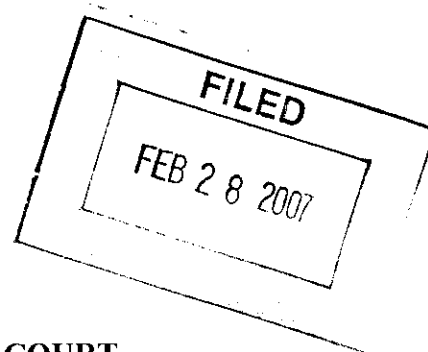


ORIGINAL

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UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION

In re

) Case No. LA 05-22627-TD

) Chapter 11

WATTHealth Foundation, Inc., dba UHP
Healthcare, a California not-for-profit
corporation,

) **DISCLOSURE STATEMENT FOR
DEBTOR'S FIRST AMENDED CHAPTER
11 PLAN OF REORGANIZATION DATED
JANUARY 23, 2007**

Debtor.

DISCLOSURE STATEMENT HEARING

Tax I.D. No. 95-2623688

) Date: February 28, 2007
) Time: 10:30 a.m.

PLAN CONFIRMATION HEARING

) Date: _____, 2007
) Time: ____:____.m.

) Place: Roybal Federal Bldg.
) Courtroom 1345
) 255 E. Temple Street
) Los Angeles, CA 90012

[THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE
BANKRUPTCY COURT AND NO ONE MAY SOLICIT ACCEPTANCES OR
REJECTIONS OF THE PLAN UNTIL THIS DISCLOSURE STATEMENT
HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING
ADEQUATE INFORMATION UNDER THE BANKRUPTCY CODE.]

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I.

INTRODUCTION

WATTSHHealth Foundation, Inc., dba UHP Healthcare, a California not-for-profit corporation, is the debtor (the "**Debtor**") in the above-referenced bankruptcy case (the "**Chapter 11 Case**"). The Debtor commenced the Chapter 11 Case by filing a voluntary petition under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") on May 31, 2005 (the "**Petition Date**"). The Chapter 11 Case is pending in the United States Bankruptcy Court for the Central District of California before the Honorable Thomas Donovan (the "**Bankruptcy Court**").

Chapter 11 allows the Debtor, inter alia, to propose a plan of reorganization. The Debtor filed its plan of reorganization on December 15, 2006, and filed an amended version on [DATE] (as amended, the "**Plan**"). A copy of that Plan is attached hereto as **Exhibit "A"**. The Debtor estimates that the Effective Date of the Plan will occur in [May] 2007. The document you are reading (as the same may be modified, amended, or supplemented, the "**Disclosure Statement**") contains information with respect to the Debtor and the Plan. Except as otherwise provided herein, capitalized terms used in this Disclosure Statement shall have the meanings set forth in the Plan. The Debtor also will file with the Bankruptcy Court a Plan Supplement, which (as set forth below) will contain copies of certain documents relating to the transactions contemplated by the Plan. The Plan Supplement will be filed with the Bankruptcy Court on or before [April 2, 2007]. The Plan Supplement also will be available at www.bmccorp.com/uhp.

The Plan provides for the Debtor to use its available Cash and other assets to satisfy Allowed Claims, and, to the extent that any excess funds remain available thereafter, continue in existence as a charitable organization, but not as a provider of health insurance. The Plan provides for payment to holders of Allowed Claims consistent with the priority provisions of the Bankruptcy Code. The following is a summary of the treatment proposed for Allowed Claims under the Plan:

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CLASS	TREATMENT AND DISTRIBUTION	ESTIMATE OF CLAIM AMOUNTS AND RECOVERY	VOTING STATUS
Unclassified Allowed Administrative Claims and Allowed Priority Tax Claims	Treatment: Payment in full.	+/- \$570,000 Recovery: 100%	N/A
Class 1: Other Priority Claims	Treatment: Payment in full of Unpaid Principal Amount <u>plus</u> Post-Petition Interest.	None Anticipated	Impaired; entitled to vote.
Class 2: Allowed Merrill Lynch Secured Claim	Treatment: Cash payment in the amount of \$2,042,250.00, <u>plus</u> 50% of the accrued and unpaid non-default interest from the Petition Date through the date of payment, <u>plus</u> the reasonable out-of-pocket attorneys' fees and expenses incurred by Merrill Lynch from and after the Petition Date to the extent provided for in the Merrill Lynch Indebtedness Documents, but not to exceed \$25,000.	+/- \$2,050,000 Recovery: 100%	Impaired; entitled to vote.
Class 3: Allowed Secured Property Tax Claims	Treatment: Deferred Cash payments or Cash payment on the Effective Date.	None Anticipated	Impaired; entitled to vote.
Class 4: DIR Secured Claims	Treatment: Any legal, equitable, and contractual rights to the DIR Deposit are unaltered, except that any recourse of the DIR is limited solely to the DIR Deposit and the DIR shall have no recourse to the Plan Assets, the Plan Reserves, the Effective Date Reserve, the Debtor, or the Reorganized Debtor.	Contingent and Unliquidated Claim	Impaired; entitled to vote.
Class 5: Allowed United Bank Secured Claim	Treatment: Cure and reinstatement.	+/- \$112,000 Recovery: 100%	Unimpaired; deemed to accept the Plan
Class 6: Allowed	Treatment: Deferred Cash payments, Cash payment on	None Anticipated	Impaired; entitled

SUMMARY OF PLAN CLASSIFICATION AND TREATMENT			
CLASS	TREATMENT AND DISTRIBUTION	ESTIMATE OF CLAIM AMOUNTS AND RECOVERY	VOTING STATUS
Secured Claims (not otherwise classified in any other Class)	the Effective Date, or cure and reinstatement.		to vote.
Class 7: Allowed General Unsecured Claims	Treatment: Pro-Rata Cash Distributions of Net Proceeds, up to full Unpaid Principal Amount <u>plus</u> Post-Petition Interest.	Over \$70 million asserted Recovery Range: 50 <u>60</u> -100%	Impaired; entitled to vote.
Class 8: Allowed Convenience Claims	Treatment: Payment in Cash, on or about the Effective Date, of Unpaid Principal Amount not to exceed \$5,000, plus Post-Petition Interest.	+/- \$500,000 <u>600,000</u> Est. Recovery: 100%	Unimpaired; deemed to accept the Plan

THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN.

UNLESS AND UNTIL THE BANKRUPTCY COURT CONFIRMS THE PLAN, ITS TERMS ARE NOT BINDING. IF THE COURT CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ALL CREDITORS AND INTEREST HOLDINGS IN THE CHAPTER 11 CASE.

A. Purpose of This Document.

Pursuant to section 1125 of the Bankruptcy Code, this Disclosure Statement is being distributed to you for the purpose of enabling you to make an informed judgment about the Plan. The Bankruptcy Code requires a Disclosure Statement to contain "adequate information" concerning the Plan. The Bankruptcy Court has approved this Disclosure Statement as containing adequate information as required by the Bankruptcy Code. This Disclosure Statement summarizes the provisions set forth in the Plan, and tells you certain information relating to the Plan and the process the Bankruptcy Court will follow in determining whether or not to confirm the Plan.

READ THIS DISCLOSURE STATEMENT CAREFULLY TO LEARN ABOUT:

(1) WHO CAN VOTE ON THE PLAN,

- 1 (2) **HOW CLAIMS WILL BE TREATED UNDER THE PLAN,**
2 (3) **HOW THIS TREATMENT COMPARES TO HOW CLAIMS WOULD BE**
3 **TREATED IF THE DEBTOR WAS LIQUIDATED UNDER CHAPTER 7 OF THE**
4 **BANKRUPTCY CODE,**
5 (4) **THE HISTORY, BUSINESS, RESULTS OF OPERATIONS, MANAGEMENT,**
6 **ASSETS AND LIABILITIES OF THE DEBTOR, AND SIGNIFICANT EVENTS**
7 **DURING THE CHAPTER 11 CASE,**
8 (5) **HOW THE COURT WILL DECIDE WHETHER OR NOT TO CONFIRM THE**
9 **PLAN,**
10 (6) **WHAT WILL HAPPEN IF THE PLAN IS CONFIRMED,**
11 (7) **WHETHER THE PLAN IS FEASIBLE.**

12 This Disclosure Statement cannot tell you everything about your rights. You should
13 consider consulting your own lawyer to obtain more specific advice on how the Plan will affect you
14 and what is the best course of action for you. Be sure to read the Plan as well as the Disclosure
15 Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan
16 provisions will govern.

17 The Debtor strongly urges you to review carefully the contents of this Disclosure
18 Statement and the Plan (including the referenced exhibits) before making a decision to accept or
19 reject the Plan. Particular attention should be paid to the provisions affecting or impairing your
20 rights as a creditor. The Debtor has examined various alternatives and, based on information
21 contained in this Disclosure Statement, and for the reasons set forth below, the Debtor has concluded
22 that the Plan provides the best recovery to the Debtor's creditors.

23 **B. Voting on the Plan.**

24 The Debtor is providing copies of this Disclosure Statement and the applicable form
25 of ballot for casting an acceptance or rejection of the Plan (a "**Ballot**") to all known holders of
26 Claims entitled to vote under the Plan. Such Creditors may vote to accept or reject the Debtor's
27 Plan. **Section V.B.2** ("*Who May Vote to Accept or Reject the Plan.*") below provides more
28 information about who is entitled to vote under the Plan.

1 Your vote on the Plan is important. Non-acceptance of the Plan may lead to a
2 liquidation under chapter 7 of the Bankruptcy Code, or to the confirmation of another plan of
3 reorganization. These alternatives may not provide for a distribution of as much value to holders of
4 Allowed Claims as the Plan and any such distributions may be delayed. Accordingly, the Debtor
5 urges you to accept the Plan by completing and returning the enclosed Ballot.

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14 **1. Deadline for Voting on the Plan.**

15 In order to be counted, Ballots must be completed, signed and returned so that they
16 are received no later than **4:00 P.M. prevailing Pacific Time on [April 13], 2007** (the "Voting
17 **Deadline**") at the following address:

18 **IF BY COURIER OR HAND DELIVERY:**

19 UHP Healthcare
20 C/O BMC
21 1330 East Franklin Avenue
El Segundo, CA 90245-0954

18 **IF BY MAIL:**

19 UHP Healthcare
20 C/O BMC
21 P O BOX 954
El Segundo, CA 90245-0954

22 **DO NOT SEND YOUR BALLOT VIA FACSIMILE OR E-MAIL.**

23 **DO NOT DELIVER YOUR BALLOT TO THE BANKRUPTCY COURT.**

24 **DO NOT DELIVER YOUR BALLOT TO THE DEBTOR.**

Any Ballot that is not timely received at the address above on or prior to the Voting Deadline will not be counted in connection with confirmation of the Plan by the Bankruptcy Court.

2. Ballot Instructions.

A Ballot is enclosed herewith for Creditors to use in voting on the Plan. To vote on the Plan, indicate on the enclosed Ballot that you accept or you reject the Plan and sign your name and mail the Ballot in the envelope provided for this purpose, and otherwise comply with the instructions included with the Ballot. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing.

TO BE COUNTED, YOUR BALLOT MUST BE COMPLETELY FILLED IN, SIGNED, AND TRANSMITTED IN THE MANNER SPECIFIED IN THE BALLOT SO THAT IT IS RECEIVED BY THE VOTING DEADLINE SPECIFIED IN THE BALLOT. PLEASE FOLLOW CAREFULLY ALL INSTRUCTIONS CONTAINED IN THE BALLOT. ANY BALLOTS RECEIVED WHICH DO NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN, OR WHICH INDICATE BOTH AN ACCEPTANCE AND REJECTION OF THE PLAN, WILL BE COUNTED AS A VOTE IN FAVOR OF THE PLAN. A BALLOT WHICH OTHERWISE DOES NOT FULLY COMPLY WITH THE BALLOT INSTRUCTIONS, WILL NOT BE COUNTED.

If your Ballot is not properly completed, signed and returned as described, it will not be counted. If your Ballot is damaged or lost, you may request a replacement by sending a written request to BMC at the above address. If you have any questions about the procedure for voting, or if you did not receive a Ballot, received a damaged Ballot, or have lost your Ballot, or if you would like any additional copies of this Disclosure Statement, please contact BMC at the address noted above.

3. Convenience Class Option.

If you are the holder of one or more General Unsecured Claims with an aggregate Principal Amount greater than Five Thousand Dollars (\$5,000.00), you have the option to reduce the aggregate Principal Amount of all of your General Unsecured Claims to Five Thousand Dollars

1 (\$5,000.00) and thereby become an Eligible Convenience Class Claimant (the "**Convenience Class**
2 **Option**"). If you select the Convenience Class Option on your Ballot, you will receive on the
3 Effective Date or as soon as practicable thereafter, in full satisfaction, discharge, exchange and
4 release of your Claims, Cash in the amount of (a) the Unpaid Principal Amount of your Claims, not
5 to exceed \$5,000.00, plus (b) Post-Petition Interest to the extent payable as provided for in the Plan.

6 The benefit to selecting the Convenience Class Option is that the Distribution to
7 Class 8 Allowed Convenience Claims will be made on the Effective Date or as soon thereafter as is
8 practicable. The detriment to selection the Convenience Class Option is that it limits the aggregate
9 Principal Amount of all of the General Unsecured Claims held by the selecting party to \$5,000.

10 *For example, if a party holding Class 7 General Unsecured Claims in the aggregate*
11 *amount of \$10,000 selected the Convenience Class Option, and had not previously received any*
12 *distribution in full or partial satisfaction of such Claims, then on or about the Effective Date, such party*
13 *would receive a total Distribution of approximately \$5,318, consisting of an Unpaid Principal*
14 *Amount of \$5,000 and Post-Petition Interest of approximately \$318.*

15 **C. Confirmation Of The Plan.**

16 "Confirmation" is the technical phrase for the Bankruptcy Court's approval of a plan
17 of reorganization. At the Confirmation Hearing, in order to confirm the Plan, the Debtor must
18 demonstrate that it has met the requirements of section 1129 of the Bankruptcy Code. If the
19 Bankruptcy Court determines that all of the requirements of section 1129 have been satisfied, the
20 Bankruptcy Court will enter an order confirming the Plan. The Debtor ~~believes~~ and the Committee
21 believe that the Plan satisfies all the statutory requirements of chapter 11 of the Bankruptcy Code for
22 Confirmation of the Plan. See " *CONFIRMATION REQUIREMENTS AND PROCEDURES*" at § V.

23 **1. Time and Place of Confirmation Hearing.**

24 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice,
25 to hold a hearing on Confirmation of the Plan (the "**Confirmation Hearing**"). The Confirmation
26 Hearing will take place on [DATE] at [TIME] in Courtroom 1345, Roybal Federal Building, 255 E.
27 Temple Street, Los Angeles, California. The Confirmation Hearing may be continued from time to
28 time by the Bankruptcy Court without further notice except for the announcement of the

1 continuation date made at the Confirmation Hearing or at any subsequent continued Confirmation
2 Hearing.

3 **2. Deadline for Objecting to the Confirmation of the**
4 **Plan.**

5 Any objection to Confirmation of the Plan must be in writing and must be filed with
6 the Bankruptcy Court and served upon the parties set forth below by or before **[4:00 p.m. on April**
7 **13, 2007]**, in accordance with the Disclosure Statement Order.

8 Parties on whom objections to Confirmation of the Plan must be served the following
9 parties and any other party to whom such objection is addressed or responds:

10 **Counsel for the Debtor**

11 Stutman, Treister & Glatt Professional Corporation
12 1901 Avenue of the Stars, Twelfth Floor
13 Los Angeles, California 90067
14 Attn: Nathan A. Schultz, Esq.

15 **Counsel for the Committee**

16 Danning, Gill, Diamond & Kollitz, LLP
17 2025 Century Park East, Third Floor
18 Los Angeles, California 90067
19 Attn: Steven J. Schwartz, Esq.

20 and

21 **Office of the United States Trustee**

22 725 S. Figueroa St., 26th Floor
23 Los Angeles, California 90017
24 Attn: Patricia Biery, Esq.

25 **D. Additional Documents and Information.**

26 **1. Exhibits**

27 Attached as Exhibits to this Disclosure Statement are copies of the following:

28 (a) The Plan (**Exhibit A**);

1 (b) Balance Sheet – Petition Date and As of **[December 31, 2006]** (**Exhibit B**)

2 (c) Sources and Uses (**Exhibit C**);

3 (d) Claims Analysis (**Exhibit D**);

4 (e) Liquidation Analysis (**Exhibit E**); and

5 (f) Initial Post-Confirmation Expense Budget Summary (**Exhibit F**).

6 **2. Other Documents Accompanying This Disclosure**
7 **Statement.**

8 Also accompanying this Disclosure Statement are copies of the following:

9 (a) The Order of the Bankruptcy Court approving this Disclosure Statement and
10 setting the confirmation hearing, the deadlines and procedures for voting and for objecting to
11 confirmation of the Plan, and related matters (the "**Disclosure Statement Order**"); and

12 (b) For each Person entitled to vote on the Plan, a Ballot.

13 **3. Plan Supplement.**

14 Forms of certain documents referred to in the Plan are or will be contained in the
15 separate Plan Supplement, including: (i) the Initial Post-Confirmation Expense Budget; (ii) the list of
16 executory contracts and unexpired leases to be assumed pursuant to the Plan; (iii) the list of
17 executory contracts and unexpired leases to be rejected pursuant to the Plan; (iv) the Articles of
18 Incorporation of Reorganized Debtor; and (v) the By-laws of Reorganized Debtor. On or about
19 **[April 2, 2007]**, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy
20 Court, 300 N. Los Angeles Street, Los Angeles, California 90012, or a copy, or excerpts, may be
21 obtained upon written request to the Debtor's counsel, Stutman, Treister & Glatt Professional
22 Corporation, 1901 Avenue of the Stars, Los Angeles, California 90067 (Attn: Nathan A. Schultz,
23 Esq.) or online at www.bmccorp.com/uhp.

24 **4. Additional Information.**

25 Additional information relating to the Chapter 11 Case may be found at
26 www.bmccorp.com/uhp. Certain historical financial information filed by the Debtor with the
27 Department of Managed Health Care ("**DMHC**") may be obtained via the DMHC's web site at
28 <http://www.dmhc.ca.gov/>.

1 **E. Disclaimers.**

2 **1. The Bankruptcy Court Has Not Yet Approved the Plan.**

3 The Bankruptcy Court has approved this Disclosure Statement as containing
4 information of a kind and in sufficient detail, as far as is reasonably practicable in light of the nature
5 and history of the Debtor and the condition of its books and records, to be adequate to enable
6 hypothetical, reasonable investors typical of the holders of impaired Claims to make an informed
7 judgment as to whether to accept or reject the Plan. Approval of this Disclosure Statement does not,
8 however, constitute a determination by the Bankruptcy Court as to the fairness or the merits of the
9 Plan.

10 **2. The SEC Has not Approved this Disclosure Statement.**

11 **THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR**
12 **DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE**
13 **"COMMISSION") UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE**
14 **"SECURITIES ACT"), OR BY ANY STATE AUTHORITY UNDER ANY STATE**
15 **SECURITIES OR "BLUE SKY" LAW, NOR HAS THE COMMISSION (OR ANY STATE**
16 **AUTHORITY) PASSED UPON THE ACCURACY OR ADEQUACY OF THE**
17 **STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.**

18 **3. Forward-Looking Statements.**

19 The information contained in **Section III** ("*Financial Information*") and certain other
20 statements contained or incorporated by reference herein, including, without limitation, statements
21 containing the words "believes," "anticipates," "expects," and words of similar import, constitute
22 "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of
23 1995. Such forward-looking statements involve known and unknown risks, uncertainties, and other
24 factors that may cause the actual results, performance, or achievements of the Debtor, or industry
25 results, to be materially different from any future results, performance, or achievements expressed or
26 implied by such forward-looking statements. Such factors include, among others, the following:
27 national and local general economic and market conditions; demographic changes; liabilities and
28 other Claims asserted against the Debtor; the realizable value of the assets of the Estate; business

1 disruptions; the allowance and disallowance of Claims; the ability to attract and retain qualified
2 personnel; regulatory matters; and other factors referenced herein. **Given these uncertainties, those**
3 **reading this Disclosure Statement are cautioned not to place undue reliance on such forward-**
4 **looking statements.** The Debtor disclaims any obligation to update any such factors or to publicly
5 announce the result of any revisions to any of the forward-looking statements contained or
6 incorporated by reference herein to reflect untrue events or developments.

