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CENTRAL DISTRICT OF CALIFORNIA
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11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **LOS ANGELES DIVISION**

14 In re:
15 **FOUNTAIN VIEW, INC.**, a Delaware
16 corporation, et al.

Case No.: LA 01-39678 BB through
LA 01-39697 BB
And LA 01-45516 BB;
LA 01-45520 BB; and
LA 01-45525 BB
(Jointly Administered under Case No. LA
01-39678 BB)

Chapter 11

18 Debtors.

19 **NOTICE OF MOTION AND MOTION FOR**
20 **ORDER TO AUTHORIZE AND APPROVE: (A)**
21 **ADEQUACY OF "DEBTORS' DISCLOSURE**
22 **STATEMENT REGARDING JOINT PLAN OF**
23 **REORGANIZATION DATED MARCH 10,**
24 **2003"; (B) FORM, SCOPE, AND NATURE OF**
25 **SOLICITATION, BALLOTING, TABULATION,**
26 **AND NOTICES WITH RESPECT THERETO;**
27 **AND (C) RELATED CONFIRMATION**
28 **PROCEDURES, DEADLINES, AND NOTICES;**
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF BOYD
HENDRICKSON

Hearing Set For:

DATE: April 15, 2003
TIME: 2:00 p.m.
PLACE: Roybal Federal Building
255 E. Temple St, Rm. 1475
Los Angeles, CA 90012

MLT
DJB
BCB
GEO
LLB

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COPY

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1 TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY
2 JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE; THE OFFICIAL
3 COMMITTEE OF UNSECURED CREDITORS; THE OFFICIAL NOTEHOLDERS
4 COMMITTEE; THE DEBTOR'S SECURED LENDERS; THE DEBTOR'S
5 CREDITORS; THE DEBTOR'S EQUITY HOLDERS; THE SECURITIES AND
6 EXCHANGE COMMISSION; AND ALL OTHER PARTIES ENTITLED TO
7 NOTICE:

8 PLEASE TAKE NOTICE that on April 15, 2003, at 2:00 p.m., or as soon
9 thereafter as counsel may be heard, before the Honorable Sheri Bluebond, United States
10 Bankruptcy Judge, a hearing will be held on the *Motion For Order Authorizing And*
11 *Approving: (A) Adequacy of Debtors' "Disclosure Statement Regarding Joint Plan Of*
12 *Reorganization Dated March 10, 2003"; (B) Form, Scope, And Nature of Solicitation,*
13 *Balloting, Tabulation, And Notices With Respect Thereto; And (C) Related Confirmation*
14 *Procedures, Deadlines, And Notices* (the "Motion"), filed by Fountain View, Inc. and its 22
15 debtor affiliates, the debtors and debtors in possession in the above-captioned jointly
16 administered chapter 11 cases (collectively, the "Debtors").

17 By this Motion, the Debtors request that the Court enter an order, pursuant to
18 Bankruptcy Code section 1125, Rules 3017, 3018, 9007, and 9008 of the Federal Rules of
19 Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3017-1 of the Local Bankruptcy
20 Rules of the United States Bankruptcy Court for the Central District of California (the "Local
21 Rules"), granting the following relief:

22 1. **Approval of Disclosure Statement:** Finding that the *Debtors'*
23 *Disclosure Statement Regarding Joint Plan of Reorganization Dated March 10, 2003* (the
24 "Disclosure Statement") contains "adequate information" within the meaning of Bankruptcy
25 Code section 1125(a).

26 2. **Authorization to Disseminate Disclosure Statement:** Authorizing the
27 Debtors to disseminate the Disclosure Statement to parties in interest pursuant to the
28 procedures set forth in this Motion.

1 3. **Limitation of Service of the Solicitation Package:** Authorizing the
2 Debtors to disseminate the Disclosure Statement, the *Debtors' Joint Plan of Reorganization*
3 *Dated March 10, 2003* (the "Plan"),¹ and related notices and solicitation materials, and
4 limiting the required service of such materials, as follows:

5 a. On or before April 30, 2003 (the "Service Date"), the Debtors will
6 serve a "Solicitation Package" consisting of: (1) the Disclosure Statement; (2) the
7 Plan; (3) a notice of (x) the Court's order approving the adequacy of the Disclosure
8 Statement, (y) the scheduled hearing date regarding confirmation of the Plan (the
9 "Confirmation Hearing Date"), and (z) the deadlines for voting, filing objections, and
10 submitting evidence in connection therewith, substantially in the form of the proposed
11 notice attached hereto as Exhibit A1 (the "Confirmation Hearing Notice");² (4) any
12 cover letters in support of the Plan; and (5) an appropriate ballot or ballots (if the
13 intended recipient is in a class that is entitled to vote on the Plan), as described in
14 Section 7, below, on the following entities:

