

Individual Chapter 11: Not Just Chapter 13 on Steroids

Hon. Bruce A. Markell, Moderator

U.S. Bankruptcy Court (D. Nev.); Las Vegas

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12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF ARIZONA**

14 In re:
15 [REDACTED] and
16 [REDACTED]
17 Debtors.

In Proceedings Under Chapter 11
Case No: 0:11-bk-16337-JMM
**DISCLOSURE STATEMENT
FOR DEBTORS' CHAPTER 11
PLAN OF REORGANIZATION**

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18 [REDACTED] and [REDACTED], Debtors (the "Debtors" or the "Plan Proponents"),
19 hereby submit this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code, Title
20 11, United States Code, section 101, *et seq.* (the "Code" or "Bankruptcy Code"), to all known
21 holders of claims against the bankruptcy estate of the Debtors in order to disclose information
22 deemed to be material, important, and necessary for creditors of the Debtors to make an informed
23 decision in exercising their right to vote for acceptance or rejection of the Debtors' proposed Plan
24 of Reorganization dated February 9, 2012 (the "Plan"). The Plan has been filed with the United
25 States Bankruptcy Court for the District of Arizona (the "Court"), and a copy of the Plan is
26 attached as **Exhibit 1** hereto.

27 This Disclosure Statement has been submitted for a determination by the Court as to
28 whether it contains adequate information as required by Section 1125 of the Code. Any
such determination does not constitute recommendation or approval of the Plan by the
Court.

ARTICLE I

INTRODUCTION TO THE DISCLOSURE STATEMENT AND VOTING

1.1 Purpose of the Disclosure Statement.

This Disclosure Statement is submitted by the Debtors pursuant to 11 U.S.C. §1125. Its purpose is to provide creditors with the information necessary to enable them to arrive at an informed decision for voting on the Debtors' Plan of Reorganization ("Plan"), which is on file at the Bankruptcy Court. (A copy of the Plan is attached to this Disclosure Statement as Exhibit 1.) As a creditor, your acceptance of the Plan is important. Acceptance of the Plan by a class of creditors requires a vote by at least two-thirds (2/3) in claim amount and more than fifty percent (50%) in number of the allowed claims in the class that actually cast votes. Failure to vote on the Plan does not count as either an acceptance or rejection of the Plan.

1.2 Definitions.

Unless a word is otherwise defined in this Disclosure Statement, it has the meaning given to it by the U.S. Bankruptcy Code and the U.S. Bankruptcy Court Rules or the Definition section in the Plan.

1.3 Authorized Representations.

When approved by the Court, this Disclosure Statement is the only document authorized by the Bankruptcy Court to be used in connection with the solicitation of votes on the Plan.

1.4 Voting Procedures.

To be entitled to vote, a creditor must have an allowed claim that is impaired under the Plan. The Bankruptcy Code defines whether a claim is impaired in section 1124. Summarily, a claim is impaired if the Plan modifies the legal, equitable or contractual rights of the claimant, or if the Plan does not cure and reinstate the legal rights of the claimant after default. A creditor in a class that will not, under any circumstances, receive any distributions under the Plan, is not entitled to vote because the class of which it is a member is deemed to have rejected the Plan. If a creditor holds more than one claim in one class, all of the claims in such class will be aggregated and the creditor will be entitled to one vote in the amount of all aggregated claims in that class.

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1 All creditors or parties in interest entitled to vote on the Plan may cast their votes for
2 or against the Plan by completing, dating, and signing the Ballot which will accompany this
3 Disclosure Statement after approval by the Court.

4 In order for the Ballot to be considered, the original Ballot must be mailed to the attorneys
5 for the Plan Proponents. The Court will issue an Order in conjunction with approval of this
6 Disclosure Statement requiring that all votes for the acceptance or rejection of the Plan be
7 received by the close of business on a date to be specified in the Order. The Ballots should be
8 sent to: Peter M. Gennrich, Esq., Nussbaum Gillis & Dinner, P.C., 14850 N. Scottsdale Road,
9 Suite 450, Scottsdale, Arizona 85254.

10 Your Ballot will not be counted if the Plan Proponents' counsel receives it after such
11 deadline. You may not change your vote after it is cast, unless the Bankruptcy Court permits you
12 to do so after notice and a hearing to determine whether sufficient cause exists to permit the
13 change.

14 **1.5 Confirmation of the Plan.**

15 In order for the Plan to be effective, it has to be confirmed by the Court. Confirmation of
16 the Plan means that the Court has approved the Plan. For the Plan to be confirmed, votes by each
17 impaired class representing at last two-thirds (2/3) in amount of the allowed claims voting in each
18 class and greater than one-half (1/2) in number of individual creditors for such class (of those
19 casting votes) must be submitted in favor of acceptance of the Proponents' Plan. If the requisite
20 acceptances are not obtained from one or more impaired classes, the Court may nonetheless
21 confirm the Proponents' Plan pursuant to section 1129(b) of the Bankruptcy Code. If one
22 impaired class accepts the Plan and the Court finds that the Debtors' Plan provides, among other
23 things, fair and equitable treatment of the classes rejecting the Plan, and that creditors receive as
24 much or more under the Plan than they would receive in a Chapter 7 liquidation (discussed more
25 fully below), the Court may confirm the Plan. When confirmed by the Bankruptcy Court, this
26 Plan will bind all holders of claims against or equity interests in the Debtors, whether or not they
27 are entitled to vote, or did vote, on the Plan, and whether or not they received or retained any
28 distributions of property under the Plan.

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ARTICLE II

FACTUAL BACKGROUND OF THE DEBTORS

2.1 Events Leading to the Filing of the Chapter 11 Petition

1
2
3
4 [REDACTED] were married in [REDACTED] and have [REDACTED] adult children who assist them on a
5 daily basis. After successfully operating a retail store for 24 years, [REDACTED]
6 [REDACTED] the [REDACTED] needed to sell the business in 2007 because of the economic decline
7 following September 11, 2001. Their search for new business opportunities began in 2003 and
8 for 6 years the [REDACTED] were having difficulty finding sustainable employment. In 2009 they met
9 [REDACTED] ("[REDACTED]") about a possible business opportunity to purchase the
10 [REDACTED], a popular regional retail marketplace and check-cashing center located
11 in a fertile agricultural valley about 100 miles west of Phoenix in La Paz County. Upon review of
12 the financial records of the business provided by [REDACTED] and his business broker, the [REDACTED]
13 decided to purchase the business in December of 2009 with financing obtained through a down
14 payment derived from a second mortgage on a residential property they owned in Desert
15 Mountain, north Scottsdale, a Small Business Administration loan and carryback credit from
16 [REDACTED]

17 Since its purchase by the Debtors through a wholly owned limited liability company
18 known as [REDACTED], LLC, the Debtors have never been able to achieve the
19 financial performance represented by [REDACTED], business has declined as the Arizona economy in
20 general has suffered and the [REDACTED] have been unable to maintain the personal debt service
21 associated with the purchase. Because the [REDACTED] were not able to achieve a modification of their
22 obligations to [REDACTED] and were facing foreclosure of the Desert Mountain residence which could
23 have led to non-dischargeable tax liability, the [REDACTED] filed this Chapter 11 proceeding on June 6,
24 2011. The [REDACTED] believe that by surrendering the over-encumbered Desert Mountain residence in
25 Scottsdale and reducing and/or eliminating unsecured personal debt, they will be able to continue
26 to operate the [REDACTED] business and to pay their necessary personal and family
27 household expenses while funding a Chapter 11 Plan.
28

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1 **2.2 History of the Chapter 11 Case**

2 Upon the filing of their Chapter 11 case, the Debtors remained in possession of their
3 assets and continued management of their financial and business affairs as debtors in possession
4 pursuant to sections 1107 and 1108 of the Bankruptcy Code. No official committee of unsecured
5 creditors has been appointed.