7 **4. Exclusive Source Of Information.**

8 No representations concerning the Debtor or the Plan are authorized by the Debtor
9 other than as set forth in this Disclosure Statement.

10 **5. Plan Controls.**

11 Although the Debtor believes that this Disclosure Statement accurately describes the
12 Plan, all summaries of the Plan contained in this Disclosure Statement are qualified by the Plan itself
13 and the documents described therein which are controlling.

14 ///

15 ///

16 **6. Source Of Information.**

17 Factual information contained in this Disclosure Statement has been provided by the
18 Debtor or has been obtained from the Debtor's records, except where otherwise specifically noted.
19 All financial information contained in this Disclosure Statement has been prepared by the Debtor or
20 has been obtained from its records. None of the Debtor's attorneys, accountants, or other
21 professionals make any representation regarding the Debtor's information or the information
22 contained herein. The Debtor does not represent or warrant that the information contained in this
23 Disclosure Statement is free from any inaccuracy.

24 **EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, NOTHING**
25 **CONTAINED HEREIN SHALL BE ATTRIBUTABLE TO OR IS DERIVED FROM OR**
26 **REPRESENTED TO BE ACCURATE BY THE DEBTOR'S PROFESSIONALS, THE**
27 **COMMITTEE, BY ANY HOLDER OF A CLAIM, OR BY ANY OF THEIR RESPECTIVE**
28 **ADVISORS, NOR HAS THE COMMITTEE, ANY SUCH HOLDER, OR ANY SUCH**

1 **ADVISOR INDEPENDENTLY VERIFIED THE INFORMATION SET FORTH HEREIN.**
2 **ALTHOUGH THE DEBTOR'S PROFESSIONAL ADVISORS HAVE ASSISTED IN THE**
3 **PREPARATION OF THIS DISCLOSURE STATEMENT BASED UPON FACTUAL**
4 **INFORMATION AND ASSUMPTIONS RESPECTING FINANCIAL, BUSINESS, AND**
5 **ACCOUNTING DATA PROVIDED BY THE DEBTOR, THEY HAVE NOT**
6 **INDEPENDENTLY VERIFIED THE INFORMATION SET FORTH HEREIN AND MAKE**
7 **NO REPRESENTATIONS AS TO THE ACCURACY THEREOF.**

8 The Debtor has, however, made great efforts to present the information accurately
9 and fairly and believes that the information is substantially accurate. The assumptions underlying
10 the projections contained in this Disclosure Statement concerning sources and amounts of payments
11 to Creditors represent the best estimate of the Debtor as to what is expected will happen. Because
12 these are only assumptions about or predictions of future events, many of which are beyond the
13 Debtor's control, there can be no assurances that the assumptions will in fact materialize or that the
14 projected realizations will in fact be met. Except as otherwise provided herein, this Disclosure
15 Statement does not reflect any events that occurred subsequent to the date that the Debtor submitted
16 the Disclosure Statement to the Bankruptcy Court for approval.

17 **7. No Admissions.**

18 Nothing contained herein shall, or shall be deemed, to be an admission or declaration
19 against interest by the Debtor for purposes of any existing or future litigation.

20 **8. Warning Regarding Federal And State Income Tax**
21 **Consequences Of The Plan.**

22 The tax consequences of the Plan will vary based on the individual circumstances of
23 each holder of a Claim. Accordingly, each Creditor is strongly urged to consult with its own tax
24 advisor regarding the federal, state, local and foreign tax consequences of the Plan. See § VII
25 *(CERTAIN FEDERAL INCOME TAX CONSEQUENCES.)*.

26 **F. EXCULPATION.**

27 As specified in section 1125(e) of the Bankruptcy Code, persons who solicit
28 acceptances or rejections of the Plan and/or who participate in the offer, issuance, sale, or

1 purchase of securities offered or sold under the Plan, in good faith and in compliance with the
2 applicable provisions of the Bankruptcy Code, are not liable, on account of such solicitation or
3 participation, for violation of any applicable law, rule, or regulation governing the solicitation
4 of acceptances or rejections of the Plan or the offer, issuance, sale, or purchase of securities.

5 **II.**

6 **BACKGROUND INFORMATION**

7 **A. Description and History of the Debtor's Business.**

8 **1. Corporate Structure.**

9 The Debtor is a California not-for-profit corporation. As such, the Debtor is exempt
10 from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and Section 23701 of the
11 California Revenue and Taxation Code. The Debtor does not have outstanding equity interests, and
12 the Debtor does not have any subsidiaries. The Debtor has a historical relationship with
13 WATTHealth Charities, Inc., which is not a debtor in the Chapter 11 Case.

14 ///

15 **2. Business Operations.**

16 As of the Petition Date, the Debtor operated as a health maintenance organization
17 ("HMO") with approximately 90,000 members in the state of California. The primary function of
18 the Debtor's business was to arrange for the provision of healthcare services to the Debtor's
19 members. The Debtor arranged for the delivery of healthcare services to its members by contracting
20 with physicians, either directly or through Independent Practice Associations and medical groups,
21 hospitals and other health care providers or contracting entities. As an HMO, the Debtor did not
22 provide healthcare or hospital services directly to its members.

23 The Debtor served members in four principal lines of business: (i) Medi-Cal; (ii)
24 Medicare; (iii) Denti-Cal; and (iv) Commercial/Individual. The majority of the Debtor's revenues
25 consisted of premiums principally under contracts with the Local Initiative Health Authority for Los
26 Angeles County ("L.A. Care") and the Centers for Medicare & Medicaid Services ("CMS") for
27 Medi-Cal and Medicare beneficiaries, respectively. In the year ending on December 31, 2004, the
28 Debtor generated revenues of approximately \$207 million.

1 As of the Petition Date, the Debtor had approximately 173 full-time employees and 2
2 part-time employees. As of the Petition Date, the Debtor did not own a hospital or healthcare
3 facility, nor did it employ doctors or health care providers, except in administrative capacities.

4 **3. Management of the Debtor as of, and After, the**
5 **Petition Date.**

6 As of the Petition Date, the Debtor's Board of Directors (the "**Board**") consisted of:

- 7 • Johnny D. Griggs - Chairman
- 8 • Lawrence G. Becker - Treasurer
- 9 • Cynthia McClain-Hill - Secretary
- 10 • Frank Quevedo
- 11 • Edmund Butts, MD
- 12 • Arthur I. Johnson, MD

13 Subsequent to the Petition Date, Mr. Griggs was appointed as Board Restructuring
14 Director. Other than this appointment, there have been no changes to the composition of the Board
15 since the Petition Date.

16 As of the Petition Date, the Debtor's senior management consisted of:

- 17 • Curtis Owens - Chief Executive Officer
- 18 • Charles Ferrand - Chief Financial Officer
- 19 • Alan Bloom - Chief Administrative Officer
- 20 • Albert Young, MD - Chief Medical Officer
- 21 • Cassandra Sams - Chief Nursing Officer

22 Following the Petition Date, Bradley A. Lang of Alvarez & Marsal, LLC ("**A&M**")
23 was appointed as the Debtor's Chief Restructuring Officer. In or about August 2005, Mr. Owens and
24 the Board agreed that Mr. Owens would separate his employment with the Debtor. Charles Ferrand
25 subsequently was appointed Interim Chief Executive Officer. In or about May 2006, Mr. Ferrand
26 and the Board agreed that Mr. Ferrand would separate his employment with the Debtor. Sharon
27 Isaac subsequently was appointed Chief Financial Officer. On or about August 31, 2006 (as of the
28 closing of the sale of the Debtor's lines of business), Mr. Bloom, Mr. Young, and Ms. Sams

1 separated employment with the Debtor. Subsequently, Sione Ayers was appointed Chief
2 Administrative Officer.

3 As of the date of this Disclosure Statement, the Debtor's management consists of:

- 4 • Bradley A. Lang – Chief Restructuring Officer
- 5 • Sharon Isaac – Chief Financial Officer
- 6 • Sione Ayers – Chief Administrative Officer

7 **B. Events Leading To The Filing Of The Chapter 11 Case.**

8 **1. The Conservatorship.**

9 In August 2001, the DMHC took possession of the property, business and assets of
10 Watts Health Foundation, Inc. and appointed Frank Stevens as Conservator, thereby commencing a
11 conservatorship case (the "**Conservatorship Case**") for the Debtor under applicable state law. In
12 October 2003, the Superior Court of the State of California, County of Los Angeles, Central District
13 entered its "Order Approving Termination Of Conservatorship And Approving Conservator's Plan of
14 Reorganization Dated September 3, 2002" (the "**Conservatorship Order**").

15 Pursuant to the Conservator's Plan of Reorganization, a trust was created for the
16 benefit of the holders of pre-Conservatorship Case claims against the Debtor (the "**Creditors'**
17 **Trust**"). Pursuant to the Conservatorship Order, except as expressly provided in the
18 Conservatorship Plan of Reorganization, all entities who held claims against the Debtor arising prior
19 to August 8, 2001 are permanently enjoined from (a) commencing or continuing in any manner,
20 directly or indirectly, an action or proceeding of any kind against the Debtor, the Creditors' Trust, or
21 any of their property, with respect to any such claims, (b) the enforcement, attachment, collection or
22 recovery by any manner or means, directly or indirectly, of any judgment, award, decree, or order
23 against the Debtor or the Creditors' Trust with respect to any such claims, (c) commencing or
24 continuing against any of the Debtor's members, or against persons for whom the Debtor arranged
25 health care services, including any individual subscribers and any employees of employer groups
26 which contracted with the Debtor for the arrangement of health care services, with respect to any
27 such claims, and (d) any act, in any manner, in any place whatsoever, that does not conform to or
28 comply with the provisions of the Conservatorship Plan of Reorganization with respect to such

1 claims.¹ In accordance with the Conservatorship Order, the Conservatorship Case terminated on
2 November 21, 2003.

3 **2. Events Following The Conservatorship Case.**

4 Following the termination of the Conservatorship Case, the Debtor was fully vested
5 with its assets, claims against the Debtor arising prior to August 8, 2001 were resolved pursuant to
6 the Conservator's Plan of Reorganization and are specifically not enforceable against the Debtor, and
7 the Debtor took over control of the management and operation of its businesses under the auspices of
8 a newly appointed Board of Directors,⁺ and was fully vested with its assets. In January 2004, the
9 President and CEO and the Chief Operations Officer of the Debtor resigned. In March 2004, the
10 Board of Directors hired a new President and CEO. Subsequently, in the fall of 2004 several key
11 senior management employees, including the Chief Financial Officer, resigned.

12 Changes in senior management, changes in the health-care industry, and other factors
13 combined to create significant challenges for the Debtor in calendar year 2005. The Debtor's
14 operating performance in 2005 deteriorated and, the Debtor confronted various challenges to remain
15 in compliance with its regulatory obligations.

16 On the Petition Date, in order to restructure its operations, and preserve and maintain
17 its value, the Debtor filed a voluntary petition for relief under the Bankruptcy Code. Since the
18 Petition Date, the Debtor has continued in the possession of its properties and has managed its
19 business as Debtor in Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

20 **C. Significant Events During the Chapter 11 Case.**

21 **1. First Day Pleadings.**

22 Immediately after filing its chapter 11 petition, the Debtor began its transition to
23 operating as a Debtor in Possession. In order to facilitate that process, the Debtor filed certain
24 motions on an emergency basis (the "**Emergency Motions**"). By these Emergency Motions the

25 ¹ Development Specialists, Inc. ("DSI") is the trustee of the Creditors' Trust. DSI filed a claim in
26 the Chapter 11 Case on behalf of the Creditors' Trust.

27 ⁺ Pursuant to the Conservator's Plan of Reorganization, a trust was created for the benefit of the
28 holders of pre-Conservatorship Case claims against the Debtor (the "**Creditors' Trust**").
Development Specialists, Inc. ("DSI") is the trustee of the Creditors' Trust. DSI filed a claim in
the Chapter 11 Case on behalf of the Creditors' Trust.

1 Debtor sought authorization to pay pre-petition wages and continue to honor employee benefits,
2 maintain the Debtor's existing cash management system, establish procedures for adequate assurance
3 of utilities, and establish various administrative procedures. The Court granted each of the
4 Emergency Motions.

5 **2. Administrative Matters.**

6 The Debtor obtained Court approval to retain The BMC Group, Inc. ("**BMC**") as its
7 notice agent and proofs of claim agent. BMC provided notice of the Debtor's 341(a) meeting, which
8 took place on August 16, 2005. The Debtor timely filed its "7-Day" package with the Office of the
9 United States Trustee ("**OUST**"), and provided supplements, as needed. In July 2005, the Debtor
10 met with the OUST analyst to ensure that the Debtor's monthly operating reports ("**MOR's**") would
11 satisfy the OUST's requirements. Since the Petition Date, the Debtor has filed its MOR's on a
12 monthly basis, generally in a timely manner. On August 1, 2005, the Debtor filed its Schedules and
13 Statement of Financial Affairs (the "**Schedules**"), and on November 30, 2005 and December 22,
14 2005, the Debtor filed amendments to the Schedules.

15 **3. Appointment Of The Committee.**

16 On June 16, 2005, the OUST appointed the members of the Official Committee of
17 Creditors Holding Unsecured Claims (the "**Committee**"). The members of the Committee are:
18 (a) the University of Southern California Hospital; (b) St. Bernardine Medical Center; (c) Long
19 Beach Memorial Medical Center; (d) Centinela Hospital Medical Center; (e) Watts Healthcare
20 Corporation, Inc.; (f) La Vida Medical Group; (g) Good Samaritan Hospital; (h) LAC King/Drew
21 Medical Center; and (i) Development Specialists, Inc. The Committee selected Danning, Gill,
22 Diamond & Kollitz, LLP ("**DGDK**") as its counsel, and FTI Consulting, Inc. ("**FTI**") as its financial
23 advisor. The employment of DGDK and FTI were approved by orders of the Bankruptcy Court.

24 **4. MedImpact Contract.**

25 As of the Petition Date, the Debtor had outstanding obligations owing on account of
26 pharmaceutical benefits provided to members of the Debtor's health plans, which benefits are
27 administered through the Debtor's pre-petition contract with MedImpact Healthcare Systems, Inc.
28 ("**MedImpact**"). To avoid a potentially crippling disruption to the Debtor's operations, working

1 with MedImpact and the Committee, the Debtor obtained Court authority to pay its pre-petition
2 obligations owing to MedImpact.

3 **5. Workers' Compensation.**

4 As of the Petition Date, the Debtor's workers' compensation coverage included the
5 Workers' Compensation Self-Insured Program and an insured program. The Workers' Compensation
6 Self Insured Program is subject to regulation by the DIR, with whom the Debtor had posted the DIR
7 Deposit. The DIR Deposit is in the form of certificates of deposit issued by Wells Fargo and Bank
8 of America. At the commencement of the Chapter 11 Case, the Debtor was confronted with the
9 possibility that the DIR would cause the Self-Insurance Program to be taken over by the DIR or an
10 affiliated program, draw on the deposit, and seek to recover any deficiency from the Debtor. To
11 avoid this result, and ensure the continued orderly administration of the Workers' Compensation Self
12 Insured Program, the Debtor obtained Court authority to continue, in its discretion, to honor its
13 workers' compensation obligations in the ordinary course of business.

14 Because the vast majority of the Workers' Compensation Self Insured Program
15 claimants had no affiliation with the Debtor, other than having asserted claims under the program,
16 the Debtor determined that it would be in the best interests of the Estate to pursue a comprehensive
17 settlement with as many of these claimants as possible. In late 2005, the Debtor filed a motion
18 seeking approval for certain forms and procedures to be used in negotiating settlements with
19 Workers' Compensation Self Insured Program claimants. Prior to the hearing on this motion, the
20 DIR asserted various concerns regarding the forms and procedures proposed by the Debtor. The
21 Debtor successfully negotiated a resolution to some of these concerns, and obtained Court approval
22 for modified versions of the forms and procedures. The procedures generally provide for the Debtor
23 to provide notice to the Committee of a settlement reached with a Workers' Compensation Self
24 Insured Program claimant prior to seeking approval of such settlement under applicable state law.

25 **6. Employment Of Professionals.**

26 Shortly after the Petition Date, the Debtor filed applications to employ certain
27 professionals, including A&M as its restructuring financial advisor, Stutman, Treister & Glatt
28 Professional Corporation ("ST&G") as its reorganization counsel, Sidley Austin Brown & Wood,

1 LLP ("Sidley") as its special litigation counsel, and McDermott Will & Emery LLP ("MWE") as
2 its special healthcare counsel. The Bankruptcy Court granted each of these employment
3 applications.

4 **7. Operational Analysis And Modifications; Business**
5 **Plan Development.**

6 Prior to the Petition Date, the Debtor had commenced a number of initiatives to
7 improve its operational performance, including: (i) seeking to recover from its medical group
8 providers certain medical cost payments made by the Debtor that were the responsibility of the
9 providers; (ii) renegotiating the Debtor's contract with MedImpact; and (iii) assessing the Debtor's
10 Medicare premium rate and developing the database to increase the Debtor's Medicare premium.

11 Following the commencement of the Chapter 11 Case, with the assistance of A&M,
12 the Debtor defined and expanded its pre-petition initiatives, developed implementation programs,
13 assigned employee tasks and responsibility, and diligently worked to implement operational
14 changes. During the pendency of the Chapter 11 Case, the Debtor made substantial progress in this
15 regard, including (for example): (i) finalizing a new contract with MedImpact that built on Medicare
16 program changes initiated in January 2005; (ii) implementing an aggressive effort to collect the data
17 necessary to support a Medicare premium increase, which resulted in both retroactive adjustments,
18 and an increased premium going forward; (iii) undertaking a thorough analysis of its contracts,
19 developing a draft "medical services agreement" and a draft "hospital services agreement" and
20 commencing and in certain cases completing contract negotiations; and (iv) implementing changes
21 in its medical cost management procedures and claims review process to ensure that any improper
22 submissions are identified and that they are either not paid, or paid and subjected to appropriate
23 measures to recover payment from the responsible providers.

24 The Debtor's prepetition and post-petition operational improvement efforts focused
25 on both stabilizing the company's operations, and providing a baseline for determining whether the
26 company could pursue a stand-alone internal reorganization. Of critical importance to the Debtor's
27 efforts and analysis were improvement of the Debtor's medical loss ratio and stabilization of the
28 Debtor's member enrollment. Following the commencement of the Chapter 11 Case, the Debtor's

1 operational efforts started to translate into improved operating margins. However, as a result of the
2 commencement of the Chapter 11 Case, the Debtor suffered a decline in enrollment. As part of its
3 effort to stabilize and expand its enrollment, the Debtor initiated several marketing programs. In
4 addition, the Debtor successfully sought authority to offer a Medicare Part D Plan.

5 Starting around December 2005 the Debtor's member enrollment began to improve.
6 The improvement in the Debtor's operating margins and the stabilization in member enrollment
7 provided the Debtor's with a foundation to develop a business plan and compare the costs and
8 benefits of an internal reorganization with a sale of the company.

9 **8. The Debtor's Marketing Effort.**

10 In conjunction with its internal analysis of a stand-alone restructuring, the Debtor
11 determined in the first month of the Chapter 11 Case that it was important to consider alternatives to
12 an internally-driven restructuring, including a sale of one or more lines of business. The Debtor,
13 with assistance from ST&G and A&M, developed a form of confidentiality agreement, and created
14 an on-line due diligence room. In addition, the Debtor both responded to unsolicited expressions of
15 interest by engaging such parties in a dialogue, and reached out to those parties who, based on their
16 participation in the industry, likely would be qualified candidates to consider such a transaction.

