

1 STEVEN T. GUBNER – NV Bar No. 4624  
 SUSAN K. SEFLIN – CA Bar No. 213865 – Admitted *Pro Hac Vice*  
 2 JESSICA S. WELLINGTON – CA Bar No. 324477 – Admitted *Pro Hac Vice*  
 BG LAW LLP  
 3 300 S. 4<sup>th</sup> Street, Suite 1550  
 Las Vegas, NV 89101  
 4 Telephone: (702) 835-0800  
 Facsimile: (866) 995-0215  
 5 Email: sgubner@bg.law  
 sseflin@bg.law  
 6 jwellington@bg.law

7 Attorneys for Chapter 11 Debtor in Possession  
 and Plan Proponent

8  
 9 **UNITED STATES BANKRUPTCY COURT**  
 10 **FOR THE DISTRICT OF NEVADA**

<p>11 In re:</p> <p>12 Front Sight Management LLC,</p> <p>13</p> <p>14 Debtor.</p>	<p>Case No. 22-11824-abl</p> <p>Chapter 11</p> <p><b>Confirmation Hearing:</b> November 18, 2022  <b>Hearing Time:</b> 9:30 a.m.</p>
--	--

15  
 16  
 17 **DEBTOR’S MOTION FOR CONFIRMATION OF DEBTOR’S SECOND**  
 18 **AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

19 Front Sight Management LLC, the chapter 11 debtor in possession and plan proponent (the  
 20 “Debtor”), respectfully submits this Motion (“Motion”) in support of the Debtor’s *Second Amended*  
 21 *Chapter 11 Plan of Reorganization* [ECF No. 405] (as may be amended or modified, the “Plan”) (i)  
 22 presenting an analysis of the legal issues before the Court regarding to confirmation of the Plan, and  
 23 (ii) providing the basis necessary for the Court to confirm the Plan pursuant to Section<sup>1</sup> 1129(a) and,  
 24 where applicable, Section 1129(b). Any capitalized term not defined herein shall have the same  
 25

26  
 27 <sup>1</sup> Unless otherwise stated, all references to “Section” herein shall be to the Bankruptcy Code  
 28 appearing in Title 11 of the U.S. Code; all references to a “Bankruptcy Rule” shall refer to the  
 Federal Rules of Bankruptcy Procedure; and all references to a “Local Rule” shall refer to the Local  
 Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

1 meaning as set forth in the Plan or in the Debtor’s *Second Amended Disclosure Statement*  
2 *Describing Debtor’s Second Amended Chapter 11 Plan of Reorganization* [ECF No. 406] (as may  
3 be further amended or modified, the “Disclosure Statement”).

4 This Motion is made and based on the declaration of Ignatius Piazza (the “Piazza Decl.”)  
5 filed in support of confirmation of the Plan, the Plan, the Disclosure Statement, the points and  
6 authorities provided herein, as well as the papers and pleadings filed on the docket in the Debtor’s  
7 chapter 11 case, judicial notice of which is respectfully requested pursuant to Federal Rule of  
8 Evidence 201, and such other and further evidence as may be provided in advance of and at the  
9 hearing on Plan confirmation (including the ballot tally and reply confirmation brief due on  
10 November 11, 2022). As discussed below, the Debtor respectfully submits that the Court should  
11 confirm the Plan pursuant to Section 1129.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. JURISDICTION AND VENUE**

14 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and  
15 1334 and Local Rule 1001(b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)  
16 and (L). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

17 2. As required by Local Rule 9014.2, the Debtor consents to the entry of final orders or  
18 judgments by this Court if it is determined that this Court, absent consent of the parties, cannot enter  
19 final orders or judgments consistent with Article III of the United States Constitution.

20 **II. STATEMENT OF FACTS**

21 **A. General Case Background**

22 3. On May 24, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of  
23 the Bankruptcy Code. The Debtor continues to operate its business and manage its financial affairs  
24 as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee  
25 or examiner has been appointed in this case.

26 4. On June 9, 2022, United States Trustee for Region 17 filed its *Amended Appointment*  
27 *of the Official Committee of Unsecured Creditors* [ECF No. 116].  
28

1           5.       An overview of the Debtor’s business, capital structure, and events leading to the  
2 commencement of the Debtor’s chapter 11 case, and the turnaround strategy implemented by the  
3 Debtor are set forth in detail in the declarations of Ignatius Piazza filed in support of the Debtor’s  
4 first day emergency motions [ECF Nos. 14 and 21], which are incorporated herein by this reference.

5           **B.       Plan and Disclosure Statement**

6           6.       On October 3, 2022, the Debtor filed its proposed Plan and Disclosure Statement.  
7 The Plan designates seven classes of claims, including four classes of secured claims, one class of  
8 priority (non-tax) claims, one class of unsecured claims, and one class of equity interests.  
9 Specifically, the Plan classifies the following claims and interests as such: (i) Class 1 – LVDF  
10 Secured Claim; (ii) Class 2 - Meacher Secured Claim; (iii) Class 3 – M2 EPC Secured Claim; (iv)  
11 Class 3 - Top Rank Builders Inc. Secured Claim; (v) Class 5 – Employee Wage Claim; (vi) Class 6 –  
12 General Unsecured Claims; and (vii) Class 7 – Equity Interests.

13           7.       In accordance with Section 1123(a)(1), Administrative Claims, Priority Tax Claims,  
14 and the FS DIP Secured Claim have not been classified, but their treatment is set forth in Article III  
15 of the Plan.

16           8.       The Plan provides for the Debtor to emerge from bankruptcy as an operating entity  
17 and for the distribution of certain funds to various holders of Allowed Claims as set forth in the Plan,  
18 and for the pursuit of certain claims and Causes of Action. The Plan will be funded by the Exit  
19 Financing in the aggregate amount of the \$19.575 million Cash Contribution and the contribution or  
20 payment of FS DIP’s secured claim of approximately \$5.2 million by Nevada PF, LLC or its affiliate  
21 (the “New Equity Investor” or “Nevada PF”). The Plan provides that the New Equity Investor will  
22 obtain 100% of the Reorganized Debtor’s equity as of the Effective Date. The Plan further provides  
23 that all of the Debtor’s pre-petition lifetime memberships shall be rejected effective as of the  
24 Effective Date. However, the Reorganized Debtor will offer all existing members the memberships  
25 that are set forth in Exhibit B to the Plan and Disclosure Statement. It is currently estimated that the  
26 New Value Contribution will total at least \$24.775 million.

27           9.       On October 3, 2022, the Court entered the *Order Approving (I) Adequacy of Debtor’s*  
28 *Second Amended Disclosure Statement (as May be Further Amended or Modified); (II) Approving*

1 *Solicitation Procedures, Manner of Notice and Vote Tabulation Procedures; (III) Establishing*  
2 *Voting Record Date and Deadline for Receipt of Ballots; and (IV) Fixing Date, Time, and Place for*  
3 *Confirmation Hearing and (V) Setting Deadline to File Objections to Confirmation* [ECF No. 403]  
4 (the “Disclosure Statement Order”).