15 i. All known creditors (1) that have filed a proof of claim in
16 the Debtors' cases (other than claims that have been disallowed, waived,
17 or withdrawn by order of the Court, stipulation, or otherwise), or (2) if no
18 such proof of claim has been filed, on whose behalf the Debtors
19 scheduled a claim in their respective Schedules;

20 ii. All known holders of the 11¼% Notes (the "Public
21 Noteholders") existing as of the Record Date (as defined in Section 6.b,
22 below), to be served in accordance with the procedures set forth in
23 Section 6, below;

24 iii. All non-debtor parties to unexpired leases and executory
25

26 ¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

27 ² The Debtors will submit and serve all of the exhibits to the Disclosure Statement and this Motion on or before April 1,
28 2003, which will give the Court and parties in interest approximately 14 days to consider these exhibits.

1 contracts other than parties to the Resident Agreements;

2 iv. All parties who have requested special notice in these cases
3 (collectively, the “Special Notice Parties”);

4 v. The Office of the United States Trustee and the
5 governmental entities enumerated in Bankruptcy Rule 2002(j);

6 vi. Counsel for the Creditors’ Committee and counsel for the
7 Noteholders’ Committee; and

8 vii. all known holders (the “Shareholders”) of the Debtors’
9 preferred stock, common stock, warrants, options, and/or other equity
10 Interests existing as of the Petition Date.

11 b. By the Service Date, the Debtors will cause an abbreviated notice
12 of the Confirmation Hearing Date, and the means for obtaining more information in
13 connection therewith, in substantially the form of the proposed notice attached hereto
14 as Exhibit A2 (the “Publication Notice”), to be published at the expense of the Estates
15 one time in the Wall Street Journal (national edition), Los Angeles Times, Orange
16 County Register, Fresno Bee, Houston Chronicle, Dallas Morning News, Fort Worth
17 Star-Telegram and Austin Statesman. The Publication Notice will also be posted in
18 each of the Debtors’ 48 long-term care facilities. The Debtors intend to assume each of
19 their thousands of Resident Agreements³ under the Plan and believe that there has been
20 no default in any of these agreements and that no cure amounts are owing.
21 Nonetheless, parties to the Resident Agreements will have the opportunity to object to
22 the assumption of their agreement in the manner set forth in the Confirmation Hearing
23 Notice. With respect to publishing notice, Federal Rule of Bankruptcy Procedure 9008
24 provides that “[w]henver these rules require or authorize service or notice by
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26 ³ Upon admission to one or more of the Debtors’ long-term care facilities, each resident (or appropriate representative of
27 such resident) executes a Resident Agreement establishing the terms and conditions of such resident’s admission and
28 residency in the Debtors’ facility.

1 publication, the court shall, to the extent not otherwise specified in these rules,
2 determine the form and manner thereof, including the newspaper or other medium to
3 be used and the number of publications.” Such notice as is proposed herein is
4 appropriate under the circumstances and consistent with the notice procedures
5 approved by the Court in this case in connection with the Order fixing August 30, 2002
6 as the last date for timely filing of proofs of claim. See Mullane v. Central Hanover
7 Bank & Trust Co., 339 U.S. 306 (1950); Chemtron Corp. v. Jones, 72 F.3d 341 (3d Cir.
8 1995) (finding notice by publication sufficient to discharge environmental claims of
9 former residents).

10 4. **Filing of Plan Related Documents:** Authorizing the Debtors to file
11 such other plan related documents in the manner set forth below:

12 a. By the first business day that is at least twenty (20) days prior to
13 the Confirmation Hearing Date, the Debtors will file their Amended Schedule of
14 Assumed or Assigned Agreements and Amended Schedule of Rejected Agreements, as
15 defined in the Plan (collectively, the “Amended Contract Schedules”), and will serve
16 the Amended Contract Schedules on the Special Notice Parties, and the non-debtor
17 parties to the executory contracts and unexpired leases identified in the Amended
18 Contract Schedules whose treatment differs from that provided in the Exhibits attached
19 to the Solicitation Package.

20 b. By the first business day that is at least ten (10) days prior to the
21 Confirmation Hearing Date, the Debtors will file the other Exhibits required in the Plan
22 to be filed by such date and will serve such Exhibits on the Special Notice Parties.

23 5. **Approval of Form of Notices:** Approving the form of, and authorizing
24 the Debtors to transmit, the Confirmation Hearing Notice and the Solicitation Package, and
25 approving the form of, and authorizing the Debtors to cause, the publication of the Publication
26 Notice, in accordance with the procedures requested by the Debtors in this Motion.