17 The Debtor set September 30, 2005 as the initial deadline for the submission of
18 formal offers. After receiving multiple offers, the Debtor analyzed the offers received and provided
19 feedback to each of the interested parties. The Debtor set October 31, 2005 as a second deadline for
20 parties to submit new or revised offers. By early November 2005, the Debtor had received new or
21 revised offers from multiple parties. The Debtor and its professionals analyzed the additional offers
22 received and developed a uniform term sheet to respond to the interested parties. In response to the
23 term sheet, the Debtor received counter-offers from more than one party. The Debtor had
24 discussions with each party regarding its respective counter-offer, and subsequently prepared a
25 further revised term sheet to submit to such parties.

26 Ultimately, the Debtor focused its negotiations on two separate buyers. After
27 considerable negotiations, meetings, and due diligence, the Debtor selected Care 1st as the party
28 with the highest and best offer for the Debtor's lines of business. During February, 2006, the Debtor

1 reached agreement with Care 1st on the form of term sheet, and proceeded to negotiate the form of
2 an asset purchase agreement (the "APA") with Care 1st during March, 2006. In conjunction with
3 this effort, the Debtor engaged various of the governing regulators in discussions relating to a
4 potential sale to Care 1st.

5 **9. The Sale of the Debtor's Lines of Business.**

6 By the end of March/early April, 2006, each of the Debtor's dual reorganization
7 tracks (a sale transaction and a stand-alone business plan) had matured sufficiently for the Debtor to
8 make a decision regarding which restructuring path to pursue. In making this decision, the Debtor
9 focused primarily on its key goals: (1) arranging for quality health care to all of the Debtor's
10 members; (2) the Debtor's financial commitments and obligations to creditors, including the
11 hospitals, medical groups and other health care providers who have supported the Debtor and tended
12 to the needs of thousands of the Debtor's members; (3) protecting the interests of the Debtor's
13 employees; and (4) addressing the health care needs and contributing to the quality of life of the
14 underserved community that it is the Debtor's mission to serve. The Debtor also considered input
15 from the Committee, the Debtor's regulators, and the provider community.

16 On April 3, 2006, the Debtor's Board voted unanimously to approve the APA and to
17 reorganize the Debtor's business through a sale transaction. In making this decision, the Board
18 balanced the perceived risks and benefits of the stand-alone business plan against the perceived risks
19 and benefits of a sale. With respect to the stand-alone business plan, the Board identified the
20 following significant risks and hurdles: (i) the potential that the Debtor would be unable to meet the
21 cash and operating capital requirements necessary to emerge from chapter 11; (ii) the uncertainty as
22 to whether the Debtor would be able to meet revenue projections, given the relatively recent
23 Medicare enrollment increases and the continued Medi-Cal enrollment decline; (iii) the uncertainty
24 as to whether the Debtor would be able to sustain the apparent reduction in per-member medical
25 expenses, particularly given the largely incomplete status of the Debtor's efforts to re-contract with
26 its providers; (iv) the potential that the Debtor would not be able to obtain sufficient support from its
27 providers for the stand-alone business plan; (v) the likelihood that, given the Debtor's prior
28 bankruptcy and state court conservatorship, the Debtor's regulators would impose particularly

1 rigorous standards and requirements as a condition to the Debtor's continued operations; and (vi) the
2 strong preference for a sale transaction repeatedly expressed by the Committee. Thus, the Board
3 determined that the benefits of a stand-alone restructuring, such as continuity for employees and as
4 an HMO with a mission to serve the underserved community, were greatly offset by substantial
5 risks.

6 In contrast, the proposed sale transaction posed relatively few risks to offset its
7 substantial benefits. Care 1st is Knox-Keene licensed, community-based, and provider owned, and
8 has a history of arranging for health care for the underserved populations of Los Angeles County.
9 Care 1st operates a Medi-Cal line of business similar to that operated by the Debtor in California,
10 and a Medicare business in Arizona. The Debtor understood that Care 1st had, in place, a network
11 of health care providers in Los Angeles County which duplicated that of the Debtor by
12 approximately 90%. Thus, substantially all of the Debtor's members in Los Angeles County will be
13 able to continue using their same medical providers. In addition, Care 1st agreed to assume certain
14 of the Debtor's provider agreements, which will enable those additional providers to continue to
15 provide services based upon the terms of their agreement with the Debtor.

16 On April 24, 2006, the Debtor filed its motion ("**Sale Motion**") seeking approval of
17 the sale proposed under the APA (the "**Sale**"). The Sale Motion was approved at a hearing held on
18 June 7, 2006, the order approving the Sale was entered on June 19, ~~2006~~, 2006 (the "**Sale Order**"),
19 and the Sale closed on August 31, 2006. As a result of the closing of the Sale, Care 1st: (1) acquired
20 all of the Debtor's lines of business; (2) paid the Debtor at closing approximately \$11.8 million, and
21 deposited approximately \$10.2 million in escrows pursuant to which the Debtor anticipates receiving
22 additional funds, see Exhibit D (Sources and Uses); (3) assumed the financial responsibility for, and
23 the administrative cost of paying and processing, the Debtor's unpaid fee-for-service post-petition
24 medical claims (as a credit against the \$30 million purchase price); (4) assumed certain of the
25 Debtor's contracts; and (5) employed a number of the Debtor's qualified employees who applied for
26 employment with Care 1st.

27 Certain parties to the contracts assumed and assigned pursuant to the Sale Order
28 disputed the Cure Costs (as defined in the Sale Order) required for the Debtor to assume and assign

1 such contracts (as defined in the Sale Order, the "Modified Cure Costs Contracts"). The Debtor
2 has partially or fully resolved several such disputes and paid the Cure Costs so resolved. As of the
3 date hereof, the Cure Costs for certain Modified Cure Costs Contracts have not been resolved and
4 paid. Under the Plan, and consistent with the Sale Order, pending the resolution and payment of the
5 Cure Costs required for the Modified Cure Costs Contracts, if any, pursuant to the procedures set
6 forth in paragraph 16 of the Sale Order, the Debtor will not make any distributions to pre-petition
7 creditors that would impair the Debtor's ability to pay the full amount of Cure Costs asserted by the
8 parties to such Modified Cure Costs Contracts.

9 **10. Claims Processing Agreement.**

10 One of the key functions required in connection with the Debtor's business operations
11 is the processing and payment of fee-for-service medical claims asserted by the various physicians,
12 hospitals and other entities that provide healthcare services to the Debtor's members. As of the
13 commencement of the Debtor's case, the Debtor used a third-party claims processor to perform this
14 function. However, prior to the closing of the Sale, the Debtor's claims processor ceased operations,
15 forcing the Debtor either to find a new third-party claims processor, or to process its own claims
16 internally. In light of the Sale to Care 1st, the Debtor determined that the most efficient and
17 economical way to process and pay its claims through the date of the Sale closing was to transition
18 its claims processing function (and certain other services) to Care 1st. Accordingly, the Debtor and
19 Care 1st negotiated a Claims Agreement. The Debtor sought and obtained Bankruptcy Court
20 approval of the Claims Agreement.

21 **11. Employee Severance and Retention.**

22 Due to the inherent delay between the approval of the Sale and its closing, the Debtor
23 determined that it was critical to insure that it maintain its workforce. The Debtor's workforce was
24 necessary to ensuring that the business would continue to operate pending the Sale, and that the Sale
25 could be consummated. To enable the Debtor to retain employees who would, in large measure, lose
26 their jobs upon consummation of the Sale, the Debtor determined that it was necessary to enact a
27 retention program. In addition, the long-term tenure of many of the Debtor's employees, and the
28 highly specialized nature of the Debtor's business, suggested that many of the Debtor's rank-and-file

employees could face significant difficulty in finding comparable alternative employment opportunities.

In order to address these issues, the Debtor, with the assistance of its advisors, developed a comprehensive retention and severance plan (the "**Retention and Severance Plan**"). The Retention And Severance Plan consists of two levels of benefits, one of which was available to all employees of the Debtor who were actively employed as of April 10, 2006, and the other that was available only to specific employees of the Debtor who (i) were actively employed as of April 10, 2006, and (ii) who were specifically identified as "key" to the Debtor's restructuring and transition process. In general, the Retention and Severance Plan offered four types of benefits: (i) a severance payment; (ii) the pay out of accrued unused sick leave; (iii) full vesting of company-funded pension benefits; and (iv) professional outplacement services.

##

##

The Debtor sought and obtained Bankruptcy Court approval of its Retention and Severance Plan. As of the date hereof, the actual payments made and the estimated payments remaining under the Retention Severance Plan are as follows:

	Amount Paid As of 12/31/06	Estimated Payments Remaining	TOTAL
Severance	\$ 2,698,491	\$ 433,379	\$ 3,131,870
Outplacement	200,000	-	200,000
Sick Leave	435,516	45,682	481,198
Pension Vest	350,000	-	350,000
	<u>\$ 3,684,007</u>	<u>\$ 479,061</u>	<u>\$ 4,163,068</u>

12. Rejection of Union Contract.

As of the Petition Date, certain of the Debtor's employees were members of the the Hotel and Services Employees Union, Local 399 SEIU, AFL-CIO (the "**Union**"). Following the Debtor's decision to pursue the Sale, the Debtor entered into negotiations with the Union regarding the termination of the employment of the Debtor's Union employees as of the Sale closing. These negotiations resulted in the Union's agreement to the Debtor's termination of its relationship with the

1 Union pursuant to section 1113 of the Bankruptcy Code, in return for the Debtor's agreement to
2 allow the Union employees to participate in the Retention and Severance Plan. The Debtor obtained
3 Bankruptcy Court approval for the termination of its relationship with the Union.

4 **13. Claims Bar Date.**

5 Given the nature of the Claims asserted against the Debtor, the Debtor developed and
6 obtained Bankruptcy Court approval for a general bar date and a comprehensive set of procedures
7 for filing and processing proofs of claim. In particular, the Debtor designed, with input from the
8 Committee, a set of forms and procedures intended to streamline the proof of claim process for
9 Creditors who will assert fee-for-service medical claims. Because the resolution of Claims will
10 require the parties to reference, exchange and analyze confidential patient information, the Debtor
11 proposed certain protections to prevent such information from becoming available to the public.

12 On November 16, 2005, the Bankruptcy Court approved the Debtor's motion seeking
13 approval for the bar date and related procedures and fixed a general claims bar date of January 31,
14 2006. The Debtor's claims agent mailed notice of the bar date on November 30, 2005. Shortly
15 thereafter, the Debtor filed amendments to certain portions of its Schedules, which amendments
16 primarily reflected updated information regarding fee-for-service medical claims. The Debtor
17 subsequently prepared and served a supplemental bar date notice to ensure that the information
18 provided to Creditors clearly reflected the Debtor's amended Schedules.

19 Over 2,000 Claims were filed on or before the bar date. Subsequent to the bar date,
20 over 200 additional Claims have been filed. Based upon the Debtor's Schedules and the timely filed
21 and late filed proofs of claim, a total of approximately 2400 Claims aggregating approximately
22 ~~\$69.375~~[70.75] million currently are pending against the Estate.² The Debtor believes that a number
23 of the asserted Claims are duplicates, have been amended, superceded or previously resolved, or are
24 subject to objection. The Debtor assembled a bankruptcy claims resolution team with expertise in
25 reviewing and resolving medical claims, and developed a non-litigation process for compiling,
26 reviewing, and negotiating Claims. While the Debtor's review and negotiation of Claims is ongoing,

27 ² This amount includes approximately \$6.4 million in Claims asserted by parties for whom a
28 dispute regarding unpaid Cure Costs has not yet been resolved.

1 the Debtor has resolved or identified for objection various Claims. A summary of the Claims
2 asserted against the Debtor is set forth in **Exhibit D**.

3 **14. Settlement Procedures and Claim Distribution Motion.**

4 To facilitate the resolution of Claims, on September 22, 2006, the Debtor filed a
5 motion seeking: (i) approval for certain procedures to provide notice and obtain Court approval of
6 settled Claims; and (ii) authority to make a 50% interim distribution to holders of allowed general
7 unsecured Claims. The proposed procedures for settled Claims provide a streamlined and efficient
8 notice and approval process for Claims that the Debtor settles. By the procedures, the Debtor sought
9 to avoid the inefficiency and added cost of filing individual settlement motions. By the interim
10 distribution, the Debtor sought to implement a means for distributing cash to holders of undisputed
11 Claims in the near term, and to incentivize holders of disputed Claims to negotiate settlements with
12 the Debtor. The Committee filed a limited objection to the motion, supporting the proposed
13 settlement procedures, but objecting to the proposed interim distribution. The Court overruled the
14 Committee's objection and granted the Debtor's motion. On or about December 18, 2006, the Debtor
15 made its first interim 50% distribution in the amount of approximately \$1.25 million.

16 **15. Exclusivity Extensions.**

17 The Debtor's initial exclusive period to file a plan of reorganization and solicit
18 acceptances of its plan of reorganization were set to expire on January 31, 2006 and April 3, 2006,
19 respectively. The Debtor and the Committee negotiated a series of consensual extensions of the
20 Debtor's exclusive periods to file and solicit acceptances of a plan of reorganization. The Debtor
21 filed the Plan on December 15, 2006, within its exclusive period to do so. The Disclosure Statement
22 similarly has been filed on or before the Debtor's deadline to do so. The Debtor's exclusive period to
23 solicit acceptance of the Plan will expire on February 12, currently extends through March 29, 2007,
24 unless and will automatically be further extended: through May 15, 2007 if the Disclosure Statement
25 is approved on or before March 15, 2007.

26 **16. Interim Fee Procedures.**

27 On July 29, 2005, the Debtor filed a motion seeking approval for certain procedures
28 for interim compensation and reimbursement of fees and expenses of Professional Persons. In

1 particular, the proposed procedures provided that, upon filing and serving a monthly professional
2 statement and absent timely objection, without further order of the Court a Professional Person shall
3 be entitled to payment from the Debtor in the amount of eighty percent (80%) of the compensation
4 and one hundred percent (100%) of the expense reimbursement requested in such statement. The
5 Court approved the motion, and Professional Persons have filed fee statements and received monthly
6 interim payments throughout the course of the Chapter 11 Case.

7 **17. Building Sale.**

8 As of the Petition Date, the Debtor's health plan operations, including over 150
9 employees, were housed in a headquarters building occupying over 60,000 square feet located at
10 3405 W. Imperial Highway, Inglewood, California (the "**Headquarters Building**"). The Debtor has
11 continued to occupy the Headquarters Building throughout the pendency of the Bankruptcy Case.
12 The Debtor is the fee owner of the Headquarters Building, and the real property upon which it is
13 located (the "**Property**").

14 Following the Sale, the Debtor no longer required a building of the Headquarters
15 Building's size to house its remaining staff. Moreover, the Debtor understood that the Property has
16 significant sale value, particularly to a party who would occupy the premises for its own use. In
17 furtherance of and in conjunction with the Plan, the Debtor engaged Cushman & Wakefield of
18 California, Inc. ("**C&W**") as the Debtor's real estate broker for the marketing and sale of the Debtor's
19 former headquarters property and building located at Property pursuant to the "Exclusive Listing
20 Agreement: Sale Transaction" between the Debtor and C&W dated September 13, 2006. On
21 September 22, 2006, the Debtor filed an application to employ C&W as its real estate broker, which
22 application was approved by order of the Court entered on October 23, 2006.

23 C&W combined its knowledge and expertise regarding the Los Angeles real estate
24 market with extensive research to identify (1) the use of the Property that would most likely generate
25 the highest and best purchase price, and (2) the potentially interested parties who would be
26 motivated to make a strong offer and proceed to closing at such a price. Through this process, C&W
27 determined that a party purchasing the Property in order to use the Headquarters Building for its own
28

1 purposes (an "owner/user") would be most likely to pay the highest and best price for the Property,
2 and that such a party likely could be willing to pay up to \$6 million (or more) for the Property.

3 Accordingly, in September 2006, C&W commenced a wide-reaching marketing
4 campaign for the Property at a minimum offer price of \$5.7 million. C&W emailed fliers regarding
5 the property to 2,185 commercial real estate professionals. In addition, C&W agents personally
6 contacted several hundred parties likely to be interested in the Property, including potential
7 owner/users and developers. Additionally, C&W agents posted the offering in the CoStar and
8 LoopNet multiple listing services and to over 1,000 C&W agents through its CWWeb system.

9 In response to these marketing efforts, during October and November 2006, C&W
10 received 10 offers, 6 of which were at or above the minimum offer price of \$5.7 million. Following
11 the receipt of these offers, C&W contacted the offerors and solicited a highest and best offer from
12 each. In response, one of the offerors withdrew its offer and the four offerors with offers below the
13 minimum offer price declined to raise their offer to the minimum offer price. Of the remaining five
14 offers, one was at the minimum offer price of \$5.7 million, and the other four ranged from \$5.8
15 million to \$6.3 million.

16 Among the parties who submitted offers on the Property, the Debtor identified
17 Today's Fresh Start, Inc. ("TFS") as the party most likely to proceed to closing on a sale of the
18 Property at the agreed price, in part because TFS would be an owner/user of the Property (as
19 opposed to a developer) and because TFS already has in place its funding for the purchase price. In
20 addition, the \$6.35 million purchase price offered by TFS exceeded any other offer received by the
21 Debtor.

22 On December 20, 2006, the Debtor and TFS entered into an Asset Purchase
23 Agreement (the "**TFS APA**") that provides for TFS to purchase the Property from the Debtor for a
24 purchase price of \$6,350,000.00, ~~potentially subject to a downward price adjustment contingency~~
25 ~~based upon the appraised value of the Property. The that has since been satisfied. On January 5,~~
26 ~~2007, the Debtor filed a motion seeking approval of the TFS APA on January 5, 2007, (the "**TFS**~~
27 ~~**Motion**") which motion is was set for hearing on January 31, 2007. The Court granted the Motion~~
28 ~~without a hearing and entered an order approving the sale of the Property to TFS on February 16,~~

2007. The sale of the Property is expressly contemplated by the Plan as a component of the means of implementation. The closing of the sale contemplated by the TFS APA is subject to DMHC approval and certain other conditions set forth therein. The Debtor anticipates that, if the conditions to closing are satisfied, the sale of the Building to TFS will close in the spring or early summer of 2007.

III.

FINANCIAL INFORMATION

A. Current and Historical Financial Information.

1. The Debtor's Assets and Liabilities.

The Schedules contain information regarding the Debtor's assets and liabilities as of the Petition Date. Attached hereto as **Exhibit A** are (a) the Debtor's Balance Sheet as of the Petition Date, and (b) the Debtor's most recent Balance Sheet (dated as of **[December 31, 2006]**). The Debtor's historical financial statements are on file with the DMHC and can be viewed at <http://www.dmhc.ca.gov/>.

2. Results of Post-Petition Operations and Wind-down.

From the Petition Date through the closing of the Sale, the Debtor operated its HMO lines of business. From the closing the Sale through the date of this Disclosure Statement, the Debtor has continued to wind-down its former operations as an HMO, which has involved, among other things, (a) collecting Medicare risk-score adjustments, (b) collecting pharmacy rebates, (c) reducing workers' compensation obligations, and (d) collecting other accounts receivable. The following summarizes the Debtor's quarterly unaudited results of operations and wind-down for each quarter from the Petition Date through November 2006:

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Q1

Q2

Q3

Q4

Q5

Q6

	6/1/05 - 8/30/05	9/1/05 - 11/30/05	12/1/05 - 2/28/06	3/1/06 - 5/31/06	6/1/06 - 8/30/06	9/1/06 - 11/30/06
Enrollment Revenue	\$ 46,485,506	\$ 40,727,679	\$ 41,833,330	\$ 42,866,165	\$ 41,212,458	\$ 4,134,353
Total Revenue	46,711,000	41,060,311	42,266,843	43,323,611	41,879,982	4,702,923
Healthcare Expenses	37,870,454	32,443,601	33,775,216	34,963,968	34,378,771	(674,644)
General Expenses	6,650,717	7,429,556	7,915,082	9,412,591	10,110,927	3,427,655
Total Expenses	\$ 44,521,170	\$ 39,873,157	\$ 41,690,298	\$ 44,376,558	\$ 44,489,699	\$ 2,753,011
Net Income²³	\$ 2,189,829	\$ 1,187,154	\$ 576,545	\$ (1,052,947)	\$ (2,609,716)	\$ 1,949,912

More detailed historical financial information can be obtained from the public reports filed by the Debtor with the DMHC, which can be accessed via the Internet at <http://www.dmhc.ca.gov/>.