5 10. The Disclosure Statement Order, Plan, Disclosure Statement, ballots, and the  
6 Confirmation Hearing Notice were properly and timely served on all creditors, equity holders, and  
7 other parties entitled to notice pursuant to the Disclosure Statement Order. *See* ECF No. 424.

8 11. Such service provided: (i) twenty eight (28) days’ notice of the November 4, 2022,  
9 deadline for creditors and equity holders in impaired classes to submit a vote to accept or reject the  
10 Plan; (ii) twenty eight (28) days’ notice of the November 4, 2022, deadline to object to the Plan; and  
11 (iii) forty two (42) days’ notice of the November 18, 2022, Confirmation Hearing in accordance with  
12 Bankruptcy Rules 3017, 3017.1, and 3018.

13 12. A detailed Ballot Summary will be filed by the Debtor prior to the confirmation  
14 hearing.

### 15 **III. REQUIREMENTS FOR CONFIRMATION**

16 A plan of reorganization will only be confirmed if it satisfies the requirements identified in  
17 Sections 1129(a) (1)-(16), unless Section 1129(b)(1) applies. Section 1129(a) of the Bankruptcy  
18 Code provides that the Court shall confirm a plan only if the requirements of that section are met.  
19 Section 1129(a) sets forth, in sixteen (16) separate paragraphs, the requirements that must be  
20 complied with before a plan of reorganization can be confirmed. As set forth below, each of the  
21 requirements of Section 1129(a) have been met. Thus, the Debtor’s Plan is confirmable. The  
22 elements necessary for plan confirmation are present and the Court should confirm the Plan.

#### 23 **A. The Plan Complies with the Applicable Provisions of Title 11 -- Section** 24 **1129(a)(1).**

25 Section 1129(a)(1) requires that the Plan comply with the applicable provisions of Title 11.  
26 A plan complies with the applicable provisions of Title 11 of the United States Code when it  
27 properly classifies the claims or interests and contains all mandatory provisions. *See* 11 U.S.C.  
28 §1122, 1123; *see also, In re Acequia, Inc.*, 787 F.2d 1352; *In re Technical Knockout Graphics, Inc.*,

1 833 F.2d 797, 803 (9th Cir. 1987). To determine plan compliance with Section 1129(a)(1), reference  
2 must be made to the requirements of Sections 1122 and 1123, which govern classification of claims  
3 and contents of plans, respectively. *See In re G-I Holdings, Inc.*, 420 B.R. 216 (D.N.J. 2009); *In re*  
4 *Journal Register Co.*, 407 B.R. 520, 531-32 (Bankr. S.D.N.Y. 2009). The Debtor submits that the  
5 Plan complies with the provisions of those sections as outlined below.

6 **1. Classification of Claims -- Section 1122.**

7 Apart from an administrative-convenience exception under Section 1122(b) not applicable  
8 here, “a plan may place a claim or an interest in a particular class only if such claim or interest is  
9 substantially similar to the other claims or interests of such class.” 11 U.S.C. § 1122(a). Section  
10 1122(a) requires only that claims must be “substantially similar” to be placed into the same class;  
11 thus, Section 1122(a) prohibits placing dissimilar claims together in the same class, but it does not  
12 prevent substantially similar claims from being placed into different classes. *See Zante, Inc. v.*  
13 *Delgado (In re Zante, Inc.)*, 467 B.R. 216, 218 (D. Nev. 2012); *see also Wells Fargo Bank, N.A. v.*  
14 *Loop 76, LLC (In re Loop 76, LLC)*, 465 B.R. 525, 536-37 (B.A.P. 9th Cir. 2012), *aff’d*, 578 F.  
15 App’x 644 (9th Cir. 2014). To determine whether claims are substantially similar, “bankruptcy  
16 court judges must evaluate the nature of each claim, *i.e.*, the kind, species, or character of each  
17 category of claims.” *See In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016)  
18 (quoting *Steelcase, Inc. v. Johnston (In re Johnston)*, 21 F.3d 323, 327 (9th Cir. 1994)).

19 The Plan satisfies this requirement in that Article III.B – C of the Plan designates classes of  
20 claims and classes of interests and addresses unclassified claims. Plan, pp. 17-25. The Plan also  
21 complies with the requirements of Section 1122 in that the Plan places claims or interests in a  
22 particular class only if such claims or interests are substantially similar to the other claims or  
23 interests of such class. The Debtor has not placed claims entitled to priority under Sections  
24 507(a)(2), 507(a)(3) and 507(a)(8) in a class, but has provided for treatment of these claims in  
25 Article III.B of the Plan. Plan, pp. 17-18.

26 All similar claims are members of the same class. The Plan classifies creditors in the  
27 following seven (7) classes: Class 1 (LVDF Secured Claim), Class 2 (Meacher Secured Claim),  
28 Class 3 (M2 EPC Secured Claim), Class 4 (Top Rank Builders Inc. Secured Claim), Class 5

1 (Employee Wage Claim), Class 6 (General Unsecured Claims), and Class 7 (Equity Interests). Each  
 2 of the classes 1, 2, 3, 4, and 5 contain a single claim. Classes 1 through 4 consist of secured claims  
 3 and Class 5 consists of a singled Priority Unsecured Claim subject to Section 507(a)(5). Class 6  
 4 consists of all General Unsecured Claims, and Class 7 consists of current equity interests.  
 5 Accordingly, the Debtor's classification scheme does not place any dissimilar claims within the  
 6 same class in violation of Section 1122. Therefore, the Plan satisfies the classification requirements  
 7 of Section 1122 as all similarly situated claims are placed in a separate class. *See In re Barakat*, 99  
 8 F.3d 1520, 1525 (9th Cir. 1996) (quoting *Matter of Greystone III Joint Venture*, 995 F.2d 1274, 1278  
 9 (5th Cir. 1991)); *In re Tucson Self-Storage*, 166 B.R. 892, 897 (B.A.P. 9th Cir. 1994).

## 10 **2. Mandatory Plan Requirements -- Section 1123.**

11 Section 1123(a) sets forth eight (8) requirements with which the proponent of every chapter  
 12 11 plan must comply. As demonstrated below, the Plan complies with each of the applicable  
 13 requirements.<sup>2</sup>

14 i. Section 1123(a)(1). Section 1123(a)(1) requires that a plan designate  
 15 classes of claims and equity interests subject to Section 1122. 11 U.S.C. § 1123(a)(1). Apart from  
 16 Administrative Claims and Priority Tax Claims addressed in Article III.B of the Plan, which need  
 17 not be designated, Article III.C of the Plan designates six (6) classes of claims and one (1) class of  
 18 equity interests. *See* Plan, Art.III.C, pp. 21-25. Accordingly, the Plan satisfies Section 1123(a)(1).