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6. Approval of Procedures for Transmittal of Solicitation Package to

Public Noteholders: Before commencing its chapter 11 case, Fountain View, Inc. issued the 11¼% Notes, which were publicly traded debt securities. Class 9 is comprised entirely of claims with respect to the 11¼% Notes. The owners of record for these securities are largely financial institutions. The Debtors believe that, as is customary with respect to publicly traded securities, these institutions hold a large portion of the 11¼% Notes in “street name” on their own behalf and on behalf of their customers, who are known as the “beneficial owners” of the securities. In other words, the securities are registered in the name of these institutional nominees, who keep private records of the beneficial owners for whom they hold the securities. Record holders generally are unable to provide the names and addresses of beneficial holders to third parties such as the Debtors unless the beneficial holder specifically has authorized the release of such information.

The Debtors therefore cannot obtain lists of the beneficial holders of the 11¼% Notes without an order of the Court pursuant to Bankruptcy Rule 1007(i). The Debtors believe that seeking to obtain such an order generally leads to extensive litigation and substantial delay. Accordingly, both in and out of the bankruptcy context, the solicitation of beneficial holders of publicly traded securities typically is facilitated by and through the record owners of those securities. Most holders of shares in street name use ADP Proxy Services (“ADP”) to handle beneficial owner voting solicitations in connection with matters such as voting to approve or disapprove mergers and acquisitions or to accept or reject a plan of reorganization. ADP maintains a confidential database of beneficial holders, which it updates periodically, and it mails the voting solicitation.

The Debtors believe that it is industry practice for institutional nominees themselves to distribute materials in connection with an economic election such as cash and stock elections in connection with a merger and acquisition. For example, if a merger and acquisition is subject to shareholder approval and the proposed transaction provides

1 shareholders with an option to take either cash or stock in exchange for their existing shares of
2 stock, ADP will typically be used to distribute the voting materials with respect to the
3 proposed merger and acquisition while the institutional nominees will themselves separately
4 distribute the materials with respect to the election between cash and stock.

5 In recognition of these complexities, the Federal Rules of Bankruptcy Procedure
6 specifically authorize the Court to consider procedures for transmitting solicitation materials
7 to the beneficial holders of securities, to determine their adequacy, and to enter appropriate
8 orders with respect thereto.⁴ The procedures described in this section for transmitting the
9 Solicitation Package and ballots to holders of 11¼% Notes are designed to ensure that: (i)
10 beneficial owners of 11¼% Notes are given a reasonable opportunity to vote on the Plan; and
11 (ii) the votes recorded with respect to the Claims for principal and interest arising under the
12 11¼% Notes properly reflect the intentions of beneficial owners of the 11¼% Notes while
13 also comporting with industry practices. The Order granting this Motion will direct the
14 institutional nominees to comply with these procedures.

15 a. **Distribution of Solicitation Package:** The Debtors will retain a
16 voting agent (the “Voting Agent”) to oversee the distribution of the Solicitation
17 Package to the Public Noteholders. (The Debtors intend to use Shanda Pearson,
18 Paralegal, at Klee, Tuchin, Bogdanoff & Stern LLP, to serve as voting tabulator and
19 recipient of ballots from all other classes entitled to vote under the Plan.)

20 b. **Identification of Record Holders:** Subject to this Court’s
21 approval, the Debtors have selected April 15, 2003 as the Record Date for determining
22 the holders of the 11¼% Notes for purposes of the Plan. Five business days prior to
23 the Service Date, the Voting Agent will dispatch a written or electronic inquiry to the
24 banks, brokers, dealers, financial institutions known to be holders of record of 11¼%
25 Notes (or to their duly authorized agents, including ADP) requesting that as of the
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27 ⁴ See Fed. R. Bankr. P. 3017(e).
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1 Record Date, they: (i) confirm whether they were record holders of 11¼% Notes as of
2 the Record Date; and (ii) advise the Voting Agent as to the number of solicitation
3 packages that they would need to transmit to each beneficial holder of 11¼% Notes as
4 of the Record Date. The Voting Agent will direct these inquiries to the institutions
5 (and/or their agents) set forth on a list provided by the Depository Trust Company
6 (“DTC”), the entity that physically holds the 11¼% Notes and maintains a register of
7 record holders. Based upon the responses to the Voting Agent’s inquiry, the Voting
8 Agent will develop a list of record holders as of the Record Date.