B. Projected Pre-Effective Date Cash Flow and Post-Confirmation Expenses.

1. Projected Pre-Effective Date Cash Flow.

From the current month through the Effective Date, the Debtor anticipates that it will continue to wind-down its former operations as an HMO. The following summarizes the Debtor's current monthly unaudited projections for the current month through the estimated Effective Date in May 2007:

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Jan-07

Feb-07

Mar-07

Apr-07

²³ Excluding gain on sale.

Receipts

Recoveries	-	400,000	50,000	-
Asset Liquidation		1,720,000	-	60,000
		\$		
		4,240,000	2,12	\$
Total Receipts	\$	-	0,000	100,000
			50,000	120,000

Expenses

General	\$	417,500	\$	637,500	\$	352,500	\$	310,000
Severance (Including Taxes & Benefits)		170,000		133,000		105,000		45,000
Professional Fees		330,000		330,000		330,000		590,000
								\$
				\$	967,500	1,		\$
Total Expenses	\$	917,500	100,500		682,500	787,500	0	900,000
								945,00
								\$
					\$		\$	\$
					3,272,500	1,01	(582,500)	737,50
Net Cash Flow	\$	(917,500)	9,500		0)			(780,000)
								885,0

2. Projected Post-Confirmation Expenses.

Following the Effective Date, the Debtor will continue to wind-down its HMO operations and resolve and pay Claims pursuant to the Plan. Pursuant to the Plan, the Debtor will pay for all Post-Confirmation Expenses that are not inconsistent with certain Post-Confirmation Budgets or as approved by the Bankruptcy Court. The Debtor will file the Initial Post-Confirmation Expense Budget with the Plan Supplement. The Initial Post-Confirmation Expense Budget will cover the first eighteen (18) months following the Effective Date. The Debtor will prepare additional Post-Confirmation Budgets as needed, pursuant to the terms of the Plan. **Exhibit F** attached hereto contains a preliminary summary of the Initial Post-Confirmation Expense Budget.

C. Disclaimer.

THE FINANCIAL INFORMATION INCLUDED OR REFERENCED IN THIS DISCLOSURE STATEMENT, INCLUDING ALL EXHIBITS HERETO, HAS BEEN PREPARED BY OR UNDER THE SUPERVISION OF DEBTOR'S MANAGEMENT AND HAS NOT BEEN REVIEWED BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

1 OR PREPARED IN COMPLIANCE WITH PUBLISHED GUIDELINES OF THE
2 AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS REGARDING
3 PROJECTIONS OR IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
4 PRINCIPLES. MOREOVER, SUBSTANTIAL UNCERTAINTIES ARE INVOLVED IN
5 THE PROJECTIONS.

6 THE ACTUAL ASSETS AND LIABILITIES OF THE ESTATE AS OF THE
7 EFFECTIVE DATE MAY VARY MATERIALLY FROM THE PROJECTIONS
8 CONTAINED HEREIN, BASED UPON, AMONG OTHER THINGS: (1) EVENTS
9 OCCURRING BEFORE THE EFFECTIVE DATE; (2) INACCURACIES IN THE
10 ASSUMPTIONS UNDERLYING THE PROJECTIONS; (3) CHANGES IN THE
11 ESTIMATED PRO FORMA ADJUSTMENTS WHICH HAVE BEEN ESTIMATED BASED
12 UPON THE BEST INFORMATION CURRENTLY AVAILABLE TO MANAGEMENT BUT
13 WHICH MAY CHANGE WITH THE PASSAGE OF TIME AND THE ACCUMULATION
14 OF ADDITIONAL AND MORE COMPLETE INFORMATION; AND (4) OTHER
15 FACTORS BEYOND THE DEBTOR'S CONTROL. IN ADDITION, THIS DISCLOSURE
16 STATEMENT ASSUMES AN EFFECTIVE DATE OF [May __, 2007]. AN EFFECTIVE
17 DATE MATERIALLY DIFFERENT FROM THIS DATE COULD SUBSTANTIALLY
18 AFFECT THE PROJECTIONS.

19 Readers are urged to review carefully any notes accompanying any financial
20 information contained or referenced in this Disclosure Statement, which notes form an integral part
21 thereof. Notes required under GAAP have not been included. Further, the reader should read the
22 disclaimer regarding forward-looking statements set forth in **Section I.E.3** (*Forward Looking*
23 *Statements.*) .

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3 IV.

4 SUMMARY OF THE PLAN.

5 THE PLAN IS ATTACHED HERETO AS EXHIBIT A AND FORMS A PART OF THIS
6 DISCLOSURE STATEMENT. THE DISCUSSION OF THE PLAN HEREIN
7 CONSTITUTES A SUMMARY ONLY, AND SHOULD NOT BE RELIED UPON FOR
8 VOTING PURPOSES. YOU ARE URGED TO READ THE PLAN IN FULL IN
9 EVALUATING WHETHER TO ACCEPT OR REJECT THE PLAN PROPOSED BY THE
10 DEBTOR. IF ANY INCONSISTENCY EXISTS BETWEEN THIS SUMMARY AND THE
11 PLAN, THE TERMS OF THE PLAN SHALL CONTROL.

12
13 A. Overview.

14 The Plan is the product of considerable effort on the part of the Debtor and its
15 professionals, with review and input from the Committee. The Plan envisions the Debtor using its
16 assets to satisfy Claims as provided for in the Plan and to fund the Debtor's Post-Confirmation
17 Expenses, with any surplus to be used by the Reorganized Debtor in accordance with the Amended
18 Articles of Incorporation and Amended By-Laws and applicable non-bankruptcy law.

19 The Debtor believes that through the Plan: (1) holders of impaired Claims will obtain
20 an earlier and greater recovery on their Claims under the Plan than if the Debtor's assets were
21 liquidated under chapter 7 of the Bankruptcy Code or if any other feasible alternatives were pursued;
22 and (2) the value of the Plan Assets will be maximized by allowing the Debtor to implement the
23 Plan.

24 THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE MOST
25 FEASIBLE METHOD TO OBTAIN THE HIGHEST AND BEST RECOVERIES FOR THE
26 HOLDERS OF IMPAIRED CLAIMS AND THAT ACCEPTANCE OF THE PLAN IS IN
27
28

1 THE BEST INTERESTS OF SUCH HOLDERS. THE DEBTOR THEREFORE
2 RECOMMENDS THAT HOLDERS OF IMPAIRED CLAIMS ACCEPT THE PLAN.

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5 **B. CLASSIFICATION AND TREATMENT OF CLAIMS.**

6 A DETAILED CHART SETTING FORTH THE CLASSIFIED AND
7 UNCLASSIFIED CATEGORIES OF CLAIMS UNDER THE PLAN, THE PROPOSED
8 TREATMENT UNDER THE PLAN OF EACH CATEGORY OF CLAIMS, THE
9 PROJECTED RECOVERY UNDER THE PLAN FOR EACH CATEGORY OF CLAIMS,
10 AND WHETHER THE HOLDER OF A CLAIM IN A CATEGORY IS ENTITLED TO
11 VOTE, IS SET FORTH AT THE OUTSET OF THIS DISCLOSURE STATEMENT. See § I
12 (*"SUMMARY OF PLAN CLASSIFICATION AND TREATMENT"*). Articles II and III of the Plan
13 contains the specific terms and conditions that will govern the treatment of Claims under the Plan.

14 **1. Unclassified Claims.**

15 Pursuant to the Bankruptcy Code, certain types of Claims are not placed into voting
16 classes; instead they are unclassified. Unclassified Claims are not considered impaired, and they are
17 not entitled to vote on the Plan because they automatically are entitled to specific treatment provided
18 for them in the Bankruptcy Code. Under the Plan, Administrative Expense Claims, Priority Tax
19 Claims and Claims described in 507(a)(3) of the Bankruptcy Code are not classified. The treatment
20 of unclassified Claims is set forth in Article II of the Plan and summarized below.

21 **a. Administrative Expense Claims.**

22 Except to the extent that the holder of an Allowed Administrative Expense Claim
23 agrees to a different treatment, the Reorganized Debtor will pay to each holder of an Allowed
24 Administrative Expense Claim Cash in an amount equal to such Allowed Administrative Expense
25 Claim on the later of the Effective Date and the date such Administrative Expense Claim becomes an
26 Allowed Administrative Expense Claim, or as soon thereafter as is practicable; provided, however,

1 that all Ordinary Course Administrative Expenses⁴ may be paid by the Reorganized Debtor in the
2 ordinary course of business in accordance with the terms and conditions of any agreement relating
3 thereto without further order of the Bankruptcy Court.

4 The Debtor currently is aware of potential liabilities that could give rise to
5 Administrative Expense Claims in the amount of approximately \$570,000. See Exhibit C (Sources
6 and Uses).

7 **Interest:** The Plan provides that the amount of any Allowed Administrative Expense
8 Claim will not include interest on such Administrative Expense Claim accruing from and after the
9 Petition Date, unless either: (a) the timely Filed request for payment of such Administrative Expense
10 Claim specifically sets forth the amount of any such interest that the holder of such Administrative
11 Expense Claim contends to be owing, and the basis upon which this contention is based, and (i) the
12 Debtor does not File an objection to such request on or before the applicable Administrative Claims
13 Bar Date, or (ii) the Debtor and the holder of such Administrative Expense Claim agree on the
14 amount of such interest owing; or (b) the Bankruptcy Court so provides in a Final Order.

15 **General Administrative Claims Bar Date:** Requests for payment of Administrative
16 Expense Claims (other than Ordinary Course Administrative Claims) must be Filed and served on
17 the Reorganized Debtor and counsel to the Plan Committee, pursuant to procedures to be specified in
18 the Confirmation Order and the notice of entry of the Confirmation Order, no later than 30 days after
19 the Effective Date (the "**General Administrative Claims Bar Date**"); provided, however, that the
20 General Administrative Claims Bar Date may be extended from time to time upon the mutual
21 agreement of the Reorganized Debtor and the applicable holder of an Administrative Expense Claim
22 or pursuant to an order of the Bankruptcy Court on notice to the Plan Committee.

23 **Professional Fee Claims Bar Date:** Professionals or other Persons asserting a
24 Professional Fee Claim for services rendered to the Estate before the Effective Date must File and
25 serve on Reorganized Debtor and such other Persons who are designated by the Bankruptcy Rules,
26 the Confirmation Order, or other order of the Bankruptcy Court an application for final allowance of

27 ⁴ Ordinary Course Administrative Expenses exclude Claims for healthcare services provided to the
28 Debtor's former members/

1 such Professional Fee Claim, as it relates to services provided to the Estate prior to the Effective
2 Date, no later than 60 days after the Effective Date (the "**Professional Fee Claims Bar Date**");
3 provided, however, that the Professional Fee Claims Bar Date may be extended from time to time
4 upon the mutual agreement of the Reorganized Debtor and the applicable Professional Person or
5 pursuant to an order of the Bankruptcy Court. Any Professional Person who may receive
6 compensation or reimbursement of expenses pursuant to the Non-bankruptcy Professionals Order
7 may continue to receive such compensation and reimbursement of expenses for services rendered
8 before the Effective Date from Reorganized Debtor, without further Bankruptcy Court review or
9 approval, in accordance with the terms and conditions of the Non-bankruptcy Professionals Order.

10 **Administrative Tax Claims Bar Date:** Any request for payment of an
11 Administrative Expense Claim asserted by a governmental unit for a tax Claim (an "**Administrative**
12 **Tax Claim**") must be Filed and served on the Reorganized Debtor, pursuant to the procedures
13 specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than
14 90 days after the Effective Date (the "**Administrative Tax Claims Bar Date**"), provided, however,
15 that the Administrative Tax Claim Bar Date may be extended from time to time upon the mutual
16 agreement of the Reorganized Debtor and the applicable governmental unit or pursuant to an order
17 of the Bankruptcy Court.

18 **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE**
19 **REQUIRED TO FILE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE**
20 **EXPENSE CLAIMS AND THAT DO NOT FILE SUCH A REQUEST BY THE**
21 **APPLICABLE ADMINISTRATIVE CLAIMS BAR DATE WILL BE FOREVER BARRED**
22 **FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE**
23 **DEBTOR OR REORGANIZED DEBTOR OR THEIR RESPECTIVE PROPERTY, AND**
24 **SUCH ADMINISTRATIVE EXPENSE CLAIMS WILL BE DEEMED DISCHARGED AS**
25 **OF THE EFFECTIVE DATE.**

26 **b. Priority Tax Claims.**

27 The Plan provides that the Allowed Priority Tax Claim held by any taxing authority
28 relating to any taxable year shall be the lesser of: (a) the Allowed Claim held by such Person; (b) the

1 estimated Claim amount held by such Person, if estimated by the Bankruptcy Court for purposes of
2 allowance; or (c) the amount of such Claim as determined by any administrative or judicial tribunal
3 of competent jurisdiction before which such issue is brought by Final Order or as compromised and
4 settled by the Reorganized Debtor and such taxing authority. In addition, notwithstanding any other
5 provision of the Plan to the contrary, payments in respect of Allowed Priority Tax Claims will not be
6 made on the Effective Date, but rather shall, at the sole option and discretion of Reorganized Debtor
7 be made (a) in full, in Cash, on the later of the Effective Date or the Date of Assessment, or, in each
8 case, as soon as practicable thereafter, (b) in accordance with section 1129(a)(9)(C) of the
9 Bankruptcy Code, in full, in Cash, in up to twenty-four (24) equal quarterly installments,
10 commencing on the first Business Day following the Date of Assessment of such Allowed Priority
11 Tax Claim, together with interest from the Date of Assessment at a rate of 3.32 percent, or (c) by
12 mutual agreement of the holder of such Allowed Priority Tax Claim and Reorganized Debtor.
13 Further, notwithstanding the provisions of Section 2.4 of the Plan, the holder of an Allowed Priority
14 Tax Claim shall not be entitled to receive any payment on account of any penalty arising with
15 respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any
16 such penalty shall be subject to treatment in Class 7, if not subordinated to Class 7 Claims pursuant
17 to an order of the Bankruptcy Court. The Plan prohibits the holder of an Allowed Priority Tax
18 Claim from assessing or attempting to collect any penalty arising with respect to or in consideration
19 with such Allowed Priority Tax Claim from the Debtor, Reorganized Debtor or their respective
20 property, but the Plan permits such holder to File timely a Claim for such penalty with respect to a
21 Tax Claim that arises prior to the Effective Date.

22 The Debtor currently is not aware of any Allowed Priority Tax Claims.

23 **2. Classified Claims.**

24 In accordance with the Bankruptcy Code, the Plan classifies Claims separately and
25 provides, separately for each Class, that holders of Claims in the Class will receive various types of
26 consideration, thereby giving effect to the different rights of the holders in each Class. The
27 treatment of each Class of Claims is set forth in Article III of the Plan and is summarized below.
28

1 **a. Class 1: Other Priority Claims.**

2 Under the Plan, except to the extent that the holder of any such Claim agrees
3 to a different treatment, each holder of an Allowed Other Priority Claim will receive on the later of
4 (a) the Effective Date; and (b) the date on which an order allowing such Claim becomes a Final
5 Order, and in each case or as soon thereafter as is practicable, in full satisfaction, discharge,
6 exchange and release of such Allowed Claim, Cash in the amount of (x) the Unpaid Principal
7 Amount of such Allowed Claim, plus (y) Post-Petition Interest on such Allowed Claim to the extent
8 payable as provided for in the Plan.

9 The Debtor currently is not aware of any Other Priority Claims.

10 **b. Class 2: Allowed Merrill Lynch Secured Claim.**

11 The Allowed Merrill Lynch Secured Claim will be allowed under the Plan in
12 (i) the principal amount of \$2,042,250.00, plus (ii) fifty percent (50%) of the unpaid non-default
13 interest accrued from the Petition Date to the Effective Date, plus (iii) reasonable out-of-pocket
14 attorneys' fees and expenses in an amount to be agreed to by the Debtor and Merrill Lynch, or as
15 determined by the Bankruptcy Court, but not to exceed in any event \$25,000. The Allowed Merrill
16 Lynch Secured Claim will be satisfied under the Plan in full by the payment of Cash to Merrill
17 Lynch on the Effective Date equal to the amount of the Allowed Merrill Lynch Secured Claim. As
18 of the Effective Date, all property of the Estate that is the subject of any Liens or Claims in favor of
19 Merrill Lynch will vest in the Reorganized Debtor free and clear of all Claims and Liens of Merrill
20 Lynch, such Claims and Liens will be automatically terminated and of no further force and effect,
21 and the Reorganized Debtor will have free and clear title to such property of the Estate.

22 **c. Class 3: Allowed Secured Property Tax Claims.**

23 Under the Plan, except to the extent that the holder of any such Claim agrees
24 to a different treatment, each holder of an Allowed Secured Property Tax Claim will receive in full
25 satisfaction, discharge, exchange and release of such Allowed Claim, one of the following
26 alternative treatments, as determined by the Reorganized Debtor in its sole and absolute discretion:
27 (a) Cash in the amount of such Allowed Claim, on the later of: (i) the Effective Date; and (ii) the
28 date on which an order allowing such Claim becomes a Final Order, and in each case or as soon

1 thereafter as is practicable; (b) deferred Cash payments (a "**Deferred Secured Tax Claim**
2 **Payment**"), over a period six years after the Effective Date, with simple interest accruing at 3.32
3 percent per annum from and after the Effective Date until the Allowed Secured Property Tax Claim
4 is paid in full. The Deferred Secured Tax Claim Payment will be paid in equal installments of
5 principal, with the first of such installments to be made three months after the later of (i) the
6 Effective Date; and (ii) the date on which an order allowing such Claim becomes a Final Order, and
7 in each case, or as soon thereafter as is practicable, and with each successive installment to be made
8 at three month intervals thereafter. An Allowed Secured Property Tax Claim may be prepaid at any
9 time without penalty or premium, and any such prepayments shall be applied to future principal
10 installments in order of maturity. Allowed Secured Property Tax Claims will not include any
11 interest accruing subsequent to the Petition Date or any penalties, and all post-petition interest and
12 all penalties will be disallowed.

13 ##

14 ##

15 The Debtor currently is not aware of any Allowed Security Property Tax
16 Claims.

17 **d. Class 4: DIR Secured Claims.**

18 Except to the extent that the holder of the DIR Secured Claims agrees to a
19 different treatment, the Plan leaves unaltered any legal, equitable, and contractual rights of the
20 holder of the DIR Secured Claims in and to the DIR Deposit; provided, however, that from and after
21 the Effective Date: (a) any recourse of the DIR for such Claims shall be limited solely to the DIR
22 Deposit; (b) the DIR will have no recourse to the Plan Assets, the Plan Reserves, the Effective Date
23 Reserve, the Debtor, or the Reorganized Debtor, for any Claim; and (c) nothing in the Plan will
24 affect or impair the Debtor's rights under applicable law to seek or obtain a refund of some or all of
25 the DIR Deposit.