19 ii. Section 1123(a)(2). Section 1123(a)(2) requires a plan to specify any  
 20 class of claims that is not impaired under the plan. 11 U.S.C. § 1123(a)(2). The requirements of  
 21 Section 1123(a)(2) are met as the Plan specifies whether each class of interests or claims is impaired  
 22 or unimpaired. Article III.C of the Plan specifies that Class 5 (Employee Wage Claim) and Class 7  
 23 (Equity Interests) are unimpaired under the Plan. *See* Plan, Art.III.C, pp. 21-25. Accordingly, the  
 24 Plan satisfies Section 1123(a)(2).

25 iii. Section 1123(a)(3). Section 1123(a)(3) requires a plan to specify the  
 26 treatment of impaired classes of claims. 11 U.S.C. § 1123(a)(3). The Plan complies with the  
 27

28 <sup>2</sup> Section 1123(a)(8) does not apply because the Debtor is not an individual.

1 requirements of Section 1123(a)(3) in that Article III.C of the Plan specifies the treatment of claims  
2 in Class 1 (LVDF Secured Claim), Class 2 (Meacher Secured Claim), Class 3 (M2 EPC Secured  
3 Claim), Class 4 (Top Rank Builders Inc. Secured Claim), and Class 6 (General Unsecured Claims),  
4 all of which are impaired classes under the Plan. *See* Plan, Art.III.C, pp. 21-24. Accordingly, the  
5 Plan satisfies Section 1123(a)(3).

6 iv. Section 1123(a)(4). Section 1123(a)(4) requires that a plan provide the  
7 same treatment for each claim or interest within a particular class unless any claim or interest holder  
8 agrees to less favorable treatment than other class members. 11 U.S.C. § 1123(a)(4). The Plan  
9 complies with the requirements of Section 1123(a)(4) in that Article III.C of the Plan provides the  
10 same treatment for each Claim or Interest of a particular Class. Accordingly, the Plan satisfies  
11 Section 1123(a)(4).

12 Section 1123(a)(5). Section 1123(a)(5) requires that a plan provide adequate means for the  
13 plan's implementation. 11 U.S.C. § 1123(a)(5). Article III.D of the Plan provides for the means for  
14 execution of the Plan including, without limitation, the funding of the Plan through the Exit  
15 Financing in the aggregate amount of the \$19.575 million Cash Contribution and the contribution or  
16 payment of FS DIP's secured claim of approximately \$5.2 million by the New Equity Investor. Of  
17 this amount, the Reorganized Debtor anticipates that it will require approximately \$700,000 for  
18 working capital to meet the Debtor's operating needs. As set forth in the Plan, the \$19.575 million  
19 Cash Contribution will be used to, among other things, fund certain Plan payments on or around the  
20 Effective Date, provide reserves for certain disputed claims, and provide the Reorganized Debtor  
21 with sufficient working capital. The Debtor's expects that the New Equity Investor will file  
22 evidence of available funds to contribute to the Plan prior to the confirmation hearing. Based on the  
23 foregoing, the Debtor is confident that sufficient funds will exist to make all required Effective Date  
24 payments. Accordingly, the Plan satisfies Section 1123(a)(5).

25 v. Section 1123(a)(6). Section 1123(a)(6) requires that a plan provide for  
26 the inclusion in the charter of the reorganized debtor a provision prohibiting the issuance of  
27 nonvoting equity securities, and providing, as to the several classes of securities possessing voting  
28

1 power, an appropriate distribution of such power among such classes. 11 U.S.C. § 1123(a)(6). This  
2 section is not applicable to the Debtor's Plan.

3 vi. Section 1123(a)(7). Section 1123(a)(7) requires that the selection of  
4 any officer, director or trustee under the Plan, or a successor thereto be consistent with the interests  
5 of creditors, equity security holders and public policy. 11 U.S.C. § 1123(a)(7). The Plan provides  
6 that the Reorganized Debtor will be managed by William W. Wilson. Plan, Art.III.D.3, p.26. The  
7 selection of William W. Wilson by the New Equity Investor, in its capacity as the sole equity  
8 security holder of the Reorganized Debtor under the Plan, complies with applicable Nevada law, an  
9 in particular, NRS § 78.130, because William W. Wilson is a natural person and will hold his office  
10 for such term and have such powers and duties as provided in the Reorganized Debtor's corporate  
11 documents. Accordingly, the Plan satisfies Section 1123(a)(7).

### 12 **3. Permissive Plan Provisions -- Section 1123(b).**

13 Section 1123(b) allows a plan to propose certain matters. As demonstrated below, the Plan  
14 incorporates the following provisions allowed pursuant to Section 1123(b).

15 i. Section 1123(b)(1). Section 1123(b)(1) of the Bankruptcy Code  
16 provides that a plan may impair or leave unimpaired any class of claims, secured or unsecured, or of  
17 interests. Article III.C. of the Plan specifies which classes are impaired and which classes are  
18 unimpaired. Classes 1, 2, 3, 4, and 6 are impaired under the Plan, and Classes 5 and 7 are  
19 unimpaired under the Plan. Plan, Art.III.C, pp. 21-25. The Debtor has classified Classes 1, 2, 3, 4,  
20 and 6 as impaired under the Plan because each of the Claimants' legal, equitable or contractual rights  
21 are changed under the Plan. *In re L & J Anaheim Assocs.*, 995 F.2d 940, 942, n.2 (9th Cir. 1993)  
22 (explaining the definition of impairment). Specifically as to Classes 3 and 4, the Plan alters the legal  
23 remedies available to those Claimants. Accordingly, Classes 3 and 4 are properly identified as  
24 impaired under the Plan. The Debtor has not structured the proposed treatment in bad faith. Rather,  
25 the Debtor has acted in good faith in an attempt to negotiate upfront payments for most of its  
26 creditors.

27 ii. Section 1123(b)(2). Section 1123(b)(2) provides that a plan may,  
28 subject to Section 365, provide for the assumption, rejection, or assignment of any executory

1 contract or unexpired lease of the debtor not previously rejected under such section. 11 U.S.C. §  
2 1123(b)(2). Article III.E of the Plan specifies the treatment of executory contracts and unexpired  
3 leases and provides that all of the Debtor's pre-petition lifetime memberships shall be rejected  
4 effective as of the Effective Date, and members shall be entitled to become members of the  
5 Reorganized Debtor pursuant to the terms set forth in Exhibit to the Plan. Plan, Art.III.E., pp. 32-33.  
6 The Plan further specifies that the Reorganized Debtor will assume certain executory contracts  
7 and/or unexpired leases set forth in the Plan and as to be identified by the New Equity Investor prior  
8 to the Plan confirmation hearing. *Id.* at pp. 33-34. The Plan further provides that all to the extent the  
9 Debtor is a party to any executory contract and/or unexpired lease that is not addressed above, such  
10 executory contract or unexpired lease will be deemed rejected. *Id.* at p. 34. Accordingly, the Plan  
11 may incorporate this provision pursuant to Section 1123(b)(2).