9 c. **Service of the Solicitation Packages and Ballots through the**

10 **Institutional Nominees:** On or before the Service Date, the Voting Agent will
11 dispatch to each of those record holders or their agents (collectively, the “Institutional
12 Nominees”), in all probability through ADP, a Solicitation Package together with
13 ballots to be completed by each beneficial holder of 11¼% Notes and returned to the
14 Institutional Nominees (the “Beneficial Holder Ballots”) as well as a ballot to be
15 completed by the Institutional Nominees to summarize voting (the “Master Ballots”).
16 The Voting Agent will deliver to each such Institutional Nominee the number of
17 Solicitation Packages and Beneficial Owner Ballots requested by that Institutional
18 Nominee in response to the voting agent’s initial inquiry, along with a self-addressed
19 return envelope (addressed to the Voting Agent) for each Institutional Nominee to
20 return its Master Ballot. The instructions set forth in these materials will direct the
21 Institutional Nominees to send to each of their beneficial holders no later than May 9,
22 2003, by first class mail, the Solicitation Package, a Beneficial Holder Ballot, and a
23 self-addressed envelope addressed to the Institutional Nominee. Consistent with
24 industry practice, most Institutional Nominees will likely distribute these materials
25 through ADP.

26 The Beneficial Holder Ballot will direct each beneficial holder to return
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1 its ballot to the Institutional Nominee from which it received that ballot, on or before
2 the May 9, 2003. Pursuant to the express terms of the Beneficial Holder Ballots, each
3 beneficial holder of 11¼% Notes executing such a ballot will authorize the Institutional
4 Nominee to transmit an acceptance or rejection of the Plan on its behalf, in accordance
5 with the vote set forth on each such beneficial holder's Beneficial Holder Ballot.
6 Beneficial owners will be instructed to return separate Beneficial Holder Ballots to the
7 appropriate Institutional Nominee with respect to 11¼% Notes that may have been
8 held through more than one record holder. Beneficial holders will also be advised that
9 any vote to accept or reject the Plan that is the subject of a dispute, would not be
10 counted unless otherwise ordered by the Court.

11 i. **Use of Master Ballots:** Each Institutional Nominee will be
12 instructed to summarize the votes received by beneficial holders on the Master
13 Ballot and to return the Master Ballot to the Voting Agent no later than May 30,
14 2003 (the "Master Ballot Deadline"). Each Institutional Nominee will be
15 required to certify, among other things, that it distributed the Solicitation
16 Package to beneficial holders no later than May 9, 2003, that it was duly
17 authorized to transmit the acceptances and rejections set forth on the Master
18 Ballot on behalf of beneficial owners (and the nature of that authorization), and
19 that the Master Ballot reflects the votes timely received from beneficial owners;
20 provided that the vote transmitted on behalf of each beneficial holder is in an
21 amount that does not exceed the actual amount of 11¼% Notes held by such
22 beneficial holder as of the Record Date. To develop an appropriate factual
23 record in the event of any discrepancy, Institutional Nominees will be asked to
24 identify each voting party by customer name or number, certify the amount of
25 11¼% Notes beneficially owned by such customer as of the Record Date, and to
26 separately transcribe the amount of 11¼% Notes purportedly cast on the
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1 Beneficial Holder Ballot by such customer.

2 ii. **Prevalidated Ballots:** Alternatively, Institutional
3 Nominees will be given the option of arranging for beneficial owners to vote by
4 returning ballots directly to the Voting Agent. This is a less common but
5 accepted method of conducting beneficial holder solicitations in the securities
6 industry. Pursuant to this procedure, Institutional Nominees will be permitted to
7 prevalidate and execute an appropriate ballot (as to the amount of 11¼% Notes
8 held as of the Record Date), by distributing a copy of the Disclosure Statement
9 and such executed ballot to each of its beneficial owners by May 9, 2003 or as
10 soon thereafter as is practicable, and by directing such beneficial owners to
11 return their prevalidated and executed Beneficial Owner Ballots directly to the
12 Voting Agent by the Voting Deadline.

13 d. **Tabulation of Ballots:** Promptly after receiving all Master
14 Ballots and, if applicable, prevalidated ballots, the Voting Agent will tabulate these
15 ballots solely with respect to Class 9 (11¼% Notes) and prepare a Plan Ballot
16 Summary with respect to Class 9 in substantially the form of Official Form F 3017.
17 The Voting Agent will promptly forward this Plan Ballot Summary to Shanda D.
18 Pearson, Paralegal/Ballot Tabulator, for inclusion in the Plan Ballot Summary to be
19 filed with this Court with respect to all Classes entitled to vote to accept or reject the
20 Plan.

21 e. **Payment of Fees, Commissions or other Remuneration:** The
22 Debtors will be authorized, without further notice or order of the Court, to reimburse
23 the Voting Agent and the Institutional Nominees for their actual, necessary, and
24 reasonable expenses incurred in performing the above-noted services. The Debtors,
25 however, will not pay any fees, commissions, or other remuneration to Institutional
26 Nominees for such services.