6 The Debtors had discontinued payments of the secured indebtedness on the Desert
7 Mountain residence and the [REDACTED] carryback loan some months before the filing of their Chapter
8 11 case, and, after the filing of their Chapter 11 case, they took steps to immediately implement a
9 budget in which they have trimmed and eliminated other unnecessary expenses to the point where
10 they have increased their projected net disposable monthly income to approximately \$1,000.00,
11 which they are willing to commit to Chapter 11 Plan payments for seven (7) years, or the
12 reasonably equivalent value thereof, for the benefit of their creditors as further described in their
13 Chapter 11 Plan.

14 During the course of their Chapter 11 proceedings, the holders of secured claims on the
15 Desert Mountain residence have failed to file a motion seeking relief from the automatic stay so
16 that they can foreclose on that property. But the Debtors are not opposed to such relief and are
17 prepared to surrender such property or allow it to be foreclosed upon so they can treat any
18 deficiency between the value of that property and the amount of debt secured by such property for
19 which they may be personally liable as general unsecured debt in their Chapter 11 Plan. The
20 Debtors believe such potential deficiency is limited to the second mortgagee's claim only since
21 Arizona's anti-deficiency laws would bar the first mortgagee's claim against the Debtors
22 personally.

23 During the course of their Chapter 11 proceedings, [REDACTED], the holder of the carryback
24 indebtedness on the purchase of the [REDACTED] has filed an adversary proceeding
25 (lawsuit) against the Debtors seeking denial of their discharge, or, alternatively, an adjudication
26 that the indebtedness owed to [REDACTED] should be non-dischargeable. The Debtors have denied such
27 claims and asserted a counterclaim against [REDACTED] alleging misrepresentation and other tortuous
28 acts by [REDACTED] which would entitle the Debtors to wipe out [REDACTED] claims against them and

1 entitle them to a substantial judgment in their favor against [REDACTED] which they would utilize to
2 reimburse administrative expenses incurred in connection with such litigation and pay the balance
3 of the net proceeds to creditors under the terms of the Debtors' proposed Chapter 11 Plan.

4 **2.3 Financial Information.**

5 During the course of this bankruptcy case, the Debtors have filed all Monthly Operating
6 Reports required by the Office of the U.S. Trustee and by the Bankruptcy Code and Rules, and
7 they have paid all quarterly U.S. Trustee fees when due. They have also filed required periodic
8 financial reports for their business entity, [REDACTED], L.L.C. These reports show
9 that the Debtors' post-petition income is derived solely from [REDACTED] L.L.C.
10 The Debtors have not incurred any post-petition secured debt. The Debtors have provided
11 projected financial information in the form of a monthly budget as set forth in Exhibit 2 attached
12 hereto demonstrating that they will have a monthly disposable income, after paying secured debt
13 and reasonable and necessary monthly living expenses, of \$1,000.00. The final Plan payment is
14 expected to be paid no later than the first day of the eighty-fourth (84th) month after the Effective
15 Date of the Plan.

16 **ARTICLE III**

17 **PLAN OF REORGANIZATION**

18 The following is a simplified description of the Plan, which is Exhibit 1 to this Disclosure
19 Statement. Reference should be made to the Plan for a full analysis of its contents; the description
20 contained herein is qualified in its entirety by such reference. Unless a word or phrase is
21 otherwise defined in this Disclosure Statement, it has the meaning given to it in the U.S.
22 Bankruptcy Code and the Federal Rules of Bankruptcy Procedure or the Definition section in the
23 Plan.

24 **3.1 Purpose of the Plan**

25 The primary purpose of the Plan is to commit the Debtors' projected net disposable
26 monthly income to Chapter 11 Plan payments for seven (7) years, or the reasonably equivalent
27 value thereof, for the benefit of creditors in a manner consistent with the rights of the creditors to
28 receive distributions pursuant to the priority provisions of the Bankruptcy Code. The Plan

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1 Proponents believe that a liquidation of their current nonexempt assets and entitlements under
2 Chapter 7 of the Code would not be in the best interests of the Debtors or their creditors and
3 would produce less for creditors than will be achieved by their proposed Plan. See "ARTICLE
4 VI - LIQUIDATION ANALYSIS".

5 **3.2 Treatment of Claims**

6 **Administrative Priority Claims.** Administrative Priority Claims include all costs and
7 expenses of the administration of the Chapter 11 case allowed under section 503(b) of the Code
8 and entitled to priority under section 507(a)(1) of the Code. This Plan provides for the payment of
9 Administrative Priority Claims to the Debtors' professionals, to be paid by agreement with
10 Debtors' professionals, upon approval by the Court on or after the Effective Date of the Plan. A
11 portion of such fees and expenses shall be paid from regular Plan payments required over a five
12 (5) year period, and a portion of such fees and expenses related to the prosecution and defense of
13 pending litigation shall be paid from continuing Plan payments required over an additional two
14 (2) year period. This Plan also provides for payment of United States Trustee fees upon the
15 Effective Date of the Plan.

16 **Priority Tax Claims.** Any Priority Tax Claims are unimpaired. The Plan Proponents
17 estimate that Allowed Priority Tax Claims will not exceed \$250 to IRS and/or the Arizona
18 Department of Revenue. Allowed Priority Tax Claims will be paid in full upon the Effective Date
19 or as soon thereafter as they become Allowed Claims.

20 **Class 1: Secured Claim of Unibank** - The Debtors estimate the Class 1 Claim of
21 Unibank at \$1,012,232.00 as of the Petition Date, plus accrued interest. This claim is secured by
22 the Debtors' limited liability company business interest, [REDACTED] L.L.C., and all
23 of its business assets and is personally guaranteed by the Debtors. The Class 1 Claim is fully
24 secured and will be paid by [REDACTED], L.L.C., in the ordinary course of its
25 business operations. The Debtors' guarantor liability for repayment of the Class 1 Claim shall be
26 discharged. The Class 1 Claim is impaired.

27 **Class 2: Secured Claim of Wells Fargo Home Mortgage** - The Debtors estimate the
28 Class 2 Claim of Wells Fargo Home Mortgage at \$632,566.00 as of the Petition Date, plus

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1 accrued interest. This claim is secured by the Debtors' former Desert Mountain residence located
2 at [REDACTED], Scottsdale, Arizona 85262, which the Debtors estimate to have a
3 fair market value of approximately \$700,000.00 as of the Petition Date. The Debtors have no
4 personal liability for repayment of this secured claim because of the application of Arizona's anti-
5 deficiency laws. The Class 2 Claim is to be satisfied by surrender of the collateral to the Class 2
6 Claimant. The Class 2 Claim is unimpaired.

