents.
- 21 . 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.
- 22 . Insert the applicable phrase:
 - (a) corporation
 - (b) partnership
 - (c) individual

(**Note:** If the Debtor is an entity that is not listed above, provide a description of Debtor's entity and verify that such an entity is eligible to be a debtor.)

- 23 . Type of business conducted by the Debtor (if applicable).

Note: For example, if the Debtor is in the business of developing real estate, the following should be listed:

- (a) The location of the properties/lots
- (b) The size of the lots
- (c) The stage of the development for each lot
- (d) The type of development, e.g., commercial, industrial or residential

If the Debtor is a manufacturer or service provider, the following should be listed:

- (a) The type of products manufactured or services provided
- (b) The location of Debtor's business

If the Debtor is in the business of renting real estate, the following should be listed:

- (a) Location of the building(s)
- (b) Size of the building(s)
- (c) Current occupancy rate(s)
- (d) Type(s) of building, e.g., residential, commercial, industrial
- (e) Debtor's interest in the building(s) being leased

If the Debtor is an individual, the following should be listed:

- (a) Debtor's employer and description of the employer's type of business
- (b) Length of Debtor's employment
- (c) Debtor's position, including title, number of hours worked, salaried or hourly
- (d) Description of Debtor's duties
- (e) Amount of Debtor's compensation

If Debtor is no longer in business, the above information should still be provided with respect to Debtor's business immediately preceding the bankruptcy. The date Debtor ceased to conduct business should also be provided.

- 24 . Approximate date and year debtor's business commenced .
- 25 . Detailed list of the names and identity of Debtor's principals and affiliates. Include the amount of compensation currently paid to principals and affiliates.

Note: For example, if Debtor is a corporation, the following must be listed:

- (a) Key members of the board of directors.
- (b) Key officers of the corporation.
- (c) Key shareholders and their respective percentage interest.

If Debtor is a partnership, the following must be provided:

- (a) Identity of all general partners since the inception of the partnership
- (b) Identity of all current limited partners.
- (c) If the general partner is a corporation, the board members, officers and shareholders must be listed.

- 26 . List key management of the Debtor before the bankruptcy petition was filed; list key management of the Debtor during the course of the bankruptcy; and lastly, list key management of the Debtor after the bankruptcy and disclose compensation and other key terms of employment agreements with bankruptcy key management.
- 27 . Discuss the specific events and dates which led the debtor to file bankruptcy. (**Note:** A statement to the effect that the recession caused debtor's business to fail is not specific enough.) 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 the Debtor for any environment or toxic waste hazards, whether or not occurring on the Debtor's premises.
- 28 . 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.
- 29 . Detailed list of the professionals who have obtained Court approval of their employment, including (1) the professional's name, (2) scope of employment, and (3) date Court approved the employment and 4) estimate of amount owed.
- 30 . Brief description of the following: (1) each significant adversary proceeding or motion that is still pending, including objections to claims, (2) the status of each matter, (3) the effects winning or losing the matter will have on the Plan, and (4) the anticipated cost of pursuing or defending the matter.
- 31 . Brief description of the following: (1) each significant matter that is still pending in other courts, (2) status of each matter, (i.e. whether the matter is stayed), (3) effect the outcome of the matter will have on the Plan, and (4) the anticipated cost of pursuing or defending the matter.
- 32 . 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.
- 33 . Estimated total recovery in dollar amount from avoiding preferential and fraudulent transfers and anticipated total expense of pursuing those matters.
- 34 . 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.
- 35 . Describe post-petition efforts made by the Debtor to remedy the problems that led to the filing of bankruptcy. (**Note:** Be specific.) Also describe the goals Debtor had in mind when implementing these procedures (e.g., save costs, increase profits).