12           iii.           Section 1123(b)(3). Section 1123(b)(3) states that a plan may provide  
13 for the settlement or adjustment of any claim or interest belonging to the debtor or to the estate, or  
14 may provide for the retention and enforcement by the debtor or by a representative of the estate  
15 appointed for such purposes, of any such claim or interest. 11 U.S.C. § 1123(b)(3). The Plan  
16 provides that the Debtor, or the Reorganized Debtor, will retain, and pursue, objections to claim as  
17 set forth on the Claim Chart and reserves the right to object to any new claim filed after the date the  
18 Claim Chart was prepared. The Plan provides that the Debtor intends of filing a complaint to avoid  
19 and recover fraudulent transfers against Meacher, and that the Debtor reserves its right to file an  
20 avoidance action against LVDF and any former member who received a refund before the case was  
21 filed. The Plan further specifies that Reorganized Debtor shall retain all claims against the Debtor's  
22 insiders, including its current equity holders, and such claims shall revert in the Reorganized Debtor  
23 upon the Effective Date. Accordingly, the Plan may incorporate this provision pursuant to Section  
24 1123(b)(3).

25           iv.           Section 1123(b)(5). Section 1123(b)(5) provides that a plan may  
26 modify the rights of holders of secured claims, other than a claim secured only by a security interest  
27 in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave  
28 unaffected the rights of holders of any class of claims. 11 U.S.C. § 1123(b)(5). Article III.C of the

1 Plan sets forth the specific treatment and recovery that each class of creditors will receive, and as a  
2 result, Class 1 (LVDF Secured Claim), Class 2 (Meacher Secured Claim), Class 3 (M2 ECP Secured  
3 Claim), Class 4 (top Rank Builders Inc. Secured Claim), and Class 6 (General Unsecured Claims)  
4 have all had their rights altered pursuant to the terms set forth in the Plan. By contrast, Class 5  
5 (Employee Wage Claim) has not had its rights altered in any way, as pursuant to the Plan, the  
6 Employee Wage Claim will be paid in full within ten (10) days of the Effective Date. These Plan  
7 provisions are permissible under Section 1123(b)(5).

8 v. Section 1123(b)(6). Section 1123(b)(6) specifies that a plan may  
9 include any other provisions not inconsistent with the applicable provisions of Title 11. 11 U.S.C. §  
10 1123(b)(6). All of the provisions of the Plan, including but not limited to the vesting of assets,  
11 discharge of claims against the Debtor, retention of jurisdiction by the Bankruptcy Court, the  
12 payment of statutory fees and the closing of the case following consummation of the Plan, are  
13 consistent with the provisions of Title 11.

14 The Debtor respectfully submits that the Plan complies with the provisions of Title 11, and  
15 therefore, meets the requirements of Section 1129(a)(1).

16 **B. The Debtor, as Proponent of the Plan, has Complied with the Applicable**  
17 **Provisions of Section 1129(a)(2).**

18 Section 1129(a)(2) provides that a plan may be confirmed only if the proponent of the plan  
19 complies with the applicable provisions of Title 11. Section 1129(a)(2) is designed to ensure that the  
20 plan proponent has made the appropriate disclosures. The principal purpose of Section 1129(a)(2) is  
21 to require the court to ascertain whether the proponent of the plan has complied with Section 1125 of  
22 the Code. *See Andrew v. Coppersmith (In re Downtown Inv. Club III)*, 89 B.R. 59, 65 (B.A.P. 9th  
23 Cir. 1988); *In re Butler*, 42 B.R. 777, 782 (Bankr. E.D. Ark. 1984); *In re Hoff*, 54 B.R. 746, 750-51  
24 (Bankr. D.N.D. 1985). Section 1125 requires disclosure of adequate information before a plan  
25 proponent may solicit acceptances of a Chapter 11 Plan.

26 The Debtor has satisfied this requirement by obtaining an order from this Court approving  
27 the Disclosure Statement and finding that the Disclosure Statement contained adequate information.  
28 *See* Disclosure Statement Order. The Disclosure Statement provides an overview of the Plan, a

1 summary of the voting process, a detailed description of the Debtor’s business and events occurring  
2 during this chapter 11 case, a detailed description of the Plan, a discussion of the risk factors  
3 associated with the Plan, a discussion of post-Effective Date operations, a discussion of federal  
4 income tax consequences, a discussion of alternatives to the Plan, and an analysis of a liquidation  
5 scenarios. Accordingly, the Debtor submits that the Disclosure Statement is adequate under Section  
6 1125, and thus, the Debtor has complied with the requirements of Section 1129(a)(2).

7 **C. The Plan is Proposed in Good Faith -- Section 1129(a)(3).**

8 Section 1129(a)(3) requires that a plan must be “proposed in good faith and not by any means  
9 forbidden by law.” 11 U.S.C. § 1129(a)(3). Section 1129(a)(3) does not define “good faith,” and  
10 good faith should be determined based on the “totality of the circumstances” and on a “case-by-case  
11 basis, taking into account the particular features of each . . . plan.” *See Platinum Cap., Inc. v. Sylmar*  
12 *Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070, 1074, 1075 (9th Cir. 2002) (citations omitted).

13 The good faith requirement does not depend on a debtor’s subjective intent, but rather  
14 “encompasses several, distinct equitable limitations that courts have placed on Chapter 11 filings.”  
15 *See Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828-29 (9th Cir. 1994). Generally, a plan is not  
16 filed in good faith if it represents an attempt “to unreasonably deter and harass creditors” and to  
17 “achieve objectives outside the legitimate scope of the bankruptcy laws.” *Id.* However, “[a] plan is  
18 proposed in good faith where it achieves a result consistent with the objectives and purposes of the  
19 Code.” *See Sylmar Plaza, L.P.*, 314 F.3d at 1075 (citations omitted); *In re Sagewood Manor Assocs.*  
20 *LP*, 223 B.R. 756, 761-62 (Bankr. D. Nev. 1998).