7 **Class 3: Secured Claim of Chase Home Mortgage** - The Debtors estimate the Class 3
8 Claim of **Chase Home Mortgage** at \$500,000.00 as of the Petition Date, plus accrued interest.
9 This claim may be partially secured by the Debtors' former Desert Mountain residence located at
10 [REDACTED], Scottsdale, Arizona 85262, which the Debtors estimate to have a fair
11 market value of approximately \$700,000.00 as of the Petition Date. The Class 3 Claim is to be
12 partially satisfied by surrender of the collateral to the Class 3 Claimant. Upon foreclosure any
13 deficiency is to be treated in accordance with Class 6 General Unsecured Claims. The Class 3
14 Claim is impaired.

15 **Class 4: Secured Claim of GMAC** - The Debtors estimate the Class 4 Claim of GMAC
16 at \$15,210.00 as of the petition Date, plus accrued interest. This claim is secured by the Debtors'
17 2008 Chevrolet Express Van, which the Debtors estimate to have a current fair market value of
18 approximately \$12,000.00. **The Class 4 Claim is to be modified because the balance owing on**
19 **the secured Class 4 Claim exceeds the current fair market value of the collateral securing**
20 **such claim. The Debtors' Plan will bifurcate such claim into a secured claim of \$12,000 and**
21 **an unsecured claim of \$3,210.** The secured Class 4 Claim shall be paid in monthly installments
22 of principal and interest based upon the revised principal balance of \$12,000 at an interest rate of
23 5.0% per annum on an amortization schedule of five (5) years, resulting in a monthly payment of
24 principal and interest of \$226.45. The unsecured portion of this claim shall be paid in accordance
25 with the treatment afforded to Class 6. The Class 4 Claim is impaired.

26 **Class 5: Unsecured Claim of [REDACTED] and [REDACTED]** - The Debtors
27 estimate the Class 5 Claim of [REDACTED] at \$1,200,000.00 as of the
28 Petition Date, plus accrued interest. Such claim is unliquidated and disputed, an Adversary

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1 Proceeding is currently pending with regard to this claim and treatment of this claim will be
2 determined upon resolution of the Adversary Proceeding by final and non-appealable judgment or
3 settlement. The Debtors estimate that their potential liability for the Class 5 Claim will be
4 extinguished, and they will be entitled to recover from the Class 5 Claimant damages pursuant to
5 their counterclaim in an amount to be determined. The net amount of any such recovery, after
6 reimbursement of administrative expenses incurred in connection with the prosecution of such
7 litigation, will be added to the distributions provided for hereunder in accordance with the
8 treatment afforded to Class 6. In the event the Class 5 Claimant is ultimately successful in
9 establishing its claim against the Debtors, it shall be paid in accordance with the treatment
10 afforded to Class 6, and, if any part of such claim is adjudicated to be non-dischargeable, the
11 remaining unpaid balance of such claim shall survive the discharge granted to the Debtors upon
12 completion of all payments under their Plan. The Class 5 Claim is impaired.

13 **Class 6: General Unsecured Claims** - Class 6 Claims constitute those allowed claims
14 which are non-priority and unsecured, and, if scheduled by the Debtors as contingent,
15 unliquidated and/or disputed, are claims for which the claimants have filed timely Proofs of
16 Claims which have been ultimately allowed. The holders of Class 6 Claims will be paid *pro rata*,
17 after payment of allowed administrative expenses, from quarterly distributions of the Debtors' net
18 disposable income of approximately \$1,000.00/month for five (5) years, or the reasonably
19 equivalent value thereof. The Debtors estimate that Class 6 Claims will be paid a total of
20 approximately \$30,000. Class 6 Claims are impaired.

21 In addition, the net amount of any recovery of damages from the Class 5 Claimant
22 pursuant to the Debtors' counterclaim in the Adversary Proceeding currently pending with the
23 Class 5 Claimant, after reimbursement of administrative expenses incurred in connection with the
24 prosecution of such litigation, will be added to the *pro rata* distributions provided to Class 6
25 hereunder as soon as reasonably thereafter such recovery is final and non-appealable and is
26 actually recovered by or on behalf of the Debtors. In the event any funds from such recovery
27 remain after payment of all Allowed Claim in full, with interest, it shall be paid to the Debtors.

1 After payment of administrative claims, and if all known and outstanding unsecured
2 claimants timely file claims or have their claims deemed allowed because they have been
3 scheduled as liquidated, non-contingent and undisputed, the proponents of this Plan estimate all
4 allowed Class 6 Unsecured Claims will receive distributions of no less than approximately 6.0%
5 or six cents (6¢) on the dollar (\$1.00) in the event that the outcome of the Debtors' litigation with
6 the Class 5 Claimant is successful or 1.75% or 1.75¢ on the dollar (\$1.00) if it is not.

7 **Class 7: Equity Interests** – The holders of Class 7 Equity Interests are the Debtors, who
8 hold an ownership interest (i.e., equity interest) in all of the Debtors' prepetition property and all
9 post-petition property owned or acquired by the Debtors during the term of the Plan. Other than
10 as set forth in the Plan for payment of administrative expenses and distribution to creditors, the
11 Debtors shall retain all such equity interests. Class 7 Equity Interests are unimpaired.

12 **ARTICLE IV**

13 **GLOBAL SETTLEMENT OPTION**

14 As an alternative to the treatment provided to Class 5 (Claim of [REDACTED] and [REDACTED]
15 [REDACTED]) (hereinafter "[REDACTED]") under the Plan, and in full satisfaction of all [REDACTED] Claims against
16 the Debtors and the Debtors' business entity known as [REDACTED], LLC, including,
17 but not limited to, the allegations of their Complaint asserted in Adversary Proceeding No. 11-ap-
18 01682-JMM, [REDACTED] will receive an unsecured seven (7) year promissory note payable by the
19 Debtors' business entity known as [REDACTED] LLC, in the amount of \$38,000
20 which (1) will bear interest at the prime rate of interest which will be adjusted on each
21 anniversary of the Effective Date to the then current prime rate of interest; (2) will be paid in
22 monthly installments of principal and interest of approximately \$500.00; and (3) may be pre-paid
23 at anytime without penalty; and in full satisfaction of all the Debtors' Claims against [REDACTED];
24 [REDACTED] will receive a full and complete waiver and release by the Debtors and the Debtors'
25 business entity known as [REDACTED] LLC, of any and all claims and causes of
26 action, whether known or unknown and whether asserted or unasserted, against [REDACTED], including,
27 but not limited to, their counterclaim asserted in Adversary Proceeding No. 11-ap-01682-JMM.
28 In return for the receipt of such alternative treatment, (1) [REDACTED] will each be deemed to have