36. The Proponent should provide a textual discussion pertaining to the Debtor's historical current financial condition. This discussion should inform the reader about the Debtor's current income and expenses and whether Debtor's operations, if any, are currently profitable and whether the 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.
37. If professional(s) have agreed to payment over time, state the precise terms and payment schedule (e.g. \$___ per months over _____ months).
38. For each chart, add more rows to the tables as necessary.
39. Total amount of administrative claims to be paid on Effective Date.
40. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.
41. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.
42. Section 507(a)(7)[now renumbered 507(a)(8) for cases filed after October 22, 1994] describing certain priority tax claims. All 507(a)(7) tax claims must be fully paid within 6 years from the date of assessment. Only unsecured tax claims of the kind described by 11 U.S.C. §507(a)(7)[8] should be inserted here.
43. Identify the proposed payment interval (e.g., monthly, quarterly, yearly).
44. Amount of payment per payment interval.
45. The date Plan payments will commence.
46. The date Plan payments will end.
47. The interest rate paid to a Section 507(a)(8) priority tax claimant should be consistent with the rate provided by 26 U.S.C. §6621.
48. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to the claimant over life of the Plan.
49. Each secured claim should be placed in a separate class, unless the secured claims have identical collateral, priority, and terms of indebtedness.

Begin numbering the classes with the number "1". The subsequent class should be numbered with the number "2". Do not use subclasses, e.g. 1.1, 1.2, etc.

- 50 . If this class is Not Impaired, put the following in the box: “Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan.”

If this class is Impaired, put the following in the box: “Impaired; claims in this class are entitled to vote on the Plan”; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put “Impaired, and claims in this case are deemed to have rejected Plan.”

- 51 . Balloon payment amount, if any.
- 52 . Total percent of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over the life of the Plan.
- 53 . Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.
- 54 . Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.
- 55 . Insert one of the following:
A. 11 U.S.C. §507(a)(3)
B. 11 U.S.C. §507(a)(4)
C. 11 U.S.C. §507(a)(5)
D. 11 U.S.C. §507(a)(6)
- 56 . Total amount of claims in this class.
- 57 . If the Plan does not provide for cash payment in full on Effective Date, Plan Proponent must be able to prove that this class has accepted deferred payments pursuant to 11 U.S.C. §1129(a)(9) before the Plan can be confirmed.
- 58 . Insert one of the following:
(a) 11 U.S.C. §507(a)(3)
(b) 11 U.S.C. §507(a)(4)
(c) 11 U.S.C. §507(a)(5)
(d) 11 U.S.C. §507(a)(6)
- 59 . Total amount of claims in this class.
- 60 . If this class is Not Impaired, put the following in the box: “Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan.”

If this class is Impaired, put the following in the box: “Impaired; claims in this class are entitled to vote on the Plan”; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put “Impaired, and claims in this class are deemed to have

rejected Plan.”

- 61 . Total percent of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over the life of Plan.
- 62 . If there is more than one class of equity holders (e.g. preferred stock and common stock), put each in a separate class and change “class” to “classes”.
- 63 . If this class is Not Impaired, put the following in the box: “Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan.”

If this class is Impaired, put the following in the box: “Impaired; claims in this class are entitled to vote on the Plan”; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put “Impaired, and claims in this class are deemed to have rejected Plan.”

- 64 . Describe the source of funding for this Plan. Be specific and consistent with the information set forth in Section {IV.C.}
 - A. If property of the estate is being sold and 11 U.S.C. §1129 (b)(2)(A)(ii) applies, then explain how that section impacts on the rights of a lienholder at a sale of the property.
 - B. If a buyer of the property has already been identified, then disclose the financial solvency of the proposed buyer.
- 65 . For each entity who will be involved in post-confirmation management, state or explain the following:
 - A. Identity
 - B. Post-confirmation managerial duties
 - C. Amount of compensation paid pre-petition, paid currently, and to be paid post-confirmation
 - D. Description of expertise
- 66 . Name and identity of disbursing agent.
- 67 . See 11 U.S.C. §1129(a)(6). This section is only applicable if Debtor’s business is regulated by a governmental regulatory commission. Examples include certain transportation companies and public utility companies. If Debtor is not regulated by a governmental commission, insert an affirmative statement to that effect in the Disclosure Statement. If debtor is regulated, state this and Plan must comply with 11 U.S.C. §1129(a)(6).
- 68 . D.N.J. LBR 3016-2(a) and (b) require the Proponent to review all claims prior to filing a Disclosure Statement and Plan and to set forth in the Disclosure Statement the number and amount of claims in each class to which the Proponent intends to object.

69. D.N.J. LBR 3016-1(a) establishes this date as the effective date unless the Proponent specifies an alternate date.
70. State the expected tax consequences of the Plan. For example, tax ramifications may include such issues as capital gains on the sale of real property and operating loss-carry forwards.

Note: If the Proponent has no idea of what such consequences might be, then the document must disclose that fact and why it is so.