1 7. **Approval of Forms of Ballots:** Approving and authorizing the Debtors
2 to use the following forms of ballot for voting on the Plan: (i) the ballot for Class 2
3 (Woodlands Place Nursing Center, L.P.), substantially in the form of the proposed ballot
4 attached hereto as Exhibit B2; (ii) the ballot for Class 6 (Bergen), substantially in the form of
5 the proposed ballot attached hereto as Exhibit B6; (iii) the ballot for Class 9 (11¼% Notes),
6 substantially in the form of the proposed ballot attached hereto as Exhibit B9 and the Master
7 Ballot related to Class 9 Claims in substantially the form attached hereto as Exhibit B9-a; (iv)
8 the ballot for Class 10 (General Unsecured Claims), substantially in the form of the proposed
9 ballot attached hereto as Exhibit B10; (v) the ballot for Class 12 (Insured Professional
10 Liability Claims), substantially in the form of the proposed ballot attached hereto as Exhibit
11 B12; (vi) the ballot for Class 13 (Uninsured Punitive Damage Claims and Other Subordinated
12 Liabilities), substantially in the form of the proposed ballot attached hereto as Exhibit B13;
13 (vii) the ballot for Class 14 (Existing Preferred Stock), substantially in the form of the
14 proposed ballot attached hereto as Exhibit B14; (viii) the ballot for Class 15 (Existing Class A
15 Common Stock), substantially in the form of the proposed ballot attached hereto as Exhibit
16 B15; (ix) the ballot for Class 17 (Existing Class C Common Stock), substantially in the form
17 of the proposed ballot attached hereto as Exhibit B17; and (i) the ballot for Class 18 (Existing
18 Warrants), substantially in the form of the proposed ballot attached hereto as Exhibit B18.

19 8. **Approval of Procedures for Balloting and Tabulation of Ballots:**
20 Approving and authorizing the Debtors to employ the following procedures for balloting and
21 for the tabulation of ballots with respect to the Plan:

22 a. The amount of a claim or interest for the purposes of ballot
23 tabulation will be:

24 i. *For a claim or interest identified in the Schedules as not*
25 *contingent, not unliquidated, and not disputed, and that has not been*
26 *disallowed, waived, or withdrawn by order of the Court, stipulation, or*
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1 otherwise prior to the Confirmation Hearing, and for which no proof of claim
2 has been filed timely, the claim or interest amount as identified in the Schedules
3 (the “Scheduled Amount”);

4 ii. For a timely proof of claim or proof of interest that is filed
5 in a specified liquidated amount and that is not the subject of an objection filed
6 before the Confirmation Hearing or that has not been disallowed, waived, or
7 withdrawn by order of the Court, stipulation, or otherwise prior to the
8 Confirmation Hearing, the specified liquidated amount in such proof of claim or
9 proof of interest (the “Liquidated Amount”);

10 iii. For a claim or interest that is the subject of an objection in
11 whole or in part before the Confirmation Hearing, only the undisputed amount,
12 if any, of such claim or interest, unless such claim or interest is temporarily
13 allowed under Bankruptcy Rule 3018(a).

14 b. If an entity submits a ballot for a claim or interest (i) for which
15 there is no timely proof of claim or proof of interest filed and for which there is no
16 corresponding Scheduled Amount, or (ii) which is the subject of an unresolved
17 objection filed prior to the Confirmation Hearing, such ballot will not be counted
18 unless otherwise ordered by the Court.

19 c. Creditors that have claims and/or interests in more than one class
20 under the Plan must submit a separate ballot for voting their claims and/or interests in
21 each such class. Any creditor that requires additional copies of a ballot either may
22 photocopy the original ballot or obtain an additional ballot pursuant to the instructions
23 set forth in the Confirmation Hearing Notice and the proposed ballots. **If a creditor**
24 **uses one ballot to vote claims and/or interests in more than one class, such**
25 **combined ballot will not be counted.**

26 d. If an entity casts more than one eligible ballot with respect to the
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1 same claim or interest before the Balloting Deadline, as established below, the last
2 ballot received prior to that deadline shall supersede any prior ballot(s) by such entity
3 with respect to such claim or interest.

4 e. Any ballot that is incomplete or that is not received by the
5 applicable deadline shall not be counted; provided, however, that any ballot that is
6 signed but that does not indicate an acceptance or rejection of the Plan shall be deemed
7 to be a ballot accepting the Plan.

8 f. Shanda Pearson, a paralegal at Klee, Tuchin, Bogdanoff & Stern
9 LLP, (the "Ballot Tabulator"), or such other person designated by the firm, shall
10 tabulate the ballots and prepare the appropriate reports with respect thereto. After
11 tabulation of the ballots, a Plan Ballot Summary, in substantially the form of Official
12 Form F 3017, will be submitted.