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1 waived and forever released any and all Claims and causes of action, whether known or unknown
2 and whether asserted or unasserted, against the Debtors and the Debtors' business entity known as
3 [REDACTED] LLC, including, but not limited to, any and all claims and causes of
4 action asserted in the [REDACTED] Adversary Proceeding (which shall be deemed dismissed with
5 prejudice) and any claims to ownership, reimbursement or repayment of a CD on deposit with
6 Bank of America to secure [REDACTED] LLC's business operations. To the extent
7 this alternative treatment is accepted by [REDACTED] as set forth hereinafter, such alternative treatment
8 will be substituted for and will replace the treatment provided under the Plan to Class 5 (Claim of
9 [REDACTED] and [REDACTED]). This alternative global settlement option treatment shall
10 be available to the Class 5 Claimant upon election in writing filed with the Court by the Class 5
11 Claimant at any time prior to the initial hearing on Approval of Disclosure Statement. In the event
12 of such timely election by the Class 5 Claimant, the Debtors' Plan term shall be decreased to five
13 (5) years and the additional \$24,000 which was to be dedicated for the Debtors' prosecution and
14 defense of the pending [REDACTED] Adversary Proceeding shall be made the subject of a second
15 unsecured two (2) year promissory note to [REDACTED] without interest, which will be paid in monthly
16 installments of \$1,000.00 by the Debtors beginning on the first day of the month following the
17 Debtors completion of all monthly payments required under the Debtors' modified five (5) year
18 Plan term and may be pre-paid at anytime by the Debtors without penalty. In the event that this
19 global settlement option is not timely elected by the Class 5 Claimant, such Claimant will receive
20 its respective treatment provided to Class 5 under the Plan at such time as its Claim becomes an
21 Allowed Claim by final and non-appealable judgment or settlement

22 **ARTICLE V**

23 **ADDITIONAL PLAN PROVISIONS**

24 In addition to the provisions outlined in Articles III above, there may be additional
25 provisions and details contained in the Plan of Reorganization which should be reviewed before
26 voting. A copy of the Plan is attached to this Disclosure Statement as **Exhibit 1**. This Article
27 outlines some of the additional provisions of the Plan.

28

1 **5.1 Means of Implementation**


2 On the Effective Date of the Plan, all property of the Debtors' bankruptcy estate shall be
3 vested in the Debtors as the Reorganized Debtors who will be responsible for administering the
4 Plan by committing their projected net disposable monthly income of \$1,000 to Chapter 11 Plan
5 payments for seven (7) years, or the reasonably equivalent value thereof, for the benefit of
6 creditors pursuant to the distributive terms and provisions of the Plan (*See Article III, above*).
7 All Allowed Administrative and Priority Claims shall be paid directly by the Reorganized
8 Debtors in full upon approval by the Court on or after the Effective Date of the Plan. The holder
9 of the Class 1 Claim shall be paid by the non-debtor limited liability company owned by the
10 Debtors; the Class 2 Claim shall be satisfied by surrender of its collateral; the Class 3 Claim shall
11 be paid by surrender of its collateral and allowance of its deficiency as a Class 6 Claim upon
12 completion of the foreclosure process and the final determination of such claimant's allowed
13 deficiency claim; the Class 4 Allowed Claim shall be paid directly by the Reorganized Debtors as
14 a reasonable and necessary monthly expense; the Class 5 Allowed Claim, if any, shall be paid *pro*
15 *rata* in accordance with the treatment afforded to Class 6 Claims upon the final and non-
16 appealable determination of such claimant's allowed claim following resolution of the pending
17 Adversary Proceeding by final and non-appealable judgment or settlement. Alternatively, upon
18 election by duly filed notice thereof by the Class 5 Claimant at any time prior to the initial
19 hearing on Approval of Disclosure Statement, the holder of the Class 5 Claim shall be paid by the
20 Debtors and the Debtors' business entity known as [REDACTED], LLC, pursuant to
21 Article IV. Payments to Class 6 general unsecured creditors of the Debtors shall be made from a
22 Plan Account opened by the reorganized Debtors after the Effective Date of the Plan and
23 maintained for the purpose of holding Plan Funds consisting of the net disposable income
24 payments of the Debtors pending distribution to holders of Class 6 Allowed Claims under the
25 terms of the Plan. There shall be no Post-Confirmation Managers of the Debtors, and no
26 compensation shall be paid on account thereof. Beginning on the last day of the first calendar
27 quarter following the Effective Date of the Plan and after payment in full of all Allowed
28 Administrative and Priority Claims, and continuing on the last day of each calendar quarter

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1 thereafter through month sixty (60), each holder of a Class 6 Allowed Claim shall be paid *pro*
2 *rata* through such quarterly distributions of the Reorganized Debtors' net disposable income from
3 the Plan Account. No distributions of cash shall be made under the Plan in an amount less than
4 ten dollars (\$10.00).

5
6 **5.2 Executory Contracts and Unexpired Leases**

7 (a) The Debtors as lessors assume the following executory contracts and/or unexpired
8 leases effective upon the Effective Date of this Plan:

<p>9 Lessee: , L.L.C.</p>	<p>Leased Property: 2008 Chevrolet Express Van Maturity Date is 60 months after Effective Date of Plan; Lease is current and lease payment is \$360/month</p>
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11 (b) The Debtors will be conclusively deemed to have rejected all executory contracts
12 and/or unexpired leases as lessors and/or lessees not expressly assumed under
13 Section 5.2(a) above, or before the date of the Order confirming this Plan, upon the
14 Effective Date of this Plan pursuant to the provisions of sections 365 and
15 1123(b)(2) of the Code. A Proof of Claim arising from the rejection of an
16 executory contract or unexpired lease under this Section must be filed no later than
17 thirty (30) days after entry of the Order confirming this Plan.

18 **5.3 Allowance and Disallowance of Claims**

19 **Proof of Claim Filing Bar Date.** The Debtors shall request the Court to establish a bar
20 date no sooner than sixty (60) days thereafter by which all claims not scheduled by the Debtors as
21 noncontingent, liquidated and undisputed must be filed by creditors ("Claims Bar Date"). All
22 creditors and interested parties shall receive written notice of such Claims Bar Date in sufficient
23 time to file a formal Proof of Claim, if necessary. A disputed Claim is a Claim which has not
24 been Allowed or disallowed [by a final non-appealable order], and as to which either: (a) a Proof
25 of Claim has been filed or deemed filed, and the Debtors or another party in interest have filed an
26 objection; or (b) no proof of claim has been filed, and the Debtors have scheduled such claim as
27 contingent, unliquidated or disputed. No distribution will be made on account of a disputed claim
28

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1 unless such claim is Allowed [by a final non-appealable order]. The Reorganized Debtors will
 2 have the power and authority to settle and compromise a disputed claim with Court approval and
 3 compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure. At any time before or
 4 after the Effective Date of the Plan, the Reorganized Debtors may request that the Court disallow
 5 or estimate, for purposes of allowance, the amount of any contingent, unliquidated or disputed
 6 Claim, including any Claim arising from any rejection of an executory contract or unexpired
 7 lease, pursuant to section 502(c) of the Code.