26 **e. Class 5: United Bank Secured Claim.**

27 United Bank filed a Claim in the amount of approximately \$112,320, which it
28 asserts is secured by a recorded Lien on the Lumpkin Property. Except to the extent that the holder

1 of the United Bank Secured Claim agrees to a different treatment, pursuant to section 1124(2) of the
2 Bankruptcy Code, under the Plan the Allowed United Bank Secured Claim will be unimpaired. On
3 the Effective Date: (i) any defaults with respect to the Allowed United Bank Secured Claim that
4 occurred either before or after the Petition Date, other than defaults of a kind specified in section
5 365(b)(2) of the Bankruptcy Code, will be cured on the later of: (a) Effective Date; or (b) the date of
6 a Final Order determining the cure payment, and in each case or as soon as practicable thereafter;
7 (ii) the maturity of the Allowed United Bank Secured Claim will be reinstated as it existed under the
8 applicable loan documents relating to the Allowed United Bank Secured Claim before any defaults;
9 (iii) the holder of the Allowed United Bank Secured Claim will be compensated on the later of: (a)
10 Effective Date; or (b) the date of a Final Order determining the cure payment, and in each case or as
11 soon as practicable thereafter, for any damages incurred as a result of any reasonable reliance by
12 such holder on any contractual provision or applicable law that entitled the holder to accelerate
13 maturity of the Allowed United Bank Secured Claim; and (iv) the other legal, equitable, and
14 contractual rights of the holder of the Allowed United Bank Secured Claim will be unaltered.

15 **f. Class 6: Other Secured Claims.**

16 Under the Plan, except to the extent that the holder of any such Claim agrees
17 to a different treatment, each holder of an Allowed Other Secured Claim will receive in full
18 satisfaction, discharge, exchange and release of such Allowed Secured Claim, one of the following
19 alternative treatments, as determined by the Reorganized Debtor in its sole and absolute discretion:
20 (a) Cash in the amount of such Allowed Secured Claim, on the later of: (i) the Effective Date; and
21 (ii) the date on which an order allowing such Claim becomes a Final Order, and in each case or as
22 soon thereafter as is practicable; (b) deferred Cash payments (a "**Deferred Other Secured Claim**
23 **Payment**"), over a period six years after the Effective Date, with simple interest accruing at 3.32
24 percent per annum from and after the Effective Date until the Allowed Other Secured Claim is paid
25 in full, with the Deferred Other Secured Claim Payment being paid in equal installments of
26 principal, with the first of such installments to be made three months after the later of (i) the
27 Effective Date; and (ii) the date on which an order allowing such Claim becomes a Final Order, and
28 in each case, or as soon thereafter as is practicable, and with each successive installment to be made

1 at three month intervals thereafter; or (c) a cure and reinstatement of the maturity of the Allowed
2 Other Secured Claim by: (i) curing any defaults with respect to an Allowed Other Secured Claim
3 that occurred either before or after the Petition Date, other than defaults of a kind specified in section
4 365(b)(2) of the Bankruptcy Code, on the later of: (a) Effective Date; or (b) the date of a Final Order
5 determining the cure payment, and in each case or as soon as practicable thereafter; (ii) reinstating
6 the maturity of each such Claim as the maturity existed before any defaults; (iii) compensating the
7 holder of each such Claim on the later of: (a) Effective Date; or (b) the date of a Final Order
8 determining the cure payment, and in each case or as soon as practicable thereafter, for any damages
9 incurred as a result of any reasonable reliance by such holder on any contractual provision or
10 applicable law that entitled the holder to accelerate maturity of the Claim; and (iv) otherwise leaving
11 unaltered the other legal, equitable, and contractual rights of the holder of such Allowed Other
12 Secured Claim.

13 The Debtor currently is not aware of any Allowed Other Secured Claims.

14 **g. Class 7: Allowed General Unsecured Claims.**

15 Under the Plan, except to the extent that the holder of any such Claim agrees
16 to a different treatment, each holder of an Allowed General Unsecured Claim will receive, in full
17 satisfaction, discharge, exchange and release of such Claim, a Pro Rata Distribution from the Net
18 Proceeds of the Available Plan Assets of Cash in an amount up to, but not exceeding, (a) the Unpaid
19 Principal Amount of such Holders' Allowed General Unsecured Claim, plus (b) Post-Petition
20 Interest on such Allowed Claim to the extent payable as provided for in the Plan. Distributions to
21 Holders of Class 7 Allowed General Unsecured Claims will be made at such time, and in such
22 manner, as is provided for in Section 6.4 of the Plan, which is summarized in § IV(C)(6) of this
23 Disclosure Statement.

24 **h. Class 8: Allowed Convenience Class Claims.**

25 Under the Plan, except to the extent that the holder of any such Claim(s)
26 agrees to a different treatment, each holder of an Allowed Convenience Class Claim will receive on
27 the Effective Date or as soon as practicable thereafter, in full satisfaction, discharge, exchange and
28 release of such Claim, Cash in the amount of (a) the Unpaid Principal Amount of such Holders'

1 Allowed Convenience Class Claim, plus (b) Post-Petition Interest on such Allowed Claim to the
2 extent payable as provided for in the Plan.

3 **C. Means Of Implementation.**

4 The implementation of the Plan will be accomplished via numerous actions,
5 transactions and processes. The following summarizes certain of the Plan's provisions for its
6 implementation.

7 **1. Conditions Precedent**

8 The Plan provides that it will not become effective unless each of the following
9 conditions has occurred or been waived by the Debtor in its sole and absolute discretion:

- 10 (a) The Confirmation Order shall have been entered on the docket of the
11 Bankruptcy Court for at least ten days (as calculated in accordance
12 with Bankruptcy Rule 9006(a)); and
13 (b) The Effective Date Reserve and the Plan Reserves shall be established
14 and funded.

15 **2. Effective Date.**

16 The Effective Date will be the later of the first Business Day on which no stay of the
17 Confirmation Order is and remains in effect and which is at least one Business Day after the date on
18 which all conditions to effectiveness of the Plan have been satisfied or waived. As soon as
19 practicable after the Effective Date has occurred, the Debtor shall File with the Bankruptcy Court an
20 informational notice specifying the Effective Date, as a matter of record.

21 **3. Reserves.**

22 On the Effective Date, or as soon thereafter as is practicable, the Debtor will establish
23 with Plan Assets, in one or more accounts, the Plan Reserves, which will consist of: (i) a reserve (the
24 "**Administrative Expense Claim Reserve**"), on account of, and for the benefit of holders of,
25 Disputed Administrative Expense Claims, in an amount reasonably estimated by the Disbursing
26 Agent, or as approved by the Bankruptcy Court; (ii) a reserve(s) (the "**Disputed Claim Reserve**"),
27 on account of, and for the benefit of holders of, Disputed Claims, equal to the aggregate Pro-Rata
28 amount that would be distributed to the holders of all such Disputed Claims at the time of any initial

1 or subsequent Distribution to holders of Allowed Claims in the same Class if such Disputed Claims
2 were allowed in the amounts set forth in the Claims filed by, or listed in the Schedules with respect
3 to, such holders; (iii) a reserve (the "**Post Confirmation Expense Reserve**") on account of, and for
4 the benefit of, the Reorganized Debtor, to pay the Post Confirmation Expenses; and (iv) a reserve to
5 fund the Distributions to holders of Allowed Claims to be paid as of the Effective Date under the
6 Plan (the "**Effective Date Reserve**"). All Distributions after the Effective Date under the Plan shall
7 be made by the Disbursing Agent from the Plan Reserves, except as otherwise required to be made
8 from the Effective Date Reserve as set forth in Section 6.3.1 of the Plan. Pursuant to the Plan, any
9 funds remaining in the Plan Reserves after payment of (or reserve for) all Distributions to be made
10 under the Plan after the Effective Date will be deemed to be Plan Assets.

11 **a. Effective Date Reserve.**

12 All Distributions on the Effective Date under the Plan shall be made by the
13 Disbursing Agent from the Effective Date Reserve, except as otherwise required to be made from the
14 Plan Reserves as set forth in Section 5.1 of the Plan. Pursuant to the Plan, any funds in the Effective
15 Date Reserve remaining after payment of (or reserve for) all Distributions to holders of Allowed
16 Claims to be paid on the Effective Date will be deemed to be Plan Assets.

17 ##

18 ##

19 **b. Post-Confirmation Expense Reserve.**

20 The Post Confirmation Expense Reserve will be used by the Reorganized
21 Debtor, and the Plan authorizes the Reorganized Debtor to use the Post-Confirmation Expense
22 Reserve, in its sole and absolute discretion, to pay for all Post Confirmation Expenses that are not
23 inconsistent with the applicable Post-Confirmation Budget. The Reorganized Debtor shall, in its
24 sole and absolute discretion, use Plan Assets to increase the Post Confirmation Expense Reserve as
25 may be required for the payment of Post-Confirmation Expenses that are not inconsistent with the
26 applicable Post-Confirmation Budget. At such time as all Distributions contemplated by the Plan are
27 made, and the Plan is substantially consummated and the Chapter 11 Case is closed, any then
28 remaining funds in the Post-Confirmation Expense Reserve or the Plan Reserves, and any then

1 Remaining Plan Assets, shall be vest in, and shall be, property of the Reorganized Debtor and
2 immediately distributed to the Reorganized Debtor, free and clear of any and all Claim, Lien, or
3 Right of Action.

4 **c. Other Reserves.**

5 The Administrative Expense Claim Reserve, the Disputed Claim Reserve, and
6 the Post Confirmation Expense Reserve will be held in trust for the benefit of the respective holders
7 of such Disputed Administrative Expense Claims, Disputed Claims, and the Reorganized Debtor, as
8 their respective interests may appear, pending determination of their respective entitlement thereto or
9 as provided for in the Plan; provided, however, any funds therein remaining after payment of (or
10 reserve for) the Distributions to be made under the Plan for which such reserves were established
11 will be Plan Assets. No reserve will be required for any Disputed Claim or Disputed Administrative
12 Expense Claims to the extent of any effective insurance coverage therefore.

13 The Administrative Expense Claim Reserve and the Disputed Claim Reserve
14 will be distributed in accordance with the Plan by the Disbursing Agent to the holder of any
15 Disputed Administrative Expense Claim or Disputed Claim at such time and to the extent that such
16 Disputed Administrative Expense Claim or Disputed Claim becomes an Allowed Administrative
17 Expense Claim or an Allowed Claim pursuant to a Final Order. To the extent that such a Disputed
18 Administrative Expense Claim or Disputed Claim ultimately is disallowed or allowed in an amount
19 less than the amount of the Disputed Administrative Expense Claim or Disputed Claim, any funds
20 remaining in the Administrative Expense Claim Reserve or Disputed Claim Reserve after payment
21 or (or reserve for) the Distributions to be under the Plan for which such reserves were established
22 will be Plan Assets.

23 The Disputed Claim Reserve will be maintained by the Disbursing Agent in
24 interest-bearing accounts. The pro-rata amount of any interest earned on the portion of funds
25 deposited in the Disputed Claim Reserve that is used to fund a Distribution will be paid to the
26 party(ies) to whom such Distribution is made, and the pro-rata amount of any interest earned on any
27 portion of the funds deposited in the Disputed Claim Reserve that is remaining after all Distributions
28 under the Plan are made will be vested in, and will be property of, the Reorganized Debtor and

1 immediately distributed to the Reorganized Debtor, free and clear of any and all Claim, Lien, or
2 Right of Action.

3 Unless the Bankruptcy Court orders otherwise, the Disputed Claims Reserve
4 will be deemed to be fully funded at such time as the aggregate cash value thereof is equal to the
5 aggregate amount of the maximum Distribution to which all holders of Disputed Claims would be
6 entitled if all such Disputed Claims were allowed in the full amount set forth in the Claims Filed by
7 such holders. Nothing in the Plan will limit the relief that the Debtor may seek nor that the
8 Bankruptcy Court may grant regarding the amount of any Plan Reserve or portion thereof, and the
9 Debtor expressly reserves all rights with respect thereto. Any funds remaining in the Plan Reserves
10 after payment of (or fully-funded reserve for) all Distributions to be made under the Plan after the
11 Effective Date will be deemed to be Remaining Plan Assets.

12 **4. Resolution of Claims.**

13 **a. Generally**

14 As of the Effective Date, the Reorganized Debtor will have sole authority for
15 investigating, administering, monitoring, implementing, litigating and settling all Disputed or
16 unresolved Claims and Administrative Expense Claims. From and after the Effective Date, the
17 Reorganized Debtor will have the sole and exclusive right to make and file, and to prosecute and
18 settle, objections to Claims and to Administrative Expense Claims; provided, however, that: (a) the
19 Plan Committee will have the right to object to any Disputed Claim for which (i) the Plan
20 Committee has requested the Reorganized Debtor to file an objection, and (ii) the Reorganized
21 Debtor has not filed an objection as of the applicable Claim objection deadline; and (b) nothing in
22 the Plan will preclude the Plan Committee from seeking, nor the Reorganized Debtor from opposing,
23 an order of the Bankruptcy Court granting to the Plan Committee the authority to prosecute
24 counterclaims on behalf of the Estate. Any Claim objection or notice of Claim settlement will be
25 served upon the counsel for the Plan Committee and the holder of the Claim or Administrative
26 Expense Claim to which the objection is made or with which the settlement is reached.

1 **b. Claim Objection Deadline.**

2 The deadline for the Reorganized Debtor to object to Priority Tax Claims and
3 Claims in Classes ~~4, 3, 6~~ other than Classes 5 and 8 will be the latest of (a) 120 days after the
4 Effective Date, (b) such other date(s) as the Bankruptcy Court may order subsequent to the Effective
5 Date, and (c) such other date(s) as the Reorganized Debtor and the holder of any such Claim may
6 agree.

7 **c. Reservation of Rights.**

8 **The Debtor has not completed, and does not intend to complete prior to**
9 **Confirmation, a comprehensive review or analysis of facts or theories of law which might give**
10 **rise to an objection to any particular Claim, including, without limitation, potential rights of**
11 **recoupment, setoff, counterclaim, subordination or affirmative recovery. Pursuant to sections**
12 **6.5.6 and 10.11 of the Plan, any such rights are expressly preserved for the benefit of, and**
13 **revested in, the Reorganized Debtor as Estate Causes of Action. The Reorganized Debtor's**
14 **rights with respect to the Estate Causes of Action are more particularly described in**
15 **§ V(F)(7(a) herein.**

16 **5. Post-Confirmation Expense Budgets.**

17 The Debtor will File the Initial Post-Confirmation Expense Budget with the
18 Plan Supplement. The Initial Post-Confirmation Expense Budget will cover the first 18 months
19 following the Effective Date. Not less than 60 days prior to the expiration of Current Budget
20 Expiration Date, the Reorganized Debtor will serve on the Plan Committee and its counsel, if any, a
21 Post-Confirmation Budget covering a period extending not less than six months from the Current
22 Budget Expiration Date. The Debtor or the Reorganized Debtor, as applicable, may amend any
23 Post-Confirmation Expense Budget by serving an amended budget on the Committee or the Plan
24 Committee, as applicable.

25 **6. Distributions.**

26 **a. Effective Date Distributions**

27 On or as soon as practicable after the Effective Date, the Disbursing Agent
28 shall cause to be made in accordance with the Plan (i) the payments to holders of Allowed Claims

described in Section 507(a)(2), 507(a)(3) and 507(a)(8) and holders of Allowed Claims in Classes 1, 2, 3, 4, 5, 6 and 8, and (ii) the Initial Class 7 Distribution to be made to holders of Allowed Claims in Class 7.

b. Post-Effective Date Distributions.

The Reorganized Debtor will make interim Pro Rata Distributions to holders of Allowed Claims in Class 7 (and into the Disputed Claims Reserve for Claims in Class 7 that are Disputed Claims) whenever Three Million Dollars (\$3,000,000) or more of Available Plan Assets is available for Distribution to holders of Allowed Class 7 General Unsecured Claims, or such other amount as agreed to by the Reorganized Debtor and the Plan Committee; provided, however, that the Reorganized Debtor may cause there to be made Pro Rata Distribution on Allowed Class 7 General Unsecured Claims even if Net Proceeds available for such Distributions are less than Three Million Dollars (\$3,000,000) if required to make the final payment on account of such Allowed Claims that may be required to comply with the treatment of Class 7 under the Plan.

Periodically, until the Disputed Claims Reserve for holders of Disputed Class 7 General Unsecured Claims has been fully disbursed or released, the Reorganized Debtor will recalculate the Distributions due the holders of Allowed Class 7 General Unsecured Claims, taking into account the resolution of such Disputed Claims. Surplus property in the Disputed Claims Reserve for holders of Disputed Class 7 General Unsecured Claims as is not necessary to pay either holders of Allowed Claims who have failed to claim their Distributions or holders of Disputed Claims whose Claims have been disallowed by a Final Order or withdrawn, in whole or in part, will first be made available to fund (i) Pro Rata Distributions to the holders of Allowed Claims in Class 7 in accordance with the Plan, and (ii) reserves for Pro Rata Distributions to the holders of the remaining Disputed Claims in Class 7 based on the assumption that said Disputed Claims will be allowed in full, unless otherwise ordered by the Bankruptcy Court ~~shall estimate that a smaller reserve is sufficient.~~

c. Disputed Claims.

If a Disputed Class 7 General Unsecured Claim becomes an Allowed Claim in whole or in part, then within twenty-one (21) days following the allowance of such Claim by Final

1 Order (or within such extended period, as may be provided by the Plan) or by agreement as provided
2 in the Plan, the Reorganized Debtor will distribute to the holder of such Allowed Claim, out of the
3 Disputed Claims Reserve for such Class, an amount equal to (i) the Pro Rata Distribution that
4 Claimant would have received on or about the Effective Date if such Disputed Class 7 General
5 Unsecured Claim had been an Allowed Claim as of the Effective Date, plus any (ii) Pro Rata
6 Distribution(s) that Claimant would have received subsequent to the Effective Date if such Disputed
7 Class 7 General Unsecured Claim had been an Allowed Claim as of the Effective Date.

8 **d. Distributions to Claims Covered by Insurance.**

9 Any Allowed Claim which has available as a source of payment either an
10 insurance policy issued to the Debtor or the Reorganized Debtor or in which the Debtor, the
11 Reorganized Debtor or the Estate has any rights as named insured or beneficiary, including but not
12 limited to general liability, workers compensation, and automobile insurance, will receive
13 Distributions pursuant to Section 6.6 of the Plan.

14 **e. Distribution of Post-Petition Interest to Holders Of Allowed**
15 **Claims in Class 7.**

16 **NO PAYMENT OF POST-PETITION INTEREST WILL BE MADE TO**
17 **ANY HOLDER OF AN ALLOWED CLASS 7 GENERAL UNSECURED CLAIM UNLESS**
18 **AND UNTIL THE UNPAID PRINCIPAL AMOUNT OF ALL ALLOWED CLASS 7**
19 **CLAIMS HAS EITHER BEEN (A) PAID, OR (B) RESERVED FOR.**

20 **f. No Distributions To Non-Filing Parties.**

21 Pursuant to Bankruptcy Rule 3003(c)(2), (a) no distribution, under the Plan or
22 otherwise, shall be made to any Non-Filing Party, and (b) any and all Claims of all Non-Filing
23 Parties shall be disallowed.

24 **g. Setoffs**

25 The Reorganized Debtor may, but will not be required to, set off against any
26 Claim, and the payments to be made pursuant to the Plan in respect of such Claim, any Right of
27 Action whatsoever the Debtor, the Reorganized Debtor or Estate may have against the holder of such
28 Claim, including, without limitation, any Estate Causes of Action, but neither the failure to do so nor

1 the allowance of any Claim under the Plan will constitute a waiver or release by the Debtor, the
2 Reorganized Debtor or the Estate of any such claim the Debtor, the Reorganized Debtor or the Estate
3 may have against such holder.

4 **h. Disbursing Agent.**

5 All Cash distributions on account of Allowed Claims will be made by the
6 Disbursing Agent from the Plan Assets (including, without limitation, the Plan Reserves or the
7 Effective Date Reserve as specified in Sections 5.1 and 6.3.1 of the Plan). Any payment of Cash
8 made by the Disbursing Agent pursuant to the Plan may be made either by check drawn on a
9 domestic bank or by wire transfer from a domestic bank, at the option of the Disbursing Agent. Any
10 distribution under the Plan of property other than Cash shall be made by the Disbursing Agent in
11 accordance with the terms of the Plan.