13 g. Pursuant to the Plan, the deadline for objecting to claims or
14 interests is after the Confirmation Hearing Date. As a result, creditors and interest
15 holders may not rely on the absence of an objection to their proofs of claim or proofs
16 of interest in determining whether to vote to accept or reject the Plan or as any
17 indication that the Debtors ultimately will not object to the amount, priority, security,
18 or allowability of such claims or interests.

19 9. **Fixing of Requisite Dates, Deadlines, and Briefing Procedures:**

20 Establishing (i) the Record Date for holders of 11¼% Notes; (ii) the deadline for filing claim
21 objections for voting purposes; (iii) deadlines for determination of motions for allowance of
22 claim for voting purposes; (iv) deadlines for determination of motions to determine impaired
23 status of claim (v) the Balloting Deadline (defined below) for receipt of ballots to accept or
24 reject the Plan; (vi) the deadline for filing the Plan Ballot Summary with the Court; (vii) the
25 Confirmation Hearing Date; (viii) the last date for filing a memorandum in support of
26 confirmation of the Plan; (ix) the last dates for filing objections to confirmation of the Plan
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1 and responses thereto; and (x) related procedures; as follows:

- 2 a. April 15, 2003 will be the Record Date for the holders of 11¼%
3 Notes.
- 4 b. April 30, 2003 will be the last day for timely filing of an objection
5 to a claim or interest for voting purposes only.
- 6 c. May 12, 2003 will be the last day for timely filing of a motion to
7 allow for voting purposes a claim subject to objection. May 23, 2003 will be the last
8 day for timely filing of a response to such a motion. Timely filed motions to allow a
9 claim for voting purposes will be heard on or before May 26, 2003. No vote may be
10 cast by the holder of a claim subject to objection or listed as disputed, contingent or
11 unliquidated on the Debtors' Schedules unless an order of the Court allowing such
12 claim for voting purposes is entered on or before the Balloting Deadline, i.e. May 30,
13 2003.
- 14 d. May 12, 2003 will be the last day for timely filing of a motion to
15 determine impaired status of a claim designated as unimpaired under the Plan. May
16 23, 2003 will be the last day for timely filing of a response to such a motion. Timely
17 filed motions to determine impaired status of a claim designated as unimpaired under
18 the Plan will be heard on or before May 26, 2003. No vote may be cast by the holder
19 of a claim designated by the Plan as unimpaired unless an order of the Court
20 determining such claim to be impaired is entered on or before the Balloting Deadline,
21 i.e. May 30, 2003.
- 22 e. May 30, 2003, at 5:00 p.m. Pacific Time (the "Balloting
23 Deadline"), will be the deadline by which ballots to accept or reject the Plan must be
24 received from eligible creditors and interest holders. All ballots must be actually
25 received by the Ballot Tabulator on or before the Balloting Deadline in order to be
26 counted.
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1 f. The Plan Ballot Summary will be submitted to the Court by three
2 (3) Court days following the Balloting Deadline.

3 g. June 27, 2003 at 10:00 a.m. Pacific Time, or such later date and
4 time as the Court may set, will be the date and time for the Confirmation Hearing Date.

5 h. The first business day that is at least twenty (20) days prior to the
6 Confirmation Hearing Date will be the last date to file and serve any initial memoranda
7 and evidence in support of confirmation of the Plan, which memoranda and evidence
8 must be served upon the Debtors; the Debtors' reorganization counsel – Klee, Tuchin,
9 Bogdanoff & Stern LLP, 1880 Century Park East, Suite 200, Los Angeles, California,
10 90067, Attn: Brendt C. Butler, Esq.; the Office of the United States Trustee, Ernst &
11 Young Plaza, 725 South Figueroa Street, 26th Floor, Los Angeles, California 90017,
12 Attn: Joseph Caceres, Esq.; counsel to the Creditors' Committee - Sonnenschein, Nath
13 & Rosenthal, 1221 Avenue of the Americas, New York, NY 10020-1089, Attn. Carole
14 Neville, Esq.; counsel to the Noteholders' Committee - Akin, Gump, Strauss, Hauer &
15 Feld L.L.P., 590 Madison Avenue, New York, NY 10022, Attn: James R. Savin, Esq.
16 And Michael Stamer, Esq.; and counsel to the Agent and Lenders - Chapman and
17 Cutler, 111 West Monroe Street. Chicago, Illinois 60603 , Attn: James Spiotto.

