

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.

28

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.

10 ///

11 ///

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.**
27
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.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

15
16
17
18
19
20

21

22

23
24
25
26

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.

23 ///

24 ///

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
28

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.

23 ///

24 ///

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.**

///

///

///

///

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.

21 ///

22 ///

23 ///

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.**

B. Federal Income Tax Consequences to Debtor.

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

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

C. Tax Consequences To Creditors.

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

1. Receipt of Interest.

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

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

8 ##

9 ##

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.

28

1 **b. Withholding.**

2 The Debtor will withhold any amounts required by law from payments made to
3 creditors. This may require payments by certain creditors of the required withholding tax on any
4 non-cash consideration issued to them. In addition, creditors may be required to provide general tax
5 information to the Debtor.

6 **VIII.**

7 **RECOMMENDATION AND CONCLUSION.**

8 The Debtor ~~believes~~and the Committee believe that confirmation and implementation
9 of the Plan is the best alternative available to Creditors. Accordingly, the Debtor and the Committee
10 urges holders of impaired Claims to vote to accept the Plan by so indicating on their Ballots and
11 returning them as specified therein.

12 DATED: _____, 2007

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

14 By: _____

15 Its: _____

16 **SUBMITTED BY:**

17
18
19 _____
20 GARY E. KLAUSNER,
21 MICHAEL H. GOLDSTEIN and
22 NATHAN A. SCHULTZ, Members of
23 STUTMAN, TREISTER & GLATT
24 PROFESSIONAL CORPORATION
25 Reorganization Counsel for
26 Debtor and Debtor in Possession
27
28

Document comparison done by DeltaView on Tuesday, February 27, 2007 2:43:31 PM

Input:	
Document 1	iManageDeskSite://STGINT/iManage/387624/4
Document 2	iManageDeskSite://STGINT/iManage/387624/5
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	218
Deletions	173
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	397