21 The objectives and purposes of the Bankruptcy Code, and chapter 11 in particular, include,  
22 among other things, “to maximize the value of the bankruptcy estate,” *see Toibb v. Radloff*, 501 U.S.  
23 157, 163 (1991), “to satisfy creditors’ claims,” *United States v. Whiting Pools, Inc.*, 462 U.S. 198,  
24 203 (1983), and “to permit successful rehabilitation of debtors,” thereby enabling a troubled  
25 enterprise to operate successfully in the future, *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 527  
26 (1984). While the protection of creditors’ interests is an important purpose under chapter 11,  
27 successful debtor reorganization and maximization of the value of the estate are the primary  
28 purposes of chapter 11 relief. *See Sylmar Plaza, L.P.*, 314 F.3d at 1074-75 (citing *Bonner Mall*

1 *P'ship v. U.S. Bancorp Mortg. Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 916 (9th Cir. 1993), *cert.*  
2 *granted*, 510 U.S. 1039 648 (1994), *dismissed as moot*, 513 U.S. 18 (1994)).

3 The second prong of Section 1129(a)(3) requires that the Plan “not be proposed by any  
4 means forbidden by law.” 11 U.S.C. § 1129(a)(3). As used in subsection (a)(3), the term “law”  
5 includes state law, and applies not to the substantive provision of a plan itself, but rather to the  
6 means employed in proposing a plan. *See In re Food City, Inc.*, 110 B.R. 808, 810 (Bankr. W.D.  
7 Tex. 1990).

8 The Plan has been proposed in good faith. The primary purpose of the plan is to permit the  
9 successful rehabilitation of the Debtor while maximizing the value of the estate to satisfy creditors’  
10 claims, which is achieved through the Exit Financing and auction and overbidding procedures. The  
11 Plan provides for: (i) the proceeds from the Exit Financing to create reserve accounts to satisfy any  
12 Allowed Secured Claim of LVDF and Meacher and to create a reserve account for Allowed General  
13 Unsecured Claims; (ii) the satisfaction of the Allowed Secured Claims of M2 EPC and Top Rank  
14 Builders Inc.; (iii) the satisfaction of all outstanding administrative expenses; (iv) the satisfaction of  
15 outstanding tax claims; and (v) the satisfaction of Priority Unsecured Claims. Administrative  
16 creditors, including the Estate’s professionals, will receive Cash in satisfaction of their Allowed  
17 Claims on or shortly after the Effective Date unless they agree to alternate treatment. Such results  
18 are fully consistent with the objectives and purposes of the Code.

19 The Debtor originally proposed a plan of reorganization that was based upon the retention  
20 and assumption of lifetime memberships, with the expected revenue from annual and daily fees to  
21 fund the Debtor’s post bankruptcy operations and payments due under the Plan. The Debtor  
22 subsequently conducted a survey of its members which survey ultimately showed the Debtor that it  
23 did not have the requisite support for a member supported plan. The Debtor ultimately determined  
24 that the agreement entered into with the New Equity Investor would enable the Debtor to continue as  
25 a going concern, retain its employees, and provide for the payment of full of some claims and a pro  
26 rata distribution to allowed general unsecured claims. The Debtor proposed the Plan in good faith  
27 and in an effort to provide the best possible result under existing circumstances to its creditors, its  
28 members and its employees.

1 Bankruptcy Rule 3020(b)(2) provides that the Court may determine that a plan proponent  
2 proposed a plan in good faith and not by any means forbidden by law, without receiving evidence, if  
3 no party in interest has timely objected to the plan proponent's good faith. *In re Warren*, 89 B.R. 87,  
4 91 (B.A.P. 9th Cir. 1988). The Debtor has filed the Plan in good faith, and thus, the requirement of  
5 Section 1129(a)(3) has been satisfied.

6 **D. Compensation of Professionals will Remain Subject to Court Approval -- Section**  
7 **1129(a)(4).**

8 Section 1129(a)(4) requires that any payment to be made by the Debtor for services or for  
9 costs and expenses in connection with the case, or in connection with a plan and incident to the case,  
10 has been approved by, or is subject to the approval of, the court as reasonable. 11 U.S.C. §  
11 1129(a)(4). Article III.B.1. of the Plan requires that all professional fees be approved by the Court  
12 after notice and hearing. *See* Plan, pp. 17-20. The Debtor requests that the Confirmation Order  
13 direct that all administrative claims and applications for final compensation of professional persons  
14 for services rendered prior to the Confirmation Date shall be filed no later than thirty (30) days after  
15 the Effective Date. Thus, all professional fees and expenses not previously approved by the Court  
16 will remain subject to the jurisdiction of the Court, and ultimately, the approval of the Court as  
17 reasonable. The professional fees incurred by the estate are those due and owing to BG, Province,  
18 LLC, Lucas Horsfall, Greenberg Traurig, Stretto, Carlyon Cica CHTD., Kelley Drye & Warren LLP,  
19 and Dundon Advisers, LLC. Thus, Section 1129(a)(4) is satisfied.

20 **E. The Plan Discloses the Identity of Proposed Post-Confirmation Management and**  
21 **of Insiders to be Employed -- Section 1129(a)(5).**

22 Section 1129(a)(5) requires that the proponent of a plan disclose the identity of any  
23 individual proposed to serve, after confirmation, as a director or officer of the debtor, and the  
24 identity of any insider that will be employed or retained by the reorganized debtor, and the nature of  
25 any compensation for such insider. 11 U.S.C. § 1129(a)(5). That section also requires that the  
26 appointment to, or continuance in an office by such an individual is consistent with the interest of  
27 creditors and equity security holders and with public policy. *Id.* Article III.D.3 of the Plan (p. 26)  
28 discloses that the Reorganized Debtor will remain a Nevada limited liability company and the

1 Reorganized Debtor's managing member shall be William W. Wilson. The Plan further discloses  
2 the New Equity Investor (Nevada PF, LLC or its assignee) will own a 100% equity interest in the  
3 Reorganized Debtor as of the Effective Date. The Plan further discloses that Dr. Piazza, a current  
4 equity holder of the Debtor and its current Chief Executive Officer and manager, has agreed to act  
5 on a limited basis as a consultant for the Reorganized Debtor after the Effective Date, and that Dr.  
6 Piazza will not hold a management position with the Reorganized Debtor, but will assist with things  
7 such as marketing, prosecuting objections to claims, and certain causes of action. To be clear, Dr.  
8 Piazza is not assuming any of the roles within the ambit of Section 1129(a)(5). The Plan further  
9 discloses that Dr. Piazza will enter into a consulting agreement with the Reorganized Debtor, which  
10 consulting agreement has not yet been agreed upon. The term sheet relating to the consulting  
11 agreement will be included in the Plan Supplement, which will be filed before the Confirmation  
12 Hearing. Thus, Section 1129(a)(5) is satisfied.

13 **F. The Plan Does Not Require Approval of any Regulatory Commission -- Section**  
14 **1129(a)(6).**

15 As no government or regulatory commission has jurisdiction over the rates of the Debtor,  
16 Section 1129(a)(6) does not apply to the Plan.