12 The Reorganized Debtor may serve as the Disbursing Agent and the
13 Disbursing Agent may serve without a bond. Except as otherwise set forth in the Plan, the
14 Disbursing Agent will make all distributions of Cash and property pursuant to the Plan on the
15 Effective Date or as soon thereafter as is practicable; provided, however, (i) no distributions will be
16 made on a Claim unless it is an Allowed Claim or in the case of a Disputed Claim an order of the
17 Bankruptcy Court has been entered estimating the Claim for purposes of distribution; and
18 (ii) distributions on Allowed Claims may be delayed as a result of, or the allowance or estimation of,
19 Disputed Claims, or the expiration of time for filing a proof of Claim.

20 **i. Delivery Of Distributions.**

21 For purposes of all notices and Distributions under the Plan, the Reorganized
22 Debtor and the Disbursing Agent shall be entitled to rely on the name and address of the holder of
23 each Claim as specified by, and Distributions to holders of Claims shall be made by regular U.S. first
24 class mail to, the following addresses: (1) the address set forth on the respective Filed proof of
25 Claim of such holder; (2) the address set forth in any written notice of address change delivered by
26 the holder to the Reorganized Debtor or the Disbursing Agent after the date of any related Filed
27 proof of Claim, or (3) the address reflected on the Schedules if no proof of Claim is Filed and the
28 Disbursing Agent or Reorganized Debtor has not received a written notice of a change of address.

1 The Reorganized Debtor and the Disbursing Agent shall be under no duty to attempt to locate
2 holders of Allowed Claims who are entitled to unclaimed Distributions. The date of delivery shall
3 be the date an item is provided to the United States Postal Service for delivery by first class mail.

4 **j. Record Date for Distributions.**

5 On the Confirmation Date, there shall be no further changes in the holders of
6 record of Claims. The Disbursing Agent shall not recognize any transfer of Claims occurring after
7 the Confirmation Date, but shall instead be entitled to recognize and deal for all purposes with only
8 those holders of record stated on the applicable transfer ledgers on the docket of Claims for the
9 Chapter 11 Case as of the Confirmation Date.

10 **k. Other Provisions re: Distributions.**

11 Except as otherwise provided in the Plan, any Distribution under the Plan
12 which is unclaimed after one year following the final Distribution will be deemed property of the
13 Reorganized Debtor. A Distribution shall be delivered as provided for in Section 6.5.12 of the Plan.

14 No Cash payment of less than ten dollars (\$10.00) shall be made by the
15 Disbursing Agent to any holder of a Claim.

16 Unless as otherwise specifically provided for in the Plan, the Distributions
17 provided for holders of Allowed Claims under the Plan shall be allocated in full satisfaction and
18 substitution of the Principal Amount of such Claims, exclusive of accrued interest from and after the
19 Petition Date.

20 If any payment or act under the Plan is required to be made or performed on a
21 date that is not a Business Day, then the making of such payment or the performance of such act may
22 be completed on the next succeeding Business Day, but shall be deemed to have been completed as
23 of the required date.

24 **7. Plan Assets.**

25 **a. Generally.**

26 The Plan Assets will remain property of the Estate following the Effective
27 Date. On and after the Effective Date, the Reorganized Debtor may operate its business, and may
28 use, acquire and dispose of property and compromise or settle any Claims, without supervision or

1 approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the
2 Bankruptcy Rules, other than restrictions expressly imposed by the Plan or the Confirmation Order.
3 The Reorganized Debtor may use (and compensate) its own employees or employ or contract with
4 (and pay) other Persons to assist in or perform the management of the Plan Assets, the
5 implementation of the Plan and the Distributions under the Plan, without further order or approval of
6 the Bankruptcy Court. Decisions made and actions taken by the Reorganized Debtor and the
7 Reorganized Debtor Representatives shall be conclusive and binding upon the Estate, the Debtor, the
8 Reorganized Debtor, and the holders of Claims.

9 Plan Assets that consist of Cash, including, without limitation, Cash held in
10 the Plan Reserves and the Effective Date Reserve, will be invested by the Disbursing Agent in
11 interest-bearing certificates of deposit and interest-bearing accounts to be established in one or more
12 depository banks which have qualified to hold deposits of bankruptcy estates. All interest earned on
13 such Cash will be deemed Plan Assets.

14 To the extent that the Plan Assets include property that is not Cash, the
15 Reorganized Debtor will have the authority under the Plan, in its sole and absolute discretion,
16 without further order of the Bankruptcy Court, or any notice to any Person, to liquidate such
17 Property at such time and on such terms to the extent reasonably practicable; provided, however, that
18 the Reorganized Debtor is required provide written notice to the Plan Committee of the proposed
19 disposition of any non-Cash Plan Asset with a value in excess of \$100,000, and the Committee will
20 have the opportunity to be heard in the Bankruptcy Court regarding any such proposed disposition
21 on not less than fifteen (15) days' notice to the Reorganized Debtor and its counsel.

22 Notwithstanding the foregoing, the sale of the Property has previously been approved by the
23 Bankruptcy Court, and as such (i) the Property (and any proceeds thereof) will, as applicable, be
24 Plan Assets, and (ii) the sale of the Property will not require any further Bankruptcy Court approval.
25 The sale of the Property expressly is made in contemplation and furtherance of the Plan, the sale of
26 the Property being a necessary step in liquidating the Plan Assets to be distributed to Creditors or
27 used by the Reorganized Debtors as Remaining Plan Assets.

1 **b. Exculpation.**

2 To the maximum extent permitted by law, the Reorganized Debtor and its
3 employees, officers, directors, agents, members, representatives, or professionals employed or
4 retained by the Reorganized Debtor (the "Reorganized Debtor's Representatives") shall not
5 have or incur liability to any Person for an act taken or omission made in good faith in
6 connection with or related to the administration of the Plan Assets, the implementation of the
7 Plan and the Distributions made thereunder. The Reorganized Debtor and the Reorganized
8 Debtor Representatives shall in all respects be entitled to reasonably rely on the advice of
9 counsel with respect to its duties and responsibilities under the Plan. Entry of the
10 Confirmation Order constitutes a judicial determination that the exculpation provision
11 contained in this Section is necessary to, *inter alia*, facilitate Confirmation and feasibility and
12 to minimize potential claims arising after the Effective Date for indemnity, reimbursement or
13 contribution from the Reorganized Debtor or the Plan Assets. The Confirmation Order's
14 approval of the Plan also constitutes a res judicata determination of the matters included in
15 the exculpation provisions of the Plan.

16 **8. Post-Confirmation Board of Directors and Management.**

17 From and after the Effective Date, the members of the Board of Directors of the
18 Debtor as of the Effective Date will serve as the Reorganized Debtor's Board of Directors, subject to
19 the terms and conditions of the Articles of Incorporation, the By-Laws and applicable law. The
20 remaining officers of the Debtor as of the Effective Date will be the officers of the Reorganized
21 Debtor and will continue to be employed, in accordance with the terms and conditions of their
22 respective employment agreements (if any) and other terms previously approved by the Bankruptcy
23 Court, subject to amendment or modification by agreement between the Reorganized Debtor and the
24 respective executives.

25 **9. Issuance And Execution Of Plan Related Documents; Corporate Action.**

26 On the Effective Date, all actions contemplated by the Plan will be deemed
27 authorized and approved in all respects (subject to the provisions of the Plan), including, without
28 limitation, the following: (a) the adoption and the filing with the appropriate Secretary of State of

1 the Articles of Incorporation and By-Laws, as amended if so required; and (b) the execution and the
2 delivery of, and the performance under, all documents and agreements contemplated by or relating to
3 the Plan. The Reorganized Debtor will be authorized to take all corporate actions, and make all
4 filings, as necessary and appropriate to effectuate the Plan. All matters provided for under the Plan
5 involving the corporate structure of the Reorganized Debtor and any corporate action required by the
6 Reorganized Debtor in connection with the Plan will be deemed to have occurred and shall be in
7 effect pursuant to the Bankruptcy Code, without any requirement of further action by the directors of
8 the Reorganized Debtor. On the Effective Date, the appropriate officers of the Reorganized Debtor
9 are authorized and directed to execute and to deliver the agreements, documents and instruments
10 contemplated by the Plan in the name and on behalf of the Reorganized Debtor.

11 **10. Transfer Taxes.**

12 Pursuant to section 1146(c) of the Bankruptcy Code and Section 5.1 of the Plan, the
13 sale by the Debtor or the Reorganized Debtor of Plan Assets, including the Property and the
14 Lumpkin Property, shall not be taxable under any law imposing a stamp tax, recording tax, transfer
15 tax or similar tax.

16 **11. Post-Confirmation Employment Of Professionals.**

17 The Reorganized Debtor will be authorized to employ, without Bankruptcy Court
18 approval, such persons, including Professional Persons, as it may deem necessary to enable them to
19 perform the functions under the Plan, and the costs of such employment and other expenditures
20 arising from and after the Effective Date will be paid by the Reorganized Debtor from Plan Assets
21 without approval of the Bankruptcy Court.

22 **12. Retention of Jurisdiction.**

23 ~~The~~Section 10.1 of the Plan provides for the retention by the Bankruptcy Court of
24 jurisdiction over, inter alia, the Chapter 11 Case and ~~certain related matters as specified in Section~~
25 ~~10.1 of the Plan.~~ any proceeding related to the Chapter 11 Case, to the fullest extent permitted by
26 the Bankruptcy Code and other applicable law.

1 **13. Prosecution Of Estate Causes Of Action.**

2 Pursuant to the Confirmation Order, on the Effective Date, all Estate Causes of
3 Action will be Plan Assets and the Reorganized Debtor shall have the full power and authority to
4 prosecute, compromise or otherwise resolve any and all such Estate Causes of Action, with all
5 recoveries derived therefrom to be Plan Assets. Any and all fees, costs and expenses incurred in
6 respect of the prosecution of such Estate Causes of Action will be payable and paid from the Plan
7 Assets. As of the date of this Disclosure Statement, the Debtor has not identified any specific Estate
8 Cause of Action and is not specifically aware of any Estate Cause of Action that might exist, other
9 than in connection with objections to proofs of claim.

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12 **14. Amendment or Revocation of the Plan.**

13 The Debtor may seek to amend or modify the Plan at any time prior to its
14 Confirmation in the manner provided by section 1127 of the Bankruptcy Code or as otherwise
15 permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code,
16 except as the Bankruptcy Court may otherwise order, and the Debtor reserves the right to amend the
17 terms of the Plan or waive any conditions to its Confirmation, effectiveness or consummation if the
18 Debtor determines that such amendments or waivers are necessary or desirable to confirm, effectuate
19 or consummate the Plan.

20 After confirmation of the Plan, the Debtor may apply to the Bankruptcy Court,
21 pursuant to section 1127 of the Bankruptcy Code, to modify the Plan. After confirmation of the
22 Plan, the Debtor may apply to remedy defects or omissions in the Plan or to reconcile
23 inconsistencies in the Plan.

24 **15. Closing of the Chapter 11 Case.**

25 When all Disputed Claims become Allowed Claims or have been disallowed and all
26 Distributions required under the Plan have been made in accordance with the terms of the Plan, the
27 Reorganized Debtor will seek from the Bankruptcy Court (with notice to those Persons on the Post-
28 Effective Date Limited Notice List) the entry of a final decree closing the Chapter 11 Case in

1 accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules
2 ("Final Decree"); provided, however, that the Reorganized Debtor may seek a Final Decree (with
3 notice to those Persons on the Post-Effective Date Limited Notice List) prior to such time.

4 ##

5 **D. Summary Of Certain Other Provisions Of The Plan.**

6 **1. Plan Committee.**

7 Prior to the Effective Date, the Committee will select the members of the Plan
8 Committee, subject to the provisions of Section 6.12 of the Plan. On or before the Effective Date,
9 the Committee will File and serve on the Debtor, the Debtor's counsel, and the Office of the United
10 States Trustee, a Plan Committee Notice. As of the Effective Date, the Plan Committee will be
11 deemed to be appointed. The Plan Committee will continue after the Effective Date and shall
12 exercise the rights and powers set forth in Section 6.12 of the Plan. The Committee shall terminate
13 and cease its existence as of the Effective Date.

14 **a. Composition.**

15 The Plan Committee will consist of no less than three (3) and no more than (5)
16 members, to be selected by the Committee in its sole discretion; provided, however, that (a) any
17 creditor whose pre-petition Claim has been paid in full will not be eligible to serve on the Plan
18 Committee, (b) the Debtor and/or the Reorganized Debtor, as applicable, will have the right to object
19 at any time on reasonable grounds to the composition of the Plan Committee by serving a Plan
20 Committee Objection on the Plan Committee and its counsel.

21 ~~Section 6.12 of the Plan contains provisions and procedures regarding (a) the~~
22 ~~replacement of members of the Plan Committee, (b) the removal of members of the Plan Committee,~~
23 ~~(c) the rights, powers and duties of the Plan Committee, (d) liability of the Plan Committee and its~~
24 ~~members, and (e) the employment and compensation of Plan Committee professionals.~~

25 **b. Powers and Duties.**

26 From and after the Effective Date through the date of its termination, the Plan
27 Committee will have the authority and power to: (i) monitor the Reorganized Debtor's
28 implementation of the Plan; (ii) receive the information as set forth herein and review the same with

1 the Reorganized Debtor; (iii) File a motion and seek relief in accordance with the Bankruptcy Code
2 and the Bankruptcy Rules from the Bankruptcy Court with respect to the Reorganized Debtor's
3 implementation of the Plan; (iv) review and object to Post-Confirmation Expense Budgets pursuant
4 to the procedures set forth in Section 5.3 of the Plan; (v) appear on any matter brought before the
5 Bankruptcy Court by any party other than the Plan Committee; (vi) subject to Section 5.1.5 of the
6 Plan, object to the Reorganized Debtor's disposition of Plan Assets; and (vii) subject to Section 5.2.1
7 of the Plan, object to the settlement of Claims.

8 **c. Exculpation**

9 **To the maximum extent permitted by law, the Plan Committee and its members,**
10 **representatives, or professionals employed or retained by the Plan Committee (the "Plan**
11 **Committee's Representatives") will not have or incur liability to any Person for an act taken**
12 **or omission made in good faith in connection with or related to any action taken or omitted by**
13 **it pursuant to the discretion, power, and authority conferred by the Plan or Bankruptcy Court**
14 **Orders. The Plan Committee and the Plan Committee Representatives shall in all respects be**
15 **entitled to reasonably rely on the advice of counsel with respect to its duties and**
16 **responsibilities under the Plan. Entry of the Confirmation Order will constitute a judicial**
17 **determination that the exculpation provision contained in Section 6.12.5(c) of the Plan is**
18 **necessary to, inter alia, facilitate Confirmation and feasibility and to minimize potential claims**
19 **arising after the Effective Date for indemnity, reimbursement or contribution from the**
20 **Reorganized Debtor or the Plan Assets. The Confirmation Order's approval of the Plan also**
21 **will constitute a res judicata determination of the matters included in the exculpation**
22 **provisions of the Plan. The Plan Committee will have no duties or obligations to the Estate or**
23 **the Reorganized Debtor except as set forth in the Plan and the Confirmation Order. Neither**
24 **the Reorganized Debtor nor any of its officers, directors, agents, attorneys, advisors,**
25 **consultants or representatives will be personally liable for the acts or omissions of the Plan**
26 **Committee or any Plan Committee member, any Person employed by the Plan Committee.**
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28

1 **d. Advice/Employment of Professionals and Compensation of**
2 **Professionals and Plan Committee Members.**

3 In the exercise or administration of any powers granted under the Plan, or in the
4 performance of any of the Plan Committee's duties and obligations in connection therewith, the Plan
5 Committee may consult with and act directly or through any professional. Neither the Plan
6 Committee nor its members will be liable for anything done, suffered or omitted in good faith in
7 accordance with the advice or opinion of any professional, so long as such advice or opinion pertains
8 to matters that the Plan Committee may reasonably presume to be within the scope of such
9 professional's expertise.

10 From time to time after the Effective Date, the Plan Committee may employ, engage
11 the services of, and compensate other Persons and professionals (which may, but need not, include
12 Professional Persons previously or currently employed in this Chapter 11 Case), reasonably
13 necessary to assist the Plan Committee in performing its duties under the Plan; provided, however,
14 that the Plan Committee may not retain professionals absent (a) consent by the Reorganized Debtor
15 (which shall not be unreasonably withheld), in which case the Plan Committee need not obtain
16 Bankruptcy Court approval of such retention, or (b) an order of the Bankruptcy Court, after notice to
17 those Persons on the Post-Effective Date Limited Notice List and a hearing; provided, further,
18 however, that the Plan Committee may retain any Professional Person currently employed in this
19 Chapter 11 Case without the consent of the Reorganized Debtor or approval of the Bankruptcy
20 Court.

21 Professionals retained by the Plan Committee in accordance with the procedures set
22 forth in Section 6.12.5(g) of the Plan, if any, will be entitled to payment by the Reorganized Debtor
23 of their post-Effective Date reasonable fees and reimbursement of reasonable expenses on a monthly
24 basis in arrears. Professionals will mail or deliver a detailed statement of unpaid fees and expenses
25 to the Reorganized Debtor and the Plan Committee and a summary statement to the other Persons on
26 the Post-Effective Date Limited Notice List. If there is no objection to the requested fees and
27 expenses within ten (10) calendar days of mailing of the detailed statement, the Reorganized Debtor
28 will promptly pay the requested amount in full. If any party objects to any portion of the fees or

1 expenses submitted by any Professional, the Reorganized Debtor will pay the undisputed portion of
2 such fees and expenses and shall reserve the amount of the disputed fees and expenses pending
3 resolution of such objection by (a) agreement between the party requesting such fees and expenses
4 and the disputing party, or (b) resolution of the disputed amount by the Bankruptcy Court pursuant
5 to a Final Order. Professionals shall not otherwise be required to File applications for Bankruptcy
6 Court approval of post-Effective Date fees and expenses.

7 Plan Committee members will serve without compensation, but will be entitled to
8 reimbursement of their reasonable and necessary out of pocket expenses. Plan Committee members
9 will submit a detailed invoice to the Reorganized Debtor, which invoice will be paid within thirty
10 (30) days of the submission thereof. If the Reorganized Debtor objects to a portion of the invoice,
11 the Reorganized Debtor will timely pay the undisputed portion of the invoice and shall reserve
12 monies in the amount of the disputed invoice pending resolution of the objection by (a) written
13 agreement between the member submitting the invoice and the Reorganized Debtor, or (b) resolution
14 of the disputed amount by the Bankruptcy Court pursuant to a Final Order.

15 **e. Indemnity.**

16 Neither the Plan Committee nor any Plan Committee member shall be liable to any
17 individual creditor, and shall be liable only to the Estate, for acts or omissions related to performance
18 of its duties for the Estate. Except as provided herein, the Plan Committee and its members shall be
19 defended, held harmless, and indemnified by the Estate against any and all losses, claims, costs,
20 expenses, and liabilities (including reasonable legal fees and expenses) asserted by any Person other
21 than the Estate and any costs of defending any action brought by any Person other than the Estate to
22 which the Plan Committee and its members may be subject by reason of its execution in good faith
23 of its duties under the Plan and the Confirmation Order and in a manner the Plan Committee
24 reasonably believes to be in the best interests of the Estate. This indemnity is intended to be and
25 shall be interpreted as providing indemnity to the fullest extent permissible under California law.

26 **f. Reporting.**

27 The Plan Committee will be entitled to receive from the Reorganized Debtor a
28 monthly report, delivered by the 15th calendar day after the end of each calendar quarter.

1 commencing with the end of the first calendar quarter in which the Effective Date falls, which
2 monthly report will include: (a) summary information regarding the remaining Plan Assets;
3 (b) summary information regarding actions taken to liquidate Plan Assets; (c) summary information
4 regarding Distributions made pursuant to the Plan, and (d) comparisons of actual expenditures to the
5 Post-Confirmation Budget. The frequency or content required with respect to the foregoing
6 reporting obligations may be modified by mutual agreement of the Reorganized Debtor and the Plan
7 Committee, or by order of the Bankruptcy Court. The Reorganized Debtor will be reasonably
8 available to address any questions of the Plan Committee.