8 **5.4 Discharge and Release**

9 Upon the completion of all payments provided for under the Plan, the Debtors
 10 shall be discharged of all Claims against them, except any Claim specifically adjudicated as non-
 11 dischargeable. The discharge of the Debtors shall be effective as to each Claim, regardless of
 12 whether a Proof of Claim thereof was filed, whether the claim is an Allowed Claim or whether
 13 the holder thereof votes to accept the Plan. Until the completion of the payments under the Plan,
 14 creditors shall be enjoined through the Confirmation Order from taking any action against the
 15 Debtors to collect on their Claims; provided, however, that this provision shall not prevent any
 16 holder of any Claim from taking any action to enforce the terms of this Plan or to enforce any
 17 debt or security interest preserved or provided for in this Plan; and provided further that creditors
 18 of the Debtors whose claims are held to be nondischargeable pursuant to Code section 523 may
 19 seek to collect upon such Claims from property of the Debtors which is not property of their
 20 bankruptcy estate. The Debtors' discharge of debts pursuant to this Plan shall not be effective
 21 until the completion of all the Plan obligations described above. Should those Plan obligations not
 22 be performed, the Debtors, the Reorganized Debtors, or any other party in interest shall retain the
 23 ability to move the Court to convert this Case to one under Chapter 7 of the Code, and the entry
 24 of the Confirmation Order shall not be deemed "a discharge ... under section 1141 of [title 11]"
 25 within the meaning of Code section 727(a)(8).

26 **4.5 Default**

27 If the Reorganized Debtors are unable to perform the terms and conditions of a confirmed
 28 Plan, then they will be in default. Any creditor may seek to enforce the Plan. Before doing so,

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1 however, a creditor must first provide at least twenty-one (21) days notice to the Reorganized
2 Debtors specifying the nature of the alleged default and providing the Reorganized Debtors a
3 twenty-one (21) day period to cure such default. Any such notice shall be in writing and sent to
4 the Reorganized Debtors, by certified mail, at their address of record with a copy sent, by
5 certified mail, to: Peter M. Gennrich, Nussbaum Gillis & Dinner, P.C., 14850 N. Scottsdale
6 Road, Suite 450, Scottsdale, AZ 85254.

7 **5.5 Conditions to Confirmation and Effectiveness**

8 Confirmation of the Plan shall not occur unless the Bankruptcy Court shall have entered a
9 Confirmation Order, which (a) shall not have been stayed and (b) shall have been final and non-
10 appealable. The Effective Date of the Plan shall be the first business day that is fifteen (15) days
11 after the Confirmation Order is entered, provided that all conditions to effectiveness of the Plan
12 are satisfied, or else the next business day after all such conditions to effectiveness are satisfied.

13 **5.6 Retention of Jurisdiction by the Court**

14 After the Confirmation Date, the Court may retain jurisdiction for the following purposes,
15 or as otherwise permitted by law:

16 **Objections to Claims.** To hear and determine objections to the allowance of
17 Claims and requests for the estimation of Claims.

18 **Fee Applications.** To hear and determine requests for payment of Administrative
19 Claims entitled to priority under section 507(a)(2) of the Code, including applications for
20 compensation of professional services and disbursements.

21 **Pending Matters.** To hear and determine any and all pending applications,
22 motions, adversary proceedings and other contested matters not resolved by the Plan.

23 **Modification of Plan.** To modify the Plan to the full extent permitted by the Plan
24 and the applicable provisions of section 1127 of the Code.

25 **Resolution of Disputes and Enforcement of Payments, Rights, and Interests.**
26 To resolve controversies and disputes regarding the interpretation or enforcement of the
27 terms and provisions of payments, rights, and interests required or created by the Plan.
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ARTICLE VIII

SPECIAL RISK FACTORS

The Plan is funded totally from wages and income to be paid to Debtors [REDACTED] and [REDACTED] for their employment services for seven (7) years, or the reasonable equivalent value thereof. As such, the success or failure of the Plan is dependent upon their health and the stability of their employment relations.

ARTICLE IX

CLOSING AND REOPENING CASE

Upon substantial consummation of the Plan, the Reorganized Debtors may apply for an order closing the Case, and, if appropriate, pursuant to Bankruptcy Code section 350(a) of the Bankruptcy Code, the Court shall close the Case by entry of a Final Decree.

The Case may be reopened pursuant to section 350(b) of the Bankruptcy Code to administer assets, for the entry of an order determining that the Debtors have been discharged of Claims or to grant the Reorganized Debtors other relief, or for other cause.

ARTICLE X

TAX CONSEQUENCES

The Debtors have not obtained a tax opinion as to the tax consequences of the Plan as to any claim, interest, or creditor. However, payment of indebtedness and discharge of debt may have significant tax consequences for creditors. The creditors are advised to see their tax advisor for information concerning the tax consequences of the Plan.

BECAUSE THE DEBTORS EXPRESS NO TAX OPINION AND GIVE NO TAX ADVICE, IN NO EVENT WILL THE DEBTORS OR THEIR PROFESSIONAL ADVISORS BE LIABLE IF THE TAX CONSEQUENCES OF THE PLAN ARE NOT AS ANTICIPATED. CREDITORS MUST LOOK SOLELY TO, AND RELY SOLELY UPON, THEIR OWN ADVISORS AS TO THE TAX CONSEQUENCES OF THE PLAN.

RECOMMENDATION OF THE DEBTORS

The Debtors urge the creditors to vote to accept the Plan, which provides a better result than liquidation under Chapter 7 and is in the best interests of the creditors.

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1 NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE
2 AUTHORIZED OTHER THAN THOSE STATED HEREIN. YOU SHOULD NOT RELY
3 UPON ANY REPRESENTATIONS OR INDUCEMENTS CONCERNING THE PLAN
4 OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT.

5 THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE
6 STATEMENT DOES NOT CONSTITUTE A CERTIFICATION OR RULING BY THE
7 COURT REGARDING THE COMPLETENESS OR ACCURACY OF ANY
8 STATEMENTS CONTAINED HEREIN.

9 AN ACCOUNTANT HAS NOT REVIEWED THE INFORMATION CONTAINED
10 IN THIS DISCLOSURE STATEMENT OR ITS EXHIBITS. THE DEBTORS CANNOT
11 WARRANT OR REPRESENT THAT THE INFORMATION IS WITHOUT ANY
12 ERROR. HOWEVER, THE INFORMATION IS ACCURATE TO THE BEST OF THEIR
13 KNOWLEDGE AND BELIEF.

14 This Disclosure Statement is not the Plan. This Disclosure Statement, together with the
15 Plan (Exhibit 1), should be read in their entirety before you vote on the Plan. The Plan is
16 summarized in this Disclosure Statement, but the Plan is controlling.

17
18 DATED this 9th day of February, 2012:

19 By: [Redacted Signature]

20
21 By: [Redacted Signature]

22
23
24 NUSSBAUM GILLIS & DINNER, P.C.