17 **G. The Plan Complies with the Best Interests Test -- Section 1129(a)(7).**

18 Section 1129(a)(7) requires that, as to each impaired class of claims or interest, each holder  
19 of a claim or interest of such class has either accepted the plan or it will receive or retain under the  
20 plan property of a value, as of the effective date of the plan, that is not less than the amount that such  
21 holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code  
22 on the effective date. 11 U.S.C. § 1129(a)(7)(A)(i) and (ii). This is commonly referred to as the  
23 "best interests test." See *In re M. Long Arabians*, 103 B.R. 211, 216 (B.A.P. 9th Cir. 1989); *In re*  
24 *Diversified Investors Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988). In order to satisfy  
25 subsection (a)(7), the Court must find that each dissenting creditor will receive or retain value, as of  
26 the effective date of the plan, that is not less than the amount it would receive if the debtor were  
27 liquidated. See *Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 761 (Bankr. S.D.N.Y. 1992).

28

1 Classes 1, 2, 3, 4, and 6 under the Plan are impaired and entitled to vote on the Plan. Class 5  
2 under the Plan is not impaired. Class 7, Equity Interests, will be cancelled as of the Effective Date  
3 and the holders of Class 7 Equity Interests shall not receive any distribution on account of such  
4 equity interests. As demonstrated by the Liquidation Analysis (Disclosure Statement, pp. 63-65 and  
5 Exhibit C), in a piecemeal Chapter 7 liquidation, the worst-case scenario would be that the  
6 liquidation proceeds would be less than the outstanding amount of asserted secured claims. The  
7 best-case scenario is that General Unsecured Claims would receive a pro rata distribution of 9.5% of  
8 their claims. However, under the Plan, Allowed General Unsecured Claims will receive a pro rata  
9 distribution of 10% to 30% of their claims.

10 As demonstrated by the Liquidation Analysis, each holder of an Allowed Claim in an  
11 impaired Class will receive under the Plan property of value that is greater than the amount that such  
12 holder would receive if the Debtor were liquidated under Chapter 7. Accordingly, the Plan satisfies  
13 Section 1129(a)(7).

14 **H. The Plan Satisfies the Requirement of Section 1129(a)(8) with Respect to all**  
15 **Classes.**

16 Section 1129(a)(8) of the Code requires that each class of claims or interests has accepted a  
17 plan or that such class is not impaired under a plan. 11 U.S.C. § 1129(a)(8). Whether a class of  
18 claims is impaired is governed by Section 1124 and whether a class of claims has accepted a plan is  
19 determined by reference to Section 1126. *See* 11 U.S.C. §§ 1124 and 1126.

20 A class which is not impaired is deemed to have accepted the plan. 11 U.S.C. § 1126(f).  
21 Thus, Class 5, which is unimpaired, has accepted the Plan. Class 7 is impaired and not receiving any  
22 recovery and is presumed to not accept the Plan.

23 The impaired Classes entitled to vote on the Plan are Classes 1, 2, 3, 4, and 6. The Debtor  
24 does not yet have the results of voting and will not have the results until after November 4, 2022. If  
25 one or more impaired classes do not vote to accept the Plan, the Debtor believes that the Plan may  
26 still be confirmed because the Plan meets the requirements of Section 1129(b). Section 1129(b)(1)  
27 provides that a plan that satisfies all of the other applicable provisions of Section 1129(a) may be  
28 confirmed despite rejection of the plan by a class or classes. In order for such a plan to be confirmed

1 under Section 1129(b), the plan must meet two criteria: (i) the plan must not unfairly discriminate;  
2 and (2) the plan must be fair and equitable. The Debtor's analysis of these provisions is discussed  
3 below.

4 **I. The Plan Provides Appropriate Treatment for Priority and Tax Claims --**  
5 **Section 1129(a)(9).**

6 Under subparagraph (A) of Section 1129(a)(9), a plan must provide that administrative  
7 claims and expenses entitled to priority under Sections 507(a)(2) and 507(a)(3) will receive, on the  
8 Effective Date of the Plan, cash equal to the allowed amount of the claim unless the holder of the  
9 claim agrees to a different treatment. Article III.B.1 of the Plan provides such treatment for Allowed  
10 Administrative Claims under Section 507(a)(2). Plan, pp. 17-20. The Plan further provides that the  
11 Debtor does not believe that there are any valid outstanding Section 507(a)(3). Thus, the Plan  
12 satisfies 11 U.S.C. § 1129(a)(9)(A).

13 Subparagraph (B) of Section 1129(a)(9) requires that a plan must provide that with respect to  
14 a class of claims of a kind specified in Sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or  
15 507(a)(7), each holder of such a claim will receive, as of the Effective Date of the Plan, if the class  
16 has accepted the Plan, deferred cash payments of a value, or cash if such class has not accepted the  
17 Plan, equal to the allowed amount of such claim. Article III.C.2 of the Plan provides that there is  
18 one valid outstanding Section 507(a)(5) priority unsecured claim, which will be paid in full within  
19 ten (10) business days of the Effective Date. Plan, pp. 23-24. The Plan further provides that the  
20 Debtor does not believe that there are any valid outstanding Section 507(a)(1), (4), (6), or (7) priority  
21 claims. The Plan provides that if there are any allowed priority unsecured claims as of the Effective  
22 Date, these claims will be paid in full by the Reorganized Debtor on the Effective Date (or as soon as  
23 practicable thereafter). Thus, the Plan satisfies 11 U.S.C. § 1129(a)(9)(B).

24 Subparagraph (C) of Section 1129(a)(9) requires that a plan must provide that with respect to  
25 a claim of a kind specified in Section 507(a)(8), each holder of such a claim will receive on account  
26 of such claim regular installment payments in cash equal to the allowed amount of such claim over a  
27 period ending not later than 5 years after the date of the order for relief. Article III.B.2 of the Plan  
28 provides that the Debtor believes that it owes \$500 to the Internal Revenue Service, which claim will

1 be paid in full on the Effective Date. Plan, pp. 20-21. The Plan further provides that if there are any  
2 other Allowed Priority Tax Claims as of the Effective Date, the Reorganized Debtor will pay those  
3 Allowed Priority Tax Claims in full over a period not exceeding five years from the Petition Date.  
4 The Debtor is still in the process of investigating its priority tax claims and has estimated the liability  
5 at \$100,000 for purposes of the Plan. Thus, the Plan satisfies Section 1129(a)(9)(C).

6 Thus, the Plan satisfies the requirements of Section 1129(a)(9).

7 **J. The Plan May Be Accepted by an Impaired Class -- Section 1129(a)(10).**

8 Section 1129(a)(10) of the Bankruptcy Code requires that “[i]f a class of claims is impaired  
9 under the plan, at least one class of claims that is impaired under the plan has accepted the plan,  
10 determined without including any acceptance of the plan by an insider.” 11 U.S.C. § 1129(a)(10).  
11 The Debtor believes that one or more impaired classes may vote to accept the Plan. The Debtor will  
12 submit a detailed Ballot Summary prior to the confirmation hearing.