18 i. Except as provided in Section 9.j below, the first business day that
19 is at least ten (10) days prior to the Confirmation Hearing Date will be the last date to
20 file and serve any objections and evidence in opposition to confirmation of the Plan,
21 which must: (1) be served upon the parties set forth in Section 9.h, above; (2) be in
22 writing and accompanied by a memorandum of points and authorities; and (3) set forth
23 in detail the name and address of the party filing the objection, the grounds for the
24 objection, any evidentiary support for the objection in the nature of declarations
25 submitted under penalty of perjury, and the amount of the objector's claims or such
26 other grounds that give the objector standing to assert the objection.

1 j. The last date to file and serve any objections and evidence in
2 opposition to assumption (including any objections to the proposed cure payments
3 specified therein) or rejection of the agreements specified on the Contract Schedules
4 served with the Solicitation Package shall be the first business day that is at least
5 twenty (20) days prior to the Confirmation Hearing Date. The last day to file and serve
6 any objection and evidence in opposition to assumption or rejection of the agreements
7 specified on the Amended Contract Schedules is the first business day that is the later
8 of: (i) twenty (20) days before the Confirmation Hearing Date; or (ii) five (5) days
9 after the Debtors file and serve any amendments to the Contract Schedules that is the
10 subject of such objection.

11 k. Any objection not timely filed and served will be deemed to be
12 waived and to be a consent to the Court's entry of an order confirming the Plan.

13 l. Any evidence that is not timely filed and served will be stricken
14 from the record and will not be considered in determining any contested matter at the
15 Confirmation Hearing.

16 m. All declarants must be available, without need for subpoena, to
17 appear for cross-examination at the Confirmation Hearing. The testimony of any
18 declarant who is not present for cross-examination at the Confirmation Hearing will be
19 stricken from the record and will not be considered in determining contested matters at
20 the Confirmation Hearing.

21 n. Responses to any objections to confirmation of the Plan may be
22 filed and served three days before the Confirmation Hearing Date.

23 **PLEASE TAKE FURTHER NOTICE** that for the reasons set forth in the
24 accompanying Memorandum of Points and Authorities, the relief requested by this Motion is
25 authorized by the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and
26 the Local Rules, and will facilitate and streamline the solicitation and confirmation process,
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1 will increase the likelihood that all creditors and interest holders receive appropriate notice of
2 the Plan and the Confirmation Hearing Date and, if appropriate, the opportunity to vote on the
3 Plan, and, in the event that any party in interest objects to confirmation, will focus the issues
4 and conserve the time and resources of the Court. Accordingly, the Debtors believe that the
5 requested relief is fair, reasonable, and in the best interests of its estates.

6 **PLEASE TAKE FURTHER NOTICE** that this Motion is based upon these
7 moving papers; the annexed Memorandum of Points and Authorities and Declaration of Boyd
8 Hendrickson (“Hendrickson Declaration”); the record in these cases, including the pleadings
9 and documents filed on behalf of the parties; and such other matters as may be presented at or
10 prior to the hearing on the Motion.

11 **PLEASE TAKE FURTHER NOTICE** that Federal Rules of Bankruptcy
12 Procedure 3017(a) and 2002(b) and Local Bankruptcy Rule 3017-1 require that any objection
13 to the Motion be filed with the Bankruptcy Court and served on the Debtors, their
14 reorganization counsel, the Office of the United States Trustee, counsel for the Official
15 Committee of Unsecured Creditors, counsel for the Noteholders Committee, and counsel for
16 the Debtors’ secured lenders **no later than 11 days before the hearing on the Motion (i.e.,
17 no later than April 4, 2003)**. The addresses for these entities are listed below:

18 Clerk of the Court
19 United States Bankruptcy Court
20 Clerk's Office Operations
21 Records and Intake
22 U.S. Federal Building – First Floor
300 North Los Angeles Street
Los Angeles, CA 90012

23 Debtors’ Reorganization Counsel
24 Klee, Tuchin, Bogdanoff & Stern LLP
25 Attn: Brendt C. Butler
1880 Century Park East, Suite 200
26 Los Angeles, CA 90067
Facsimile: (310) 407-9090
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KLEE, TUCHIN, BOGDANOFF & STERN LLP
1880 CENTURY PARK EAST, SUITE 200
LOS ANGELES, CALIFORNIA 90067-1698

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Debtors
Fountain View, Inc.
Attn: Roland Rapp
27442 Portola Parkway, Suite 200
Foothill Ranch, CA 92610

Office of the United States Trustee
Attn: Joseph Caceres, Esq.
221 N. Figueroa Street, Suite 800
Los Angeles, CA 90012

Unsecured Creditors' Committee Counsel
Sonnenschein, Nath & Rosenthal
Attn. Carole Neville, Esq.
1221 Avenue of the Americas
New York, NY 10020-1089

Noteholders' Committee Counsel
Akin, Gump, Strauss, Hauer & Feld L.L.P.
Attn: James R. Savin, Esq. and
Michael S. Stamer, Esq.
590 Madison Avenue
New York, NY 10022

Bank Group Counsel
Chapman and Cutler
Attn. James Spiotto
111 West Monroe Street
Chicago, Illinois 60603

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court is permitted, under Local Bankruptcy Rule 9013-1, to deem that the failure to timely file and serve a written opposition to the Motion constitutes consent to the relief requested therein.