25 *[Handwritten Signature]*

26 Randy Nussbaum
27 Peter M. Genrich
28 Attorneys for [Redacted]
and [Redacted], Debtors

825176/15419-1

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2 Peter M. Gennrich, Esq., #021788
3 **NUSSBAUM GILLIS & DINNER, P.C.**
4 14850 N. Scottsdale Road, Suite 450
5 Scottsdale, Arizona 85254
6 Telephone: (480) 609-0011
7 Facsimile: (480) 609-0016
8 nussbaum@ngdlaw.com
9 pgennrich@ngdlaw.com

10 Attorneys for [REDACTED]
11 and [REDACTED], Debtors

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF ARIZONA**

14 In re:
15 [REDACTED] and
16 [REDACTED],
17 Debtors.

In Proceedings Under Chapter 11
Case No: 0:11-bk-16337-JMM
**DEBTORS' CHAPTER 11
PLAN OF REORGANIZATION**

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18 **CREDITORS SHALL BE PROVIDED FOR AND PAID AS STATED IN THIS PLAN. THE PROVISIONS OF A CONFIRMED PLAN BIND THE DEBTORS AND ALL CREDITORS, WHETHER OR NOT SUCH CREDITOR IS IMPAIRED UNDER THE PLAN OR HAS ACCEPTED THE PLAN. CONFIRMATION OF THE PLAN BINDS ALL CLAIMANTS TO TREATMENT OF THEIR CLAIMS AS PROVIDED FOR IN THIS PLAN. SEE BANKRUPTCY CODE SECTION 1141(a).**

19 [REDACTED] and [REDACTED], Debtors (the "Debtors" or the "Plan Proponents"),
20 hereby propose the following Plan of Reorganization pursuant to section 1121(a) of the United
21 States Bankruptcy Code.

22 **ARTICLE I**
23 **SUMMARY**

24 This Plan of Reorganization (the "Plan") under Chapter 11 of the Code proposes to pay
25 creditors of the Debtors from wages paid to Debtors [REDACTED] and [REDACTED] for
26 their employment services for a period of seven (7) years.
27
28

EXHIBIT 1

WESTERN CONSUMER BANKRUPTCY CONFERENCE

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1 This Plan provides for the payment of Administrative Priority Claims to the Debtors'
2 professionals, to be paid by agreement with Debtors' professionals, upon approval by the Court
3 on or after the Effective Date of the Plan. A portion of such fees and expenses shall be paid from
4 regular Plan payments required over a five (5) year period, and a portion of such fees and
5 expenses related to the prosecution and defense of pending litigation shall be paid from
6 continuing Plan payments required over an additional two (2) year period. This Plan also provides
7 for payment of United States Trustee fees upon the Effective Date of the Plan. This Plan also
8 provides for payment of Priority Tax Claims to IRS and/or the Arizona Department of Revenue in
9 full upon the Effective Date of the Plan or as soon thereafter as they become Allowed Claims.
10 This Plan also provides for four (4) classes of Secured Claims; two (2) classes of Unsecured
11 Claims; and one (1) class of Equity Interests. General unsecured creditors holding allowed (Class
12 6) claims against the Debtors will receive *pro rata* quarterly distributions from the Debtors' net
13 disposable monthly income of approximately \$1,000/month for five (5) years, or the reasonably
14 equivalent value thereof. The proponents of this Plan estimate that after payment of
15 administrative priority claims, all allowed unsecured Class 5 will receive distributions of
16 approximately 6% or six cents (6¢) on the dollar (\$1.00). The individual equity interest holders
17 (the Debtors) (Class 7) shall retain their individual ownership (equity) interests in all property of
18 the Estate as the Reorganized Debtors, other than as set forth in this Plan for payment of
19 Administrative Priority Claims, Priority Tax Claims and distribution to creditors.

20 Article II of this Plan sets forth definitions of key words and phrases used throughout this
21 Plan for all creditors and other interested parties to better understand the terms and provisions of
22 this Plan. All creditors should refer to Articles III through V of this Plan for information
23 regarding the precise treatment of their claim. Articles VI through XIV of this Plan set forth
24 additional provisions of this Plan governing its implementation and consummation. A Disclosure
25 Statement which provides more detailed information regarding this Plan and the rights of
26 creditors has been circulated with this Plan. Your rights may be affected. You should read these
27 papers carefully and discuss them with your attorney, if you have one. (If you do not have an
28 attorney, you may wish to consult one.)

ARTICLE II

DEFINITIONS

For the purposes of this Plan, the following terms shall have the respective meanings set forth below:

2.1 "Administrative Claim" shall mean a claim for administrative expenses under section 503(b) of the Code that is an Allowed Claim and is entitled to priority in payment pursuant to section 507(a)(2) of the Code.

2.2 "Allowed Claim" shall mean (a) any Claim, proof of which is filed on or before the date designated by the Bankruptcy Court as the last date for filing a Proof of Claim with respect to such Claim, or which has been or hereafter is scheduled by the Debtors pursuant to section 521(a)(1) of the Code as liquidated in amount and not disputed or contingent, and, in either case, a Claim as to which no objection to the allowance thereof has been filed within the applicable period of limitation fixed by the Code, the Bankruptcy Rules, or an order of the Court, or (b) any Claim as to which any objection has been determined by an order or judgment of the Court allowing such Claim in whole or in part that is no longer subject to appeal, de novo review, or certiorari proceeding, and as to which no appeal, de novo review, or certiorari proceeding is pending.

2.3 "Allowed Priority Claim" shall mean the portion of an Allowed Claim entitled to priority under sections 507(a)(1), (3), (4), (5), (6), (7), (8), (9) or (10) of the Code.

2.4 "Allowed Unsecured Claim" shall mean an Allowed Claim, other than an Administrative Claim, or an Allowed Priority Claim.

2.5 "Avoidance Actions" shall mean any claims or causes of action of the Debtors' bankruptcy estate under/pursuant to Code sections 544, 545, 546, 547, 548, 549, 550, 551, or 553.

2.6 "Case" shall mean this Chapter 11 proceeding commenced by the Debtors, [REDACTED] and [REDACTED], by the filing of their Voluntary Petition for relief under Chapter 11 of Title 11, United States Code, on June 6, 2011.

2.7 "Causes of Action" shall mean, whenever arising, all rights, claims, and causes of action accruing to the Debtors or the Reorganized Debtors, before, on, or after the Petition Date,

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1 and not otherwise settled or compromised pursuant to this Plan or otherwise, including, without
2 limitation, all Avoidance Actions.

3 2.8 "Claim" shall mean any right in existence on the Confirmation Date against the
4 Debtors to (a) payment, whether or not such right is reduced to judgment, liquidated,
5 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,
6 secured, or unsecured, or (b) an equitable remedy for a breach of performance if the breach would
7 give rise to a right to payment, whether or not such right to an equitable remedy is reduced to
8 judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

9 2.9 "Code" or "Bankruptcy Code" shall mean the Bankruptcy Abuse Prevention and
10 Consumer Protection Act of 2005 ("BAPCPA"), as amended, Title 11, United States Code,
11 sections 101, *et. seq.*

12 2.10 "Confirmation Date" shall mean the date on which the Confirmation Order is
13 entered by the Clerk of the Court.

14 2.11 "Confirmation Order" shall mean the order of the Court confirming the Plan.