13 **K. The Plan Satisfies the Requirements Under Section 1129(a)(11).**

14 Section 1129(a)(11) of the Bankruptcy Code provides that a court may confirm a plan only if  
15 “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further  
16 financial reorganization, of the debtor or any successor to the debtor under the plan, unless such  
17 liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11). To meet this  
18 feasibility standard, a debtor need only demonstrate that the plan has a “reasonable probability of  
19 success.” *In re Acequia, Inc.*, 787 F.2d 1352, 1364 (9th Cir. 1986); *In re Pike’s Peak Water Co.*, 779  
20 F.2d 1456, 1460 (10th Cir. 1985); *In re Apex Oil Co.*, 118 B.R. 683, 708 (Bankr. E.D. Mo. 1990).

21 In this case, the Plan satisfies the requirements of Section 1129(a)(11) and the standards set  
22 forth in the cases cited above. There are at least two aspects of a feasibility analysis. The first  
23 aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan  
24 to pay all the claims and expenses which are entitled to be paid on such date. This requirement is  
25 met. On the Effective Date, the Debtor will have approximately \$24,080,706.01. Such proceeds  
26 will be utilized as follows:

1	Administrative (Professional)	\$500,000 <sup>3</sup>
	FS DIP Secured Claim	\$5,200,000 (estimated)
	LVDF Secured Claim	\$11,805,706.01 (reserve account)
2	Meacher Secured Claim	\$3,300,000 (reserve account)
	Lease/Contract Cures	\$0
3	Priority Claims	\$100,000 (estimated)
	Solicitation Expenses	\$125,000
4	Unsecured Claims	\$3,000,000 (reserve account)
	Miscellaneous	<u>\$50,000</u>
5	Total	\$24,080,706.01

6 The second aspect considers whether there will be enough cash over the life of the Plan to  
7 make the required Plan payments. This requirement is not applicable here because the Plan will be  
8 fully funded on the Effective Date by the New Value Contribution. Additionally, the Debtor  
9 believes that the Reorganized Debtor will maintain sufficient liquidity and capital resources to  
10 conduct its business subsequent to its emergence from this Chapter 11 Case, and the New Equity  
11 Investor has agreed to fund the Reorganized Debtor's ongoing business operations if necessary.  
12 Accordingly, the Debtor believes that confirmation of the Plan is not likely to be followed by the  
13 Reorganized Debtor's liquidation or the need for further financial reorganization. Thus, the Debtor  
14 respectfully submits that Section 1129(a)(11) has been met.

15 **L. All Bankruptcy Fees Have Been Paid -- Section 1129(a)(12).**

16 Section 1129(a)(12) requires that all bankruptcy fees payable pursuant to § 1930 of Title 28  
17 of the United States Code have been paid, or the Plan provides for payment of all such fees on the  
18 Effective Date of the Plan. These fees will be paid in full on or before the Effective Date. Thus, the  
19 Plan satisfies this requirement at Article III.B.1. Plan, p. 17-20.

20 **M. Miscellaneous Inapplicable Provisions – Sections 1129(a)(13) Through (a)(16).**

21 First, there are no retiree benefits, as that term is defined in Section 1114, in controversy in  
22 this chapter 11 case, and thus Section 1129(a)(13) is inapplicable. Second, the Debtor is not  
23 required or obligated on any domestic support obligation, and thus Section 1129(a)(14) is  
24 inapplicable. Third, the Debtor is not an individual, and thus Section 1129(a)(15) is inapplicable.  
25 Fourth, the Debtor is a moneyed, business, and commercial entity, not a charitable organization, and  
26

27 \_\_\_\_\_  
28 <sup>3</sup> Currently there is a discrepancy between the projected/estimated amount of Professional Fee  
Claims and the amount available under the Plan for Professional Fee Claims which will have to be  
resolved prior to Confirmation.

1 thus Section 1129(a)(16) is inapplicable.

2 As demonstrated above, all subsections of 11 U.S.C. § 1129(a) have been satisfied.

3 **N. Cramdown – Section 1129(b).**

4 Section 1129(b) provides that if a proposed plan meets all the requirements in Section  
5 1129(a), except for class acceptance pursuant to Section 1129(a)(8), then the plan may still be  
6 confirmed “if the plan does not discriminate unfairly, and is fair and equitable, with respect to each  
7 class of claims or interests that is impaired under, and has not accepted, the plan.” 11 U.S.C. §  
8 1129(b)(1). Holders of Classes 1, 2, 3, 4, and 6 are impaired under the Plan. To the extent that any  
9 impaired Class votes to reject the Plan, the Debtor seeks “cramdown” of such Class pursuant to  
10 Section 1129(b) as the Plan fairly and equitably treats such claims.

11 The Plan satisfies Section 1129(b)(1) to the extent that the Plan does not discriminate  
12 unfairly among members of an impaired Class. Under the Plan, the Claimants in Classes 1 and 2  
13 will receive the amount of their Allowed Secured Claims up to the amount in the reserve account,  
14 Claimants in Classes 3 and 4 will receive the amount of their Allowed Secured Claim over time, and  
15 Claimants in Class 6 will receive a pro rata share of \$3 million.

16 Section 1129(b)(2) sets forth the requirements for a plan for be fair and equitable. With  
17 respect to Classes 1 and 2, the Plan satisfies the requirements of Section 1129(b)(2)(A)(iii), which  
18 provides a plan is "fair and equitable" if, with respect to a class of secured claims, it provides "for  
19 the realization by such holders of the indubitable equivalent of such claims." 11 U.S.C. §  
20 1129(b)(2)(A)(iii). “The Ninth Circuit has recognized two components of an indubitably equivalent  
21 substitute: It must both ‘compensate for present value’ and ‘insure the safety of the principal.’”  
22 *Wiersma*, 227 F. App'x 603 at 607(citing *Crocker Nat'l Bank v. Am. Mariner Indus., Inc. (In re Am.*  
23 *Mariner Indus., Inc.)*, 734 F.2d 426, 433 (9<sup>th</sup> Cir.1984) (abrogated on other grounds)). Where the  
24 plan changes a secured creditor's rights in the collateral, providing the indubitable equivalent  
25 requires that the plan provide substitute collateral or other assurances that the creditor's risk is not  
26 increased. *In re Arnold & Baker Farms*, 85 F.3d 1415, 1422 (9<sup>th</sup> Cir.1996) (citation omitted). Here,  
27 the Plan provides substitute collateral to the Claimants in Classes 1 and 2. The Plan provides that  
28

1 the Claimants' liens will attach to the reserve accounts to the same extent and validity of the  
2 Claimants' existing lien against the Debtor's property.