9 **g. Termination.**

10 The Plan Committee will be dissolved and its members discharged upon the earliest
11 of (a) payment of the maximum Distribution to holders of Allowed Class 7 General Unsecured
12 Claims provided for in the Plan, ~~(b) entry of a Final Decree,~~ and ~~(eb)~~ such time as set forth in
13 Section 6.12.4(a) of the Plan.

14 **2. Executory Contracts And Unexpired Leases.**

15 Subject to the approval of the Bankruptcy Court, the Bankruptcy Code empowers the
16 debtor in possession to assume, assume and assign, or reject executory contracts and unexpired
17 leases. As a general matter, an "executory contract" is a contract under which material performance
18 (other than the payment of money) is due by each party. If an executory contract or unexpired lease
19 is rejected by the debtor in possession, the other party to the agreement may file a Claim for any
20 damages incurred by reason of the rejection. In the case of rejection of employment agreements and
21 leases of real property, such damage Claims are subject to certain limitations imposed by the
22 Bankruptcy Code. If an executory contract or unexpired lease is assumed, the debtor generally has
23 the obligation to perform its obligations thereunder in accordance with the terms of such agreement.
24 If an executory contract is assumed and assigned, the assignee generally has the obligation to
25 perform the obligations of the debtor thereunder in accordance with the terms of such agreement.

26 **a. Assumption or Rejection.**

27 Article VII of the Plan provides that entry of the Confirmation Order by the
28 Bankruptcy Court will constitute approval, pursuant to section 365(a) of the Bankruptcy Code, of the

1 Debtor's rejection or assumption of its executory contracts and unexpired leases as provided in the
2 Plan. Executory contracts and unexpired leases to be assumed and/or assumed and assigned
3 pursuant to the Plan and not subject to a prior or pending motion will be listed in Plan Schedule 7.1.
4 All executory contracts and unexpired leases which have not previously been rejected, which are not
5 specifically assumed, either pursuant to the Plan or by separate order in the Chapter 11 Case, or
6 which are not the subject of a motion to assume pending on the Effective Date are deemed rejected
7 pursuant to the Plan as of the Effective Date (or as of such earlier date as announced by the Debtor at
8 the Confirmation Hearing). Plan Schedule 7.5 contains a nonexclusive list of executory contracts
9 and unexpired leases to be rejected under the Plan.

10 **b. Cure Payments.**

11 Plan Schedule 7.1 specifies the Cure Payment amounts, if any, which the Debtor
12 believes are required to be paid on the Effective Date in accordance with sections 365(b)(1)(A) and
13 (B) of the Bankruptcy Code in connection with the assumption of the executory contracts and
14 unexpired leases listed therein. The procedures for parties to executory contracts to contest the Cure
15 Payment amount(s) set forth in Plan Schedule 7.1 are set forth in Article VII of the Plan. Failure to
16 comply with such procedures will result in the determination that the tender of the Cure Payment, as
17 specified in Plan Schedule 7.1, on the Effective Date, will provide cure and compensation for any
18 and all defaults and unpaid obligations under such assumed executory contract or unexpired lease,
19 and a determination that the proposed assumption is appropriate. Under the Plan, the Debtor
20 reserves the right to respond to any objection filed by any party to an executory contract or
21 unexpired lease and/or to reject any executory contract or unexpired lease or assume such contract or
22 unexpired lease by complying with section 365(b) of the Bankruptcy Code, if the other party to any
23 executory contract or unexpired lease establishes that the Cure Payment is greater than the amount
24 specified in Plan Schedule 7.1.

25 **c. Rejection Claims.**

26 All Allowed Claims arising from the rejection of executory contracts or unexpired
27 leases, whether under the Plan or by separate proceeding, will be treated as Class 7 Claims under the
28 Plan. The procedures for filing a Claim for rejection are set forth in Article VII of the Plan.

1 Pursuant to the Plan, failure to comply with such procedures will result in any such rejection Claim
2 being forever barred from assertion against the Debtor, the Estate, the Reorganized Debtor, and its
3 property.

4 **3. Indemnification Obligations.**

5 Except as otherwise specifically limited in the Plan, any obligations or rights of the
6 Debtor to defend, indemnify, reimburse, or limit the liability of the Covered Persons pursuant to the
7 Debtor's certificates of incorporation, by-laws, policy of providing employee indemnification,
8 applicable state law, or specific agreement in respect of any claims, demands, suits, causes of action,
9 or proceedings against such Covered Persons based upon any act or omission related to such
10 Covered Persons' service with, for, or on behalf of the Debtor prior to the Effective Date, will
11 survive confirmation of the Plan and remain unaffected thereby, shall not be discharged, irrespective
12 of whether such defense, indemnification, reimbursement, or limitation of liability is owed in
13 connection with an occurrence before or after the Petition Date, and shall be a Post Confirmation
14 Expense.

15 **4. Post Confirmation Notice.**

16 As of the Effective Date there will be a Post-Effective Date Limited Notice List.
17 Persons on such Post-Effective Date Limited Notice List will be given certain notices and in some
18 cases an opportunity to object to certain matters under the Plan (as described therein). Any Person
19 desiring to be included in the Post-Effective Date Limited Notice List must (a) File a request to be
20 included on the Post-Effective Date Limited Notice List and include thereon its name, contact
21 person, address, telephone number and facsimile number, within thirty (30) days after the Effective
22 Date, and (b) concurrently serve a copy of its request to be included on the Post-Effective Date
23 Limited Notice List on the Reorganized Debtor and the Committee. On or before sixty (60) days
24 after the Effective Date, the Reorganized Debtor shall compile a list of all Persons on the Post-
25 Effective Date Limited Notice List and File such list with the Bankruptcy Court, and serve copies of
26 such list on the Committee and the U.S. Trustee. The U.S. Trustee, members of the Plan Committee,
27 counsel to the Plan Committee and counsel to the Reorganized Debtor shall be automatically
28 included on the Post-Effective Date Limited List and need not File a request to be included thereon.

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1 **PERSONS CONCERNED WITH CONFIRMATION OF THE PLAN SHOULD CONSULT**
2 **WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN OF**
3 **REORGANIZATION IS VERY COMPLEX.**

4
5 **A. Overview.**

6 The following discussion is intended solely for the purpose of alerting readers about
7 basic confirmation issues. The Debtor **CANNOT** and **DOES NOT** represent that the discussion
8 contained below is a complete summary of the law on this topic.

9 In order for the Plan to be confirmed by the Bankruptcy Court, all of the applicable
10 requirements of section 1129 of the Bankruptcy Code must be met. These include, among others,
11 the requirements that the Plan: (i) is accepted by all impaired classes of Claims or, if rejected or
12 deemed rejected by an impaired class, "does not discriminate unfairly" and is "fair and equitable" as
13 to each rejecting class; (ii) is feasible; and (iii) is in the "best interest" of holders of Claims in each
14 class impaired under the Plan.

15 **B. Who May Vote or Object.**

16 **1. Who May Object to Confirmation of the Plan.**

17 Section 1128(b) of the Bankruptcy Code provides that any party in interest may
18 object to confirmation of the Plan. Objections must be made in writing, specifying in detail the
19 name and address of the person or entity objecting, the grounds for the objection, and the nature and
20 amount of the Claim held by the objector, and otherwise complying with the requirements of the
21 Bankruptcy Rules. Objections must be filed and served pursuant to, and in compliance with, the
22 Disclosure Statement Order in the manner set forth therein, on or before the time and date designated
23 in the Disclosure Statement Order as being the last date for serving and filing objections to
24 confirmation of the Plan. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY**
25 **SERVED AND FILED IN ACCORDANCE WITH THE DISCLOSURE STATEMENT**
26 **ORDER, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT. AS SET**
27 **FORTH IN THE DISCLOSURE STATEMENT ORDER, THE BANKRUPTCY COURT**
28 **MAY NOT CONSIDER ANY OBJECTIONS THAT ARE NOT TIMELY RAISED.**

1 **2. Who May Vote to Accept or Reject the Plan.**

2 **a. Person Who May Not Vote to Accept or Reject the Plan.**

3 The following Persons are **NOT** entitled to vote to accept or reject the Plan: (a) any
4 Person who filed a Proof of Claim as to which the dollar amount of such Claim, respectively, was
5 not specified in a fixed amount; (b) any Person holding either a Claim that is listed in the Schedules
6 and/or as to which a Proof of Claim has been Filed, as to which (i) the Debtor or any other party in
7 interest Files on or before March 9, 2007 a timely objection or request for estimation in accordance
8 with the Bankruptcy Code, the Bankruptcy Rules, and/or any order of the Bankruptcy Court,
9 (ii) such objection or request for estimation has not been withdrawn or determined by a Final Order
10 at or before the Confirmation Hearing, and (iii) no order of the Bankruptcy Court is entered after
11 notice and a hearing temporarily allowing such Claim for voting purposes under Bankruptcy Rule
12 3018(a); (c) any Person who does not File a proof of claim or interest prior to the Effective Date, and
13 for whom (i) the Schedules do not list a Claim or interest, or (i) for whom the Schedules list a Claim
14 or interest as disputed, contingent, or unliquidated; (d) any Person holding a Claim that has been
15 disallowed by order of the Bankruptcy Court; (e) any Person who holds a Claim that is not classified
16 under the Plan; and (f) Person who holds a Claim this is classified in Class 5 or Class 8 of the Plan.

17 **b. Persons Who May Vote to Accept or Reject the Plan.**

18 Except for those Persons identified in the preceding Section, any Person who holds a
19 Claim that is classified in an impaired Class has a right to vote to accept or reject the Plan. A class is
20 impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

21 The Plan divides the Allowed Claims of Creditors into eight **(8)** Classes. The Plan
22 does not have a Class of Interests because the Debtor is a not-for-profit tax exempt entity and, as
23 such, has no issued and outstanding equity securities. Classes 1, 2 , 3 , 4, 6, and 7 are impaired
24 under the Plan, and, subject to the foregoing, holders of Claims in these Classes are entitled to vote
25 to accept or reject the Plan. Class 5 and Class 8 are unimpaired under the Plan, and each holder of
26 an Allowed Claim in Class 5 or Class 8 is deemed to have accepted the Plan. Parties who dispute
27 the Debtor's characterization of their Claim as being impaired or unimpaired my file an objection to
28

1 the Plan contending that the Debtor has incorrectly characterized the applicable Class as being
2 impaired or unimpaired.

3 **3. Record Date for Voting.**

4 The record date for determining for voting is February 28, 2007 (the "**Voting Record**
5 **Date**"). A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing,
6 that an acceptance or rejection was not solicited or procured or made in good faith or in accordance
7 with the provisions of the Bankruptcy Code.

8 **4. Votes Necessary to Confirm the Plan.**

9 When there are impaired Classes under a Plan, the Court cannot confirm the Plan
10 unless (1) at least one impaired Class has accepted the Plan, without counting the votes of any
11 insiders within that class, and (2) all impaired Classes have voted to accept the Plan, unless the Plan
12 is eligible to be confirmed by "cramdown" on non-accepting classes, as discussed below in **Section**
13 **V.D** ("*Nonconsensual Confirmation.*").

14 **5. Votes Necessary for a Class to Accept the Plan.**

15 Each of the Voting Classes of Claims will be deemed to have accepted the Plan if the
16 Plan is accepted by holders of at least two-thirds in dollar amount and more than one-half in number
17 of the Claims of such Class (excluding certain Claims designated under section 1126(e) of the
18 Bankruptcy Code) that will have voted to accept or reject the Plan.

19 **FOR THE PURPOSES OF TALLYING THE NUMBER OF CLAIMS THAT**
20 **HAVE BEEN VOTED WITHIN ANY VOTING CLASS, BALLOTS SUBMITTED BY ANY**
21 **OF THE PERSON IDENTIFIED IN THE PRECEDING SECTION V.B.2.A WILL NOT BE**
22 **COUNTED.**

23 **6. Tabulation of Votes.**

24 [The amount of a Claim for voting purposes will be, as applicable: (i) the amount
25 listed on the Debtor's Schedules, if (A) the amount is listed as not contingent, unliquidated or
26 disputed, and (B) the creditor has not Filed a Proof of Claim; (ii) the fixed liquidated amount
27 set forth in a timely Filed Proof of Claim that is not subject to a pending objection or request
28 for estimation; (iii) the amount estimated for voting purposes by Final Order of the

1 **Bankruptcy Court; (iv) the amount set forth in a Final Order allowing the Claim; or (v) if**
2 **none of clauses (i)-(iv) apply, then \$0. The Debtor's failure to object to a particular amount set**
3 **forth in a Ballot does not prejudice the rights of the Debtor or any other party in interest from**
4 **objecting to the amount of such Claim.]**

5 Each healthcare provider that provided pre-petition services to the Debtor's
6 subscribers, members, or enrollees based on a single pre-petition contract with the Debtor shall be
7 deemed to have one Claim for voting purposes, regardless of either the number of Claims each such
8 healthcare provider may have filed or the number of separate patient services performed by such
9 health care provider.

10 If a creditor submits a Ballot that fails to designate whether the creditor accepts or
11 rejects the Plan, or that purports to elect both to accept and reject the Plan, such Ballot will be
12 counted as a vote in favor of acceptance of the Plan.

13 **7. Treatment of Nonaccepting Classes.**

14 The Debtor anticipates that one or more of the impaired Classes will vote to accept
15 the Plan. Even if one or more impaired Classes does not accept the Plan, the Court may nonetheless
16 confirm the Plan if the nonaccepting Classes are treated in the manner required by the Bankruptcy
17 Code. The process by which nonaccepting classes are forced to be bound by the terms of the Plan is
18 commonly referred to as "cramdown." The Bankruptcy Code allows the Plan to be "crammed
19 down" on nonaccepting classes of Claims or interests if it meets all consensual requirements except
20 the voting requirement of section 1129(a)(8) of the Bankruptcy Code, and if the Plan does not
21 "discriminate unfairly" and is "fair and equitable" toward each impaired class that has not voted to
22 accept the Plan as referred to Section 1129(b) of the Bankruptcy Code and applicable case law.

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

24 In the event of any rejection of the Plan by one or more of the impaired Classes, the
25 Debtor reserves the right to request that the Bankruptcy Court confirm the Plan in accordance with
26 section 1129(b) of the Bankruptcy Code.

1 **C. Confirmation Hearing.**

2 At the Confirmation Hearing, the Bankruptcy Court will determine, among other
3 things, whether the following confirmation requirements specified in section 1129 of the Bankruptcy
4 Code have been satisfied:

- 5 1. The Plan complies with the applicable provisions of the Bankruptcy Code.
- 6 2. The proponents of the Plan have complied with the applicable provisions of
7 the Bankruptcy Code.
- 8 3. The Plan has been proposed in good faith and not by any means proscribed by
9 law.
- 10 4. Any payment made or promised by the Debtor for services or for costs and
11 expenses in, or in connection with, the Chapter 11 Case, or in connection with
12 the Plan and incident to the Chapter 11 Case, has been disclosed to the
13 Bankruptcy Court, and any such payment made before the confirmation of the
14 Plan is reasonable or, if such payment is to be fixed after the confirmation of
15 the Plan, such payment is subject to the approval of the Bankruptcy Court as
16 reasonable.
- 17 5. The Debtor has disclosed the identity and affiliations of any individual
18 proposed to serve, after confirmation of the Plan, as a director or officer of the
19 Debtor, and the appointment to, or continuance in, such office of such
20 individual is consistent with the interests of creditors and with public policy,
21 and the Debtor has disclosed the identity of any insider that will be employed
22 or retained by the Debtor and the nature of any compensation for such insider.
- 23 6. Each holder of an impaired Claim either has accepted the Plan or will receive
24 or retain under the Plan on account of such holder's Claims, property of a
25 value, as of the Effective Date, that is not less than the amount that such entity
26 would receive or retain if the Debtor were liquidated on such date under
27 chapter 7 of the Bankruptcy Code. *See Section V.C.1. ("Best Interests Test.")*
28

7. Unless the Debtor proposes a nonconsensual plan of reorganization, each class of Claims has either accepted the Plan or is not impaired under the Plan. *See Section V.D ("Nonconsensual Confirmation.")*.
8. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full on the Effective Date and that holders of Priority Tax Claims will receive on account of such Claims either payment in full on the Effective Date or deferred cash payments, over a period not exceeding six years after the date of assessment of such Claims, of a value as of the Effective Date equal to the allowed amount of such Claims.
9. At least one class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such class.
10. The Plan contemplates the disposition of all of the assets of the Estate and the distribution of the proceeds therefrom to holders of Allowed Claims in order of priority and as provided for in the Plan. *See Section V.E ("Feasibility.")*.

The Debtor believes that, upon acceptance of the Plan by each of the impaired Classes (or, if applicable, pursuant to the "cramdown" requirements of Section 1129(b) of the Bankruptcy Code), the Plan will satisfy all the statutory requirements of Chapter 11 of the Bankruptcy Code, that the Debtor has complied or will have complied with all of the requirements of Chapter 11, and that the Plan is being proposed and will be submitted to the Bankruptcy Court in good faith.

##

1. Best Interest Test.

Confirmation of the Plan requires that each holder of an impaired Claim either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor were liquidated

1 under chapter 7 of the Bankruptcy Code. The standard described in the preceding clause (b)
2 commonly is referred to as the "best interest" test.

3 The Debtor has determined that confirmation of the Plan will satisfy the "best
4 interest" test because the Plan will provide each holder of a Claim with a recovery that is not less
5 than that which it would receive pursuant to a liquidation of the Debtor under chapter 7 of the
6 Bankruptcy Code. This determination is based upon the analysis attached hereto as **Exhibit E** (the
7 "**Liquidation Analysis**"). While the Debtor believes that the assumptions utilized in the Liquidation
8 Analysis are reasonable, the validity of such assumptions may be affected by the occurrence of
9 events and the existence of conditions not now contemplated or by other factors, many of which
10 would be beyond the control of the Bankruptcy Court, the Debtor, and the chapter 7 trustee. The
11 actual liquidation value of the Debtor would likely vary from that presented herein. See § III.C
12 ("Disclaimer."). The Liquidation Analysis demonstrates that, subject to the assumptions noted
13 therein, the amount available for distribution to each holder of a Claim if the Plan is confirmed will
14 be greater than or equal to the amount that would be available to each such holder of a Claim if the
15 debtor were liquidated under chapter 7 of the Bankruptcy Code. See **Exhibit C** (*Sources and Uses*)
16 and **Exhibit E** (*Liquidation Analysis*).

17 **D. Nonconsensual Confirmation.**

18 As set forth above, in the event that any impaired class of Claims does not accept the
19 Plan, the Bankruptcy Court may nevertheless confirm the Plan at the Debtor's request if all other
20 requirements of section 1129(a) of the Bankruptcy Code are satisfied, and if, as to each impaired
21 Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not
22 discriminate unfairly" and is "fair and equitable" with respect to such non-accepting Class.

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25 **1. No Unfair Discrimination.**

26 A plan of reorganization "does not discriminate unfairly" if (a) the legal rights of a
27 non-accepting class are treated in a manner that is consistent with the treatment of other classes
28 whose legal rights are intertwined with those of the non-accepting class, and (b) no class receives

1 payments in excess of that which it is legally entitled to receive for its Claims. The Debtor believes
2 that under the Plan, (i) all classes of impaired Claims are treated in a manner that is consistent with
3 the treatment of other classes of Claims with which their legal rights are intertwined, if any, and
4 (ii) no class of Claims will receive payments or property with an aggregate value greater than the
5 aggregate value of the Allowed Claims in such class. Accordingly, the Debtor believes the Plan
6 does not discriminate unfairly as to any impaired class.