15 2.12 "Court" shall mean the United States Bankruptcy Court for the District of Arizona
16 (the "Bankruptcy Court"), in which the Debtors' Chapter 11 Case is pending pursuant to referral
17 of jurisdiction by the United States District Court for the District of Arizona, and any court
18 having competent jurisdiction to enter final orders or judgments, conduct *de novo* review of
19 issues, or withdraw any portion of the above-captioned proceeding from the Bankruptcy Court,
20 and any court having competent jurisdiction to hear appeals or *certiorari* proceedings from any of
21 the foregoing.

22 2.13 "Creditor" shall mean a Person that has a Claim against the Debtors which arose
23 on or before the Petition Date or that has a Claim against the Debtors' bankruptcy estate of any
24 kind specified in sections 502(g), 502(h) or 502(i) of the Code.

25 2.14 "Debtors" shall mean [REDACTED] and [REDACTED], the debtors in this
26 Chapter 11 Case.

27 2.15 "Effective Date" shall mean the first business day that is fifteen (15) days after the
28 Confirmation Order is entered, provided that all conditions to effectiveness of the Plan are

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1 satisfied, or else the next business day after all conditions to effectiveness of the Plan are
2 satisfied.

3 2.16 "General Unsecured Claim" shall mean a Claim arising on or before the Petition
4 Date (or thereafter upon approval of the Court) which is unsecured, or a Claim for which the
5 claimant holds no collateral, without any basis for priority of payment under the Code.

6 2.17 "Lien" shall mean a charge against or interest in property to secure payment of a
7 debt or performance of an obligation.

8 2.18 "Petition Date" shall mean the date on which the Debtors filed their Voluntary
9 Petition for relief commencing this Chapter 11 Case, June 6, 2011.

10 2.19 "Person" shall mean an individual, partnership and corporation and is further
11 defined in section 101(41) of the Code.

12 2.20 "Plan" or "Plan of Reorganization" shall mean this Plan of Reorganization
13 proposed by the Debtors, as modified in accordance with any amendments to the terms hereof, or
14 in accordance with applicable provisions of the Code, or in accordance with a duly entered
15 Confirmation Order.

16 2.21 "Plan Account" shall mean an FDIC insured money market/checking/savings
17 account opened by the reorganized Debtors after the Effective Date of the Plan and maintained
18 for the purpose of holding Plan Funds pending distribution to holders of Class 6 Allowed Claims
19 under the terms of the Plan, See Article VII.

20 2.22 "Plan Funds" shall mean the funds held in the Plan Account.

21 2.23 "Priority Tax Claim" shall mean a Claim entitled to priority under section
22 507(a)(8) of the Code.

23 2.24 "Reorganized Debtors" shall mean [REDACTED] and [REDACTED], the
24 Debtors in this Chapter 11 Case and/or the persons appointed pursuant to this Plan to serve as the
25 post-Confirmation Order administrators of the Plan, and any successors thereto.

26 2.25 "Secured Claim" shall mean a Claim arising on or before the Petition Date (or
27 thereafter upon approval of the Court) that is secured by a valid lien on property in which the
28 Debtors' estate has an interest and which is not void or voidable under any state or federal law,

1 including the provisions of the Code, limited to an amount equal to the lesser of the Allowed
2 Claim or the value of the property, as determined by the Court pursuant to section 506(a) of the
3 Code, or as provided by the terms of this Plan approved by a duly entered Confirmation Order,
4 minus the amount of any Allowed Claim secured by a senior lien against the same property.

5 Terms not defined in this Plan which are defined in the Code shall have the meanings
6 stated in the Code.

7
8 **ARTICLE III**

9 **DESIGNATION OF CLASSES OF CLAIMS**

10 **Classification of Claims and Interests:** Claims and interests are hereby designated in the
11 following classes:

12 **Class 1:** Class 1 consists of the Secured Claim of UniBank. This claim is to
13 be paid in full by [REDACTED] L.L.C., but the Debtors'
14 guarantor liability therefor will be discharged. This Class is
15 impaired.

16 **Class 2:** Class 2 consists of the Secured Claim of Wells Fargo Home
17 Mortgage. The real property securing this claim will be
18 surrendered. This Class is not impaired.

19 **Class 3:** Class 3 consists of the Secured Claim held by Chase Home
20 Mortgage. The real property securing this claim is to be
21 surrendered and any deficiency is to be treated in accordance with
22 Class 6 General Unsecured Claims. This Class is impaired.

23 **Class 4:** Class 4 consists of the Secured Claim of GMAC. This claim is to be
24 bifurcated into secured and unsecured components with the
25 unsecured portion to be treated in accordance with Class 6 General
26 Unsecured Claims. This Class is impaired.

27 **Class 5:** Class 5 consists of the Unsecured Claim of [REDACTED] and
28 [REDACTED]. An Adversary Proceeding is currently pending with
regard to this claim, and treatment of this claim, if any, will be
determined upon resolution of the Adversary Proceeding by final
judgment or settlement. This Class is impaired.

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1 4.2 **Priority Tax Claims.** Any Priority Tax Claims are unimpaired. The Plan
2 Proponents estimate that Allowed Priority Tax Claims will not exceed \$250 to IRS and/or the
3 Arizona Department of Revenue. Allowed Priority Tax Claims will be paid in full upon the
4 Effective Date or as soon thereafter as they become Allowed Claims.

5
6 **ARTICLE V**

7 **TREATMENT OF CLASSIFIED CLAIMS**

8 5.1 **Class 1: Secured Claim of Unibank** - The Debtors estimate the Class 1 Claim of
9 Unibank at \$1,012,232.00 as of the Petition Date, plus accrued interest. This claim is secured by
10 the Debtors' limited liability company business interest, [REDACTED], L.L.C., and all
11 of its business assets and is personally guaranteed by the Debtors. The Class 1 Claim is fully
12 secured and will be paid by [REDACTED] L.L.C., in the ordinary course of its
13 business operations. The Debtors' guarantor liability for repayment of the Class 1 Claim shall be
14 discharged. The Class 1 Claim is impaired.

15 5.2 **Class 2: Secured Claim of Wells Fargo Home Mortgage** - The Debtors estimate
16 the Class 2 Claim of Wells Fargo Home Mortgage at \$632,566.00 as of the Petition Date, plus
17 accrued interest. This claim is secured by the Debtors' former Desert Mountain residence located
18 at [REDACTED], Scottsdale, Arizona 85262, which the Debtors estimate to have a
19 fair market value of approximately \$700,000.00 as of the Petition Date. The Debtors have no
20 personal liability for repayment of this secured claim because of the application of Arizona's anti-
21 deficiency laws. The Class 2 Claim is to be satisfied by surrender of the collateral to the Class 2
22 Claimant. The Class 2 Claim is unimpaired.

23 5.3 **Class 3: Secured Claim of Chase Home Mortgage** - The Debtors estimate the
24 Class 3 Claim of Chase Home Mortgage at \$500,000.00 as of the Petition Date, plus accrued
25 interest. This claim may be partially secured by the Debtors' former Desert Mountain residence
26 located at [REDACTED] Scottsdale, Arizona 85262, which the Debtors estimate to
27 have a fair market value of approximately \$700,000.00 as of the Petition Date. The Class 3 Claim
28 is to be partially satisfied by surrender of the collateral to the Class 3 Claimant. Upon foreclosure

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1 any deficiency is to be treated in accordance with Class 6 General Unsecured Claims. The Class 3
 2 Claim is impaired.