3 With respect to Classes 3 and 4, the Plan satisfies the requirements of Section  
4 1129(b)(2)(A)(i). The Claimants in those Classes retain their liens securing their claims and the  
5 Claimants will receive deferred cash payments totaling at least the amount of their allowed claims as  
6 of the Effective Date of the Plan.

7 With respect to Class 6, General Unsecured Claims, the Plan satisfies the requirements of  
8 Section 1129(b)(2)(B)(ii) because no holder of any claim or interest that is junior to Class 6, i.e.,  
9 Class 7, Equity Interests, will not receive or retain under the Plan on account of such junior interest  
10 any property. Under the Plan, Class 7, Equity Interests, will not retain or receive property "on  
11 account of" its old ownership interests in violation of Section 1129(b)(2)(B)(ii). *See In re Bonner*  
12 *Mall P'ship*, 2 F.3d 899, 911 (9th Cir. 1993), *abrogated on other grounds by Bullard v. Blue Hills*  
13 *Bank*, 575 U.S. 496, 135 S.Ct. 1686, 191 L.Ed.2d 621 (2015) (explaining meaning of "on account  
14 of" as used in Section 1129(b)(2)(B)(ii)).

15 Accordingly, the Debtor respectfully submits that the Plan does not discriminate unfairly, and  
16 it fair and equitable. Thus, Section 1129(b) is satisfied, and the Plan should be confirmed.

17 **O. If Necessary, Non-Material Plan Modifications Are Permitted.**

18 Section 1127(a) allows for plan modifications, and Bankruptcy Rule 3019(a) establishes the  
19 procedural requirements for plan modifications pre-confirmation. *See* 11 U.S.C. § 1127(a); Fed. R.  
20 Bankr. P. 3019(a). Plan modifications do not require a new disclosure statement and court approval  
21 unless the modifications are material. *See In re Simplot*, 2007 WL 2479664, at \*11 (Bankr. D. Idaho  
22 Aug. 28, 2007) (citing *In re Downtown Inv. Club III*, 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988)). The  
23 word "material" in this context has been described as "so affect[ing] a creditor or interest holder who  
24 accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its  
25 acceptance." *Id.* (quoting *In re Am. Solar King Corp.*, 90 B.R. 808, 824 (Bankr. W.D. Tex. 1988)).  
26 To the extent any plan modifications are needed, the Debtor expects that the they will not be material  
27 such that they would cause a creditor who voted to accept the plan to reconsider its acceptance.  
28

1 **IV. REQUEST FOR CONFIRMATION**

2 For the foregoing reasons and with the additional evidence to be submitted in connection  
3 with the Ballot Tally and Confirmation Brief, the Debtor submits that all of the requirements for  
4 confirmation will be satisfied. The Debtor therefore urges this Court to enter an Order confirming  
5 the Plan.

6 DATED: October 21, 2022

BG LAW LLP

8 By: /s/ Susan K. Seflin

9 Steven T. Gubner  
10 Susan K. Seflin  
11 Jessica S. Wellington  
12 Attorneys for Chapter 11 Debtor  
13 and Plan Proponent  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I declare that I am over the age of 18 years and not a party to the within action. I am employed in the County of Los Angeles and my business address is 21650 Oxnard Street, Suite 500, Woodland Hills, California 91367.

On **October 21, 2022**, I served the following document:

**DEBTOR’S MOTION FOR CONFIRMATION OF DEBTOR’S SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

**BY ELECTRONIC MAIL**

Those designated "[NEF]" on the Court docket were served with the Notice by the Court via Electronic Mail, as follows:

- **JASON BLUMBERG** Jason.blumberg@usdoj.gov
- **CANDACE C CARLYON** ccarlyon@carlyoncica.com, CRobertson@carlyoncica.com;nrodriguez@carlyoncica.com;9232006420@filings.docketbird.com;Dcica@carlyoncica.com
- **CHAPTER 11 - LV** USTPRegion17.lv.ecf@usdoj.gov
- **DAWN M. CICA** dcica@carlyoncica.com, nrodriguez@carlyoncica.com;crobertson@carlyoncica.com;dmcica@gmail.com;dcica@carlyoncica.com;tosteen@carlyoncica.com;3342887420@filings.docketbird.com
- **WILLIAM C DEVINE** william@devine.legal, courtney@devine.legal;devinewr72773@notify.bestcase.com
- **THOMAS H. FELL** tfell@fennemorelaw.com, clandis@fennemorelaw.com;CourtFilings@fennemorelaw.com
- **PHILIP S. GERSON** Philip@gersonnvlaw.com
- **STEVEN T GUBNER** sgubner@bg.law, ecf@bg.law
- **RAMIR M. HERNANDEZ** rhernandez@wrightlegal.net, jcraig@wrightlegal.net;nvbkfilings@wrightlegal.net
- **MICHAEL R. HOGUE** hoguem@gtlaw.com, LVLitDock@GTLAW.com;bundickj@gtlaw.com;hicksja@gtlaw.com;ferrariom@gtlaw.com;flintza@gtlaw.com;navarrom@gtlaw.com;rosehilla@gtlaw.com
- **JASON B KOMORSKY** jkomorsky@bg.law
- **BART K. LARSEN** BLARSEN@SHEA.LAW, 3542839420@filings.docketbird.com
- **NICOLE E. LOVELOCK** nlovelock@joneslovelock.com, ljanuskevicius@joneslovelock.com
- **EDWARD M. MCDONALD** edward.m.mcdonald@usdoj.gov
- **TRACY M. O’STEEN** tosteen@carlyoncica.com, crobertson@carlyoncica.com;nrodriguez@carlyoncica.com;ccarlyon@carlyoncica.com
- **TERESA M. PILATOWICZ** tpilatowicz@gtg.legal, bknotices@gtg.legal
- **SAMUEL A. SCHWARTZ** saschwartz@nvfirm.com, ecf@nvfirm.com;schwartzsr45599@notify.bestcase.com;eanderson@nvfirm.com;samid@nvfirm.com
- **SUSAN K. SEFLIN** sseflin@bg.law
- **BRIAN D. SHAPIRO** brian@brianshapirolaw.com, kshapiro@brianshapirolaw.com;6855036420@filings.docketbird.com
- **STRETTO** ecf@cases-cr.stretto-services.com, aw01@ecfcbis.com,pacerpleadings@stretto.com
- **U.S. TRUSTEE - LV - 11** USTPRegion17.lv.ecf@usdoj.gov
- **JESSICA S. WELLINGTON** jwellington@bg.law

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed October 21, 2022, at Woodland Hills, California.

/s/ Jessica Studley  
JESSICA STUDLEY