Few situations exist where the tax liability should not be considered because any tax liability would affect distribution to creditors. Tax considerations might affect the likelihood of continued successful post-confirmation operation of the Debtor and may also affect the feasibility analysis. For these reasons, the Proponent should know the tax consequences of the Plan.

71. Bar date for filing proof of claim.

Note: In most bankruptcy cases it is necessary that a bar date for filing proofs of claim and interest has passed before creditors and interest holders may vote on the Plan. Knowing which claims and interests have been allowed will allow the Plan Proponent to easily determine who is entitled to vote. Also, without knowing the amount and nature of the claims against the estate, it is impossible to complete a precise liquidation analysis and difficult to determine whether the Plan is feasible.

If the claims bar date has not yet passed, the motion for order approving the disclosure statement should explain why the disclosure statement and plan are proposed now instead of after the claim bar date.

72. Classes that are impaired.
73. Classes that are unimpaired. (For cases filed after October 22, 1994 please note that the Bankruptcy Reform Act of 1994 deleted Section 1124(3). Therefore, creditors who receive cash in full equal to their allowed claim by the effective date would be considered impaired under the Bankruptcy Reform Act of 1994.
74. Denominated as 507(a)(7) for bankruptcy case filed before October 22, 1994.
75. Insert the following reasons, if applicable:
- A. The liquidation value of the “x” is less than its fair market value because _____.
(**Note:** Be specific when justifying the difference between liquidation value and fair market value. State the basis for your justification.)

- B. In a chapter 7 case, a trustee is appointed and entitled to compensation from the bankruptcy estate in an amount not to exceed 25% of the first \$5,000 of all moneys disbursed, 10% on any amount over \$5,000 but less than \$50,000, 5% on any amount over \$50,000 but not in excess of \$1 million, and 3% on all amounts over \$1 million. In this case, the trustee's compensation is estimated to equal "x".
- C. A Chapter 7 recovery is less because the Debtor is permitted to exempt a certain amount of the sales proceeds before unsecured creditors are paid anything. (**Note:** Be specific when relying on Debtor's claimed exemptions. List each exempt property, the code section which entitles the Debtor to the claimed exemption, and the amount of each exemption.)

Note: If Debtor is a partnership then Section 723(a) provides that the general partners of the partnership are liable for any deficiency of property of the estate to pay in full all allowed claims. Therefore, the Proponent must disclose the financial condition of the individual general partners from whom Chapter 7 trustee could seek to collect if this was a Chapter 7 case.

76. The disclosure statement should reflect the method of valuation - i.e., appraisal, cost, etc.
77. Explain sources of cash Debtor will have on Effective Date if Debtor does not currently have sufficient cash on hand to pay all claims that must be paid on the Effective Date.
78. Total must match figure shown above as "Cash debtor will have on hand by Effective Date."
79. Insert person or entity from whom funds are being borrowed.
80. Explain how loan will be paid back (example, lender has agreed it will not be paid until all Plan payments are completed and then will be paid at \$____ per month at ____% until paid in full). If gift instead of borrowing, change "Borrowing" to "Gift" and state amount will never be repaid.
81. Explain the sources of future revenues which Debtor will have both to operate and make deferred payments under the Plan. Cross reference Financial Projection and attach as an exhibit.
82. Total amount of Plan Payments to be made each payment interval.
83. Plan payment interval (e.g. monthly, yearly, quarterly).
84. Average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes for the entire duration of the Plan.
85. Plan payment interval.

- 86 . The last Plan payment date.
- 87 . Payment interval (e.g. monthly, yearly, quarterly).
- 88 . Amount of actual average cash flow per Plan payment interval, afer paying operating expenses and post-confirmation taxes, for the three years preceding the filing of this bankruptcy case.
- 89 . Plan payment interval (e.g., monthly, yearly, quarterly).
- 90 . Debtor's average cash flow per Plan payment interval, afer paying operating expenses and post-confirmation taxes, during the bankruptcy case.
- 91 . Select one:
 1. decrease costs
 2. increase costs
 3. decrease costs and increase income
- 92 . Counsel should be aware that as long as the case remains open, quarterly fees to the United States Trustee continue. Counsel should take steps to make sure that an Order closing the case is entered at the appropriate time to avoid having these fees continue unnecessarily.