3 5.4 **Class 4: Secured Claim of GMAC** - The Debtors estimate the Class 4 Claim of
 4 GMAC at \$15,210.00 as of the petition Date, plus accrued interest. This claim is secured by the
 5 Debtors' 2008 Chevrolet Express Van, which the Debtors estimate to have a current fair market
 6 value of approximately \$12,000.00. **The Class 4 Claim is to be modified because the balance**
 7 **owing on the secured Class 4 Claim exceeds the current fair market value of the collateral**
 8 **securing such claim. The Debtors' Plan will bifurcate such claim into a secured claim of**
 9 **\$12,000 and an unsecured claim of \$3,210.** The secured Class 4 Claim shall be paid in monthly
 10 installments of principal and interest based upon the revised principal balance of \$12,000 at an
 11 interest rate of 5.0% per annum on an amortization schedule of five (5) years, resulting in a
 12 monthly payment of principal and interest of \$226.45. The unsecured portion of this claim shall
 13 be paid in accordance with the treatment afforded to Class 6. The Class 4 Claim is impaired.

14 5.5 **Class 5: Unsecured Claim of [REDACTED] and [REDACTED]** - The
 15 Debtors estimate the Class 5 Claim of [REDACTED] and [REDACTED] at \$1,200,000.00
 16 as of the Petition Date, plus accrued interest. Such claim is unliquidated and disputed, an
 17 Adversary Proceeding is currently pending with regard to this claim and treatment of this claim
 18 will be determined upon resolution of the Adversary Proceeding by final and non-appealable
 19 judgment or settlement. The Debtors estimate that their potential liability for the Class 5 Claim
 20 will be extinguished, and they will be entitled to recover from the Class 5 Claimant damages
 21 pursuant to their counterclaim in an amount to be determined. The net amount of any such
 22 recovery, after reimbursement of administrative expenses incurred in connection with the
 23 prosecution of such litigation, will be added to the distributions provided for hereunder in
 24 accordance with the treatment afforded to Class 6. In the event the Class 5 Claimant is ultimately
 25 successful in establishing its claim against the Debtors, it shall be paid in accordance with the
 26 treatment afforded to Class 6, and, if any part of such claim is adjudicated to be non-
 27 dischargeable, the remaining unpaid balance of such claim shall survive the discharge granted to
 28 the Debtors upon completion of all payments under their Plan. The Class 5 Claim is impaired.

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1 5.6 **Class 6: General Unsecured Claims** - Class 6 Claims constitute those allowed
2 claims which are non-priority and unsecured, and, if scheduled by the Debtors as contingent,
3 unliquidated and/or disputed, are claims for which the claimants have filed timely Proofs of
4 Claims which have been ultimately allowed. The holders of Class 6 Claims will be paid *pro rata*,
5 after payment of allowed administrative expenses, from quarterly distributions of the Debtors' net
6 disposable income of approximately \$1,000.00/month for five (5) years, or the reasonably
7 equivalent value thereof. The Debtors estimate that Class 6 Claims will be paid a total of
8 approximately \$30,000. Class 6 Claims are impaired.

9 In addition, the net amount of any recovery of damages from the Class 5 Claimant
10 pursuant to the Debtors' counterclaim in the Adversary Proceeding currently pending with the
11 Class 5 Claimant, after reimbursement of administrative expenses incurred in connection with the
12 prosecution of such litigation, will be added to the *pro rata* distributions provided to Class 6
13 hereunder as soon as reasonably thereafter such recovery is final and non-appealable and is
14 actually recovered by or on behalf of the Debtors. In the event any funds from such recovery
15 remain after payment of all Allowed Claim in full, with interest, it shall be paid to the Debtors.

16 After payment of administrative claims, and if all known and outstanding unsecured
17 claimants timely file claims or have their claims deemed allowed because they have been
18 scheduled as liquidated, non-contingent and undisputed, the proponents of this Plan estimate all
19 allowed Class 6 Unsecured Claims will receive distributions of no less than approximately 6.0%
20 or six cents (6¢) on the dollar (\$1.00) in the event that the outcome of the Debtors' litigation with
21 the Class 5 Claimant is successful or 1.75% or 1.75¢ on the dollar (\$1.00) if it is not.

22 5.7 **Class 7: Equity Interests** – The holders of Class 7 Equity Interests are the
23 Debtors, who hold an ownership interest (i.e., equity interest) in all of the Debtors' prepetition
24 property and all post-petition property owned or acquired by the Debtors during the term of the
25 Plan. Other than as set forth in the Plan for payment of administrative expenses and distribution
26 to creditors, the Debtors shall retain all such equity interests. Class 7 Equity Interests are
27 unimpaired.

28

ARTICLE VI

GLOBAL SETTLEMENT OPTION

As an alternative to the treatment provided to Class 5 (Claim of [REDACTED] and [REDACTED] (hereinafter "[REDACTED]") under the Plan, and in full satisfaction of all [REDACTED] Claims against the Debtors and the Debtors' business entity known as [REDACTED], LLC, including, but not limited to, the allegations of their Complaint asserted in Adversary Proceeding No. 11-ap-01682-JMM, [REDACTED] will receive an unsecured seven (7) year promissory note payable by the Debtors' business entity known as [REDACTED], LLC, in the amount of \$38,000 which (1) will bear interest at the prime rate of interest which will be adjusted on each anniversary of the Effective Date to the then current prime rate of interest; (2) will be paid in monthly installments of principal and interest of approximately \$500.00; and (3) may be pre-paid at anytime without penalty; and in full satisfaction of all the Debtors' Claims against [REDACTED], [REDACTED] will receive a full and complete waiver and release by the Debtors and the Debtors' business entity known as [REDACTED], LLC, of any and all claims and causes of action, whether known or unknown and whether asserted or unasserted, against [REDACTED] including, but not limited to, their counterclaim asserted in Adversary Proceeding No. 11-ap-01682-JMM. In return for the receipt of such alternative treatment, (1) [REDACTED] will each be deemed to have waived and forever released any and all Claims and causes of action, whether known or unknown and whether asserted or unasserted, against the Debtors and the Debtors' business entity known as [REDACTED], LLC, including, but not limited to, any and all claims and causes of action asserted in the [REDACTED] Adversary Proceeding (which shall be deemed dismissed with prejudice) and any claims to ownership, reimbursement or repayment of a CD on deposit with Bank of America to secure [REDACTED] LLC's business operations. To the extent this alternative treatment is accepted by [REDACTED] as set forth hereinafter, such alternative treatment will be substituted for and will replace the treatment provided under the Plan to Class 5 (Claim of [REDACTED] and [REDACTED]. This alternative global settlement option treatment shall be available to the Class 5 Claimant upon election in writing filed with the Court by the Class 5 Claimant at any time prior to the initial hearing on Approval of Disclosure

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