7 **2. Fair And Equitable Test.**

8 The Bankruptcy Code establishes different "fair and equitable" tests for holders of
9 secured Claims and holders of unsecured Claims, as follows:

10 (a) **Secured Claims.** Either (i) each holder of an impaired secured Claim either (x)
11 retains the liens securing its secured Claim and receives on account of its Allowed Secured Claim
12 deferred cash payments having a present value equal to the amount of its Allowed Secured Claim, or
13 (y) realizes the "indubitable equivalent" of its Allowed Secured Claim, or (ii) the property securing
14 the Claim is sold free and clear of liens, with such liens to attach to the proceeds, and the liens
15 against such proceeds are treated in accordance with clause (i) of this subparagraph (a).

16 (b) **Unsecured Claims.** Either (i) each holder of an impaired unsecured Claim
17 receives or retains under the Plan property of a value equal to the amount of its Allowed Claim, or
18 (ii) the holders of Claims that are junior to the Claims of the non-accepting class do not receive any
19 property under the Plan on account of such Claims. In this case, as the Debtor does not have any
20 equity securities, no holder of an Interest will receive or retain any property under the Plan.

21 **IN THE EVENT OF REJECTION OF THE PLAN BY ONE OR MORE**
22 **IMPAIRED CLASSES, THE DEBTOR RESERVES THE RIGHT TO REQUEST THE**
23 **BANKRUPTCY COURT TO CONFIRM THE PLAN IN ACCORDANCE WITH SECTION**
24 **1129(b) OF THE BANKRUPTCY CODE.**

25 **E. Feasibility.**

26 The Bankruptcy Code requires that, in order for the Plan to be confirmed by the
27 Bankruptcy Court, it must be demonstrated that consummation of the Plan is not likely to be
28 followed by the liquidation or the need for further financial reorganization of the Debtor, unless a

1 liquidation is contemplated by the Plan. This standard commonly is referred to as the "feasibility"
2 test.

3 The Plan is feasible because it provides for the Debtor to use the Plan Assets to pay
4 Allowed Claims consistent with the priorities set forth in the Bankruptcy Code, after which, if any
5 surplus is remaining, the Debtor will use in accordance with the Reorganized Debtor's Articles of
6 Incorporation and By-Laws and applicable non-bankruptcy law. As set forth in **Exhibit C** attached
7 hereto, the Debtor projects that it will have sufficient cash to fund the Effective Date payments and
8 the Plan Reserves.

9 **F. Effects Of Confirmation.**

10 **1. Binding Effect.**

11 Confirmation will bind the Debtor, all holders of Claims or Administrative Expense
12 Claims and other parties in interest to the provisions of the Plan whether or not the Claim or
13 Administrative Expense Claim of such holder is impaired under the Plan and whether or not the
14 holder of such Claim or Administrative Expense Claim has accepted the Plan. Nothing contained in
15 the Plan will limit the effect of Confirmation as described in section 1141 of the Bankruptcy Code.

16 **2. Good Faith.**

17 Confirmation of the Plan will constitute a finding that: (i) the Plan has been proposed
18 by the Debtor in good faith and in compliance with applicable provisions of the Bankruptcy Code;
19 and (ii) all Persons' solicitations of acceptances or rejections of the Plan and the offer, issuance, sale,
20 or purchase of a security offered or sold under the Plan have been in good faith and in compliance
21 with applicable provisions of the Bankruptcy Code.

22 **3. Discharge.**

23 **Except as provided in the Plan or Confirmation Order, the rights afforded and**
24 **the treatment of Claims and Administrative Expense Claims provided under the Plan will be**
25 **in exchange for and in complete satisfaction, discharge and release of all Claims and**
26 **Administrative Expense Claims, including any interest accrued on Claims before or after the**
27 **Petition Date. Except as provided in the Plan or the Confirmation Order, Confirmation will**
28 **discharge the Debtor and Reorganized Debtor from all Claims, Administrative Expense**

1 Claims or other debts that arose before the Confirmation Date and all debts of the kind
2 specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof
3 of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the
4 Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to section 502 of the
5 Bankruptcy Code or (c) the holder of a Claim or Administrative Expense Claim based on such
6 debt has accepted the Plan. As of the Confirmation Date, except as provided in the Plan or the
7 Confirmation Order, all Persons shall be precluded from asserting against the Debtor, the
8 Reorganized Debtor, their successors or their property, any other or further Claims, debts,
9 rights, causes of action, liabilities or equity interests based upon any act, omission, transaction
10 or other activity of any nature that occurred prior to the Confirmation Date.

11 As of the Confirmation Date, except as provided in the Plan, all Persons shall be
12 precluded from asserting against the Debtor or the Reorganized Debtor any other or further
13 Claims, Administrative Expense Claims, debts, rights, causes of action, liabilities, or equity
14 interests based on any act, omission, transaction or other activity of any kind or nature that
15 occurred before the Confirmation Date. In accordance with the foregoing, except as provided
16 in the Plan or in the Confirmation Order, the Confirmation Order will be a judicial
17 determination of discharge of all such Claims, Administrative Expense Claims and other debts
18 and liabilities against the Debtor, pursuant to sections 524 and 1141 of the Bankruptcy Code,
19 and such discharges shall void any judgment obtained against the Debtor or the Reorganized
20 Debtor at any time, to the extent that such judgment relates to a discharged liability, Claim, or
21 Administrative Expense Claim. Notwithstanding the foregoing, federal and state
22 governmental agencies shall not be subject to the foregoing injunction with respect to the
23 exercise and enforcement of any of their respective regulatory or police rights and powers.

24 4. Injunctions.

25 Except as provided in the Plan or the Confirmation Order, as of the Effective
26 Date, all Persons that have held, currently hold or may hold a Claim or other debt or liability
27 that is satisfied or released, as applicable, will be permanently enjoined from taking any of the
28 following actions on account of any such discharged or satisfied Claims, debts or liabilities:

1 (a) commencing or continuing in any manner any action or other proceeding against the
2 Debtor, Estate, the Reorganized Debtor or their respective property, other than to enforce any
3 right pursuant to the Plan to a distribution; (b) enforcing, attaching, collecting or recovering in
4 any manner any judgment, award, decree or order against the Debtor, Estate, the Reorganized
5 Debtor or their respective property, other than as permitted pursuant to (a) above;
6 (c) creating, perfecting or enforcing any lien or encumbrance against the Debtor, Estate, the
7 Reorganized Debtor or their respective property; (d) asserting a setoff, right of subrogation or
8 recoupment of any kind against any debt, liability or obligation due to the Debtor, Estate, or
9 the Reorganized Debtor; and (e) commencing or continuing any action, in any manner, in any
10 place that does not comply with or is inconsistent with the provisions of the Plan, provided
11 however, that nothing herein or in the Plan shall affect or otherwise impair the existing right
12 of setoff by the United States of mutual pre-petition obligations. Notwithstanding the
13 foregoing, federal and state governmental agencies shall not be subject to the foregoing
14 injunction with respect to the exercise and enforcement of any of their respective regulatory or
15 police rights and powers.

16 As of the Effective Date, all Persons that have held, currently hold or may
17 hold any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of
18 action or liabilities that are released pursuant to the Plan will be permanently enjoined from
19 taking any of the following actions against any released Person or its property on account of
20 such released Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of
21 action or liabilities: (a) commencing or continuing in any manner any action or other
22 proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment,
23 award, decree or order; (c) creating, perfecting or enforcing any Lien; (d) asserting a setoff,
24 right of subrogation or recoupment of any kind against any debt, liability or obligation due to
25 any released Person; and (e) commencing or continuing any action, in any manner, in any
26 place that does not comply with or is inconsistent with the provisions of the Plan.

27 Notwithstanding the foregoing, federal and state governmental agencies shall not be subject to
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1 the foregoing injunction with respect to the exercise and enforcement of any of their respective
2 regulatory or police rights and powers.

3 By accepting any distributions pursuant to the Plan, each holder of an
4 Allowed Claim receiving distributions pursuant to the Plan will be deemed to have specifically
5 consented to the injunctions set forth in the Section 11.6 of the Plan.

6 **5. Exculpation and Limitation of Liabilities.**

7 To the maximum extent permitted by law, none of the Debtor, the Reorganized
8 Debtor, the Estate, the Committee, nor any of their employees, officers, directors, agents,
9 members, representatives, or the professionals employed or retained by any of them, whether
10 or not by Bankruptcy Court order (each, an "Exculpated Person"), shall have or incur liability
11 to any Person for an act taken or omission made in good faith in connection with or related to
12 the Chapter 11 Case, formulation of the Plan, the Disclosure Statement, or a contract,
13 instrument, release, or other agreement or document created in connection therewith, the
14 solicitation of acceptances for or confirmation of the Plan, or the consummation and
15 implementation of the Plan and the transactions contemplated therein. Each Exculpated
16 Person shall in all respects be entitled to reasonably rely on the advice of counsel with respect
17 to its duties and responsibilities under the Plan. Entry of the Confirmation Order constitutes a
18 judicial determination that the exculpation provision contained in this Section is necessary to,
19 inter alia, facilitate Confirmation and feasibility and to minimize potential claims arising after
20 the Effective Date for indemnity, reimbursement or contribution from the Reorganized
21 Debtor. The Confirmation Order's approval of the Plan also will constitute a res judicata
22 determination of the matters included in the exculpation provisions of the Plan.

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25 **6. Plan Distributions and Transfers Deemed Not To Be Fraudulent**
26 **Transfers.**

27 The Confirmation Order will be a judicial determination that no distribution or
28 transfer of Cash, securities or other property under the Plan by the Debtor or Reorganized Debtor is

1 to be deemed to have been made with the actual intent to hinder, delay, or defraud any creditor.
2 Moreover, the Confirmation Order also will be a judicial determination that, with respect to a timely
3 distribution or transfer by the Debtor or Reorganized Debtor of Cash, securities or other property
4 which was required under the Plan to be made on, or as soon as practicable after, the Effective Date,
5 the Debtor or Reorganized Debtor (1) was solvent at the time of such distribution or transfer and
6 immediately thereafter, (2) was not left thereby with an unreasonably small amount of assets with
7 respect to its intended business or transactions, and (3) did not intend to incur, did not believe it
8 would incur, and reasonably should have believed it would not incur, debts beyond its ability to pay
9 as they became due.

10 **7. Revesting of Assets.**

11 The Remaining Plan Assets will vest in the Reorganized Debtor free and clear of all
12 Claims, Liens and Rights of Action. On the Effective Date, or as soon thereafter as is practicable, to
13 the extent of any Remaining Plan Assets, the Reorganized Debtor shall cause any such Remaining
14 Plan Assets to be used in accordance with the Reorganized Debtor's Articles of Incorporation and
15 By-Laws and applicable non-bankruptcy law.

16 **a. Estate Causes of Action**

17 Any and all Estate Causes of Action accruing to the Debtor or its Estate will remain
18 assets of the Estate and will revest in the Reorganized Debtor, whether or not litigation relating
19 thereto is pending on the Effective Date. The Debtor, or the Reorganized Debtor, as the case may
20 be, may pursue all Estate Causes of Action in its respective sole discretion, in accordance with what
21 is in the best interests, and for the benefit, of the Debtor, the Estate and the Reorganized Debtor.
22 Neither the Debtor, the Estate, nor the Reorganized Debtor waives, relinquishes, or abandons any
23 right or cause of action which constitutes property of the Debtor's Estate, whether or not such right
24 or cause of action is an Estate Cause of Action, has been listed or referred to in the Schedules or in
25 this Disclosure Statement and whether or not such right or cause of action is currently known to the
26 Debtor.

27 The rights and causes of action which will remain assets of the Estate and revest in
28 the Reorganized Debtor shall include, without limitation, the following:

- a. Claims against Persons pursuant to sections 510, 541, 542, 543, 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code;
- b. any Claims or rights of the Debtor under its leases, agreements, documents, or otherwise (unless such leases or agreements are sold), including, without limitation, any offset, credit, or reimbursement for overpayment;
- c. all Claims or rights of the Debtor against any Person for interference with, or damage to, the Debtor's business;
- d. all Claims or rights of the Debtor against its vendors or providers; and
- e. all Claims or rights of the Debtor against Persons who may have infringed, violated, or otherwise acted in breach of, or in violation of, the Debtor's intellectual property rights;

Other than specifying the Claims and categories of potential Claims, the Debtor has not undertaken a review and analysis of potential Estate Causes of Action with a view to exhaustively listing categories of Estate Causes of Action, specifying Claims or identifying potential defendants. The Debtor submits that its reservation of Estate Causes of Action herein and in the Plan is sufficient to preserve such Estate Causes of Action. **Accordingly, the Debtor does not intend to undertake any review or analysis of facts or theories of law which might give rise to a more comprehensive general list of potential Estate Causes of Action or identify specific Estate Causes of Action or defendants thereto.** The disclosure set forth herein is adequate under the circumstances and the Plan provides that the Debtor, the Estate and the Reorganized Debtor shall not be subject to any release, waiver, extinguishment, forfeiture or other impairment of any Estate Cause of Action against any party, or defense of res judicata, equitable estoppel or any other similar doctrines or theories, in connection with any Estate Cause of Action.

VI.

ALTERNATIVE TO CONFIRMATION AND CONSUMMATION OF THE PLAN OF REORGANIZATION

The Debtor believes that the Plan affords holders of Claims the potential for the greatest feasible realization out of the Debtor's assets, and, therefore, is in the best interest of such

holders. The Debtor has considered alternatives to the Plan such as a liquidation in the context of a chapter 7 case. In the opinion of the Debtor, such alternatives would not afford holders of Claims a return greater than that achieved under the Plan.

A. Liquidation Under Chapter 7.

If no plan can be confirmed, the Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recovery by holders of Claims is set forth in **Section V.C.1** ("*Best Interest Test*").

B. Alternative Plan Of Reorganization.

If the Plan is not confirmed, the Debtor (or if the Debtor's exclusive period in which to file a plan of reorganization has expired, any other party in interest) could attempt to formulate a different plan. However, given that the Debtor has sold its lines of business and no longer has any business operations, the Debtor does not believe that any such plan would be materially different than the Plan. **THUS, THE DEBTOR BELIEVES THAT CONFIRMATION AND IMPLEMENTATION OF THE PLAN IS PREFERABLE TO ANY OF THE ALTERNATIVES DESCRIBED HEREIN BECAUSE IT IS EXPECTED TO PROVIDE GREATER RECOVERIES AND INVOLVE LESS DELAY AND UNCERTAINTY AND LOWER ADMINISTRATIVE COSTS.**

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VII.

CERTAIN FEDERAL INCOME TAX CONSEQUENCES.

A. Introduction.

The implementation of the Plan may have federal, state and local tax consequences to Debtor and Debtor's creditors. No tax opinion has been sought or will be obtained with respect to

1 any tax consequences of the Plan. This Disclosure Statement does not constitute and is not intended
2 to constitute either a tax opinion or tax advice to any person, and the summary contained herein is
3 provided for informational purposes only.

4 The discussion below summarizes only certain of the federal income tax
5 consequences associated with the Plan's implementation. This discussion does not attempt to
6 comment on all aspects of the federal income tax consequences associated with the Plan, nor does it
7 attempt to consider various facts or limitations applicable to any particular creditor which may
8 modify or alter the consequences described herein. A creditor may find that the tax consequences of
9 the Plan to such creditor differ materially from the tax consequences discussed below because of
10 such creditor's facts and circumstances. This discussion does not address state, local or foreign tax
11 consequences or the consequences of any federal tax other than the federal income tax.

12 The following discussion is based upon the provisions of the Internal Revenue Code
13 of 1986, as amended (the "**Internal Revenue Code**"), the regulations promulgated thereunder,
14 existing judicial decisions and administrative rulings. In light of the rapidly-changing nature of tax
15 law, no assurance can be given that legislative, judicial or administrative changes will not be
16 forthcoming that would affect the accuracy of the discussion below. Any such changes could be
17 material and could be retroactive with respect to the transactions entered into or completed prior to
18 the enactment or promulgation thereof. The tax consequences of certain aspects of the Plan are
19 uncertain due to the lack of applicable legal authority and may be subject to judicial or
20 administrative interpretations that differ from the discussion below.

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24 **CREDITORS ARE ADVISED TO CONSULT WITH THEIR OWN TAX**
25 **ADVISORS REGARDING THE TAX CONSEQUENCES TO THEM AND TO DEBTOR OF**
26 **THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING FEDERAL,**
27 **STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.**

1 **B. Federal Income Tax Consequences to Debtor.**

2 Debtor is organized and operated exclusively for tax-exempt purposes and qualified
3 as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code. Debtor
4 believes but cannot assure that it will retain such status through and including the Effective Date.

5 A tax-exempt organization's exemption from federal income taxation is qualified
6 rather than absolute. Specifically, an organization exempt from federal income tax under Internal
7 Revenue Code section 501(c)(3) is nevertheless taxable on its income from an unrelated trade or
8 business and its income and gain attributable to certain kinds of debt-financed property. Although
9 Debtor cannot exclude the possibility that it may be liable for federal income tax under these rules,
10 Debtor does not believe that such tax liability, if any, will materially affect its ability to perform its
11 obligations under the Plan.

12 **C. Tax Consequences To Creditors.**

13 The tax consequences of the Plan's implementation to a creditor will depend on the
14 type of consideration received by the creditor in exchange for its Claim, whether the creditor reports
15 income on the cash or accrual method, whether the creditor receives consideration in more than one
16 tax year of the creditor, and whether all the consideration received by the creditor is deemed to be
17 received by that creditor in an integrated transaction. The tax consequences upon the receipt of cash
18 or other property allocable to interest are discussed below under "Receipt of Interest."

19 **1. Receipt of Interest.**

20 Income attributable to accrued but unpaid interest will be treated as ordinary income,
21 regardless of whether the creditor's existing Claims are capital assets in its hands.

22 A creditor who, under its accounting method, was not previously required to include
23 in income accrued but unpaid interest attributable to existing Claims, and who exchanges its interest
24 Claim for cash, or other property pursuant to the Plan, will be treated as receiving ordinary interest
25 income to the extent of any consideration so received allocable to such interest, regardless of
26 whether that creditor realizes an overall gain or loss as a result of the exchange of its existing
27 Claims. A creditor who had previously included in income accrued but unpaid interest attributable
28 to its existing Claims will recognize a loss to the extent such accrued but unpaid interest is not

1 satisfied in full. For purposes of the above discussion, "accrued" interest means interest which was
2 accrued while the underlying Claim was held by the creditor. The extent to which consideration
3 distributable under the Plan is allocable to such interest is uncertain.

4 Creditors holding Allowed Class 7 Claims or Allowed Class 8 Claims who are on an
5 accrual method of accounting and have not previously accrued Post-Petition Interest (for the period
6 from the Petition Date to the Effective Date) with respect to such Claim as income may be required
7 to accrue such Post-Petition Interest as income on the Effective Date.

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10 **2. Receipt of Principal.**

11 A creditor who previously claimed a bad debt deduction with respect to an obligation
12 of the Debtor and who recovers such all or a portion of such amount pursuant to payments made
13 under the Plan in respect of an Allowed Claim arising from such obligation may be required to
14 include such recovered amount in income under the tax benefit rule. If such bad deduction did not
15 give rise to tax savings, the recovered amount may be excludable from income pursuant to Internal
16 Revenue Code Section 111.

17 **3. Other Tax Considerations.**

18 **a. Market Discount.**

19 If a creditor has a lower tax basis in a Debtor obligation than its face amount, the
20 difference may constitute market discount under section 1276 of the Internal Revenue Code.
21 (Certain Debtor obligations are excluded from the operation of this rule, such as obligations with a
22 fixed maturity date not exceeding one year from the date of issue, installment obligations to which
23 Internal Revenue Code section 453B applies and, in all likelihood, demand instruments).

24 Holders in whose hands Debtor obligations are market discount bonds will be
25 required to treat as ordinary income any gain recognized upon the retirement or exchange of such
26 obligations to the extent of the market discount accrued during the holder's period of ownership,
27 unless the holder has elected to include such market discount in income as it accrued.

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