PLEASE TAKE FURTHER NOTICE that you may request a copy of the Motion, the *Debtors' Disclosure Statement Regarding Joint Plan of Reorganization Dated March 10, 2003*, and/or the *Debtors' Joint Plan of Reorganization Dated March 10, 2003*, or any amendments to that plan and disclosure statement by sending a written request to the Debtors' reorganization counsel at the following address:

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Debtors' Reorganization Counsel
Klee, Tuchin, Bogdanoff & Stern LLP
Attn: Shanda D. Pearson, Paralegal
1880 Century Park East, Suite 200
Los Angeles, CA 90067
Facsimile: (310) 407-9090

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the above-noted relief and such other relief as is appropriate under the circumstances.

DATED: March 10, 2003



DANIEL J. BUSSEL, an Attorney with
KLEE, TUCHIN, BOGDANOFF & STERN LLP
Reorganization Counsel for
Debtors and Debtors in Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 On October 2, 2001, Fountain View, Inc. and nineteen of its subsidiaries filed
5 voluntary petitions under chapter 11 of the Bankruptcy Code. On November 28, 2001,
6 voluntary chapter 11 petitions were filed for three additional Fountain View, Inc. subsidiaries.
7 Since these times, the Debtors have operated their business and managed their affairs as
8 debtors and debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.
9 Pursuant to a motion by the Debtors, the Court established August 30, 2002, as the bar date
10 for filing proofs of claim and interest against the Debtors.

11 On March 10, 2003, the Debtors filed their Disclosure Statement and their Plan.
12 In order to facilitate and streamline the solicitation and confirmation process with respect to
13 the Plan, and to increase the likelihood that all creditors and interest holders receive notice of
14 the Plan, the Disclosure Statement, and the Confirmation Hearing and, if appropriate, the
15 opportunity to vote on the Plan, the Debtors have proposed the notice and solicitation
16 procedures set forth in the accompanying Motion.

17 **II.**

18 **ARGUMENT**

19 By the Motion, the Debtors request that the Court (a) approve the adequacy of
20 the information in the Disclosure Statement; (b) approve and authorize the implementation of
21 specified procedures for the form, scope, and nature of solicitation, balloting, tabulation, and
22 notices with respect to the Plan; and (c) establish specified procedures and deadlines for
23 briefing and for the Confirmation Hearing. For the reasons set forth below, all of such
24 requested relief is appropriate and authorized by the Bankruptcy Code, the Bankruptcy Rules,
25 and the Local Rules.

1 **A. The Disclosure Statement Provides Adequate Information.**

2 Bankruptcy Code section 1125(b) provides that “[a]n acceptance or rejection of
3 a plan may not be solicited after the commencement of the case under this title from a holder
4 of a claim or interest with respect to such claim or interest, unless, at the time of or before
5 such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a
6 written disclosure statement approved, after notice and a hearing, by the court as containing
7 adequate information.” 11 U.S.C. § 1125(b). The Bankruptcy Code defines “adequate
8 information” as follows:

9 “adequate information” means information of a kind, and in
10 sufficient detail, as far as is reasonably practicable in light of the
11 nature and history of the debtor and the condition of the debtor's
12 books and records that would enable a hypothetical reasonable
13 investor typical of holders of claims or interests of the relevant
14 class to make an informed judgment about the plan, but adequate
 information need not include such information about any other
 possible or proposed plan.

15 11 U.S.C. § 1125(a).

16 The determination of whether a particular disclosure statement provides
17 “adequate information” is “subjective and made on a case by case basis . . . [and] . . . is
18 largely within the discretion of the bankruptcy court.” In re Texas Extrusion Corp., 844 F.2d
19 1142, 1157 (5th Cir. 1988); accord, e.g., Menard-Sanford v. Mabey (In re A.H. Robins Co.),
20 880 F.2d 694, 696 (4th Cir. 1989). Nevertheless, in determining whether the “adequate
21 information” requirements of section 1125(b) have been satisfied in a particular case, courts
22 frequently investigate whether the disclosure statement provides descriptions of the following
23 information:

- 24 (1) the events which led to the filing of a bankruptcy petition;
25 (2) a description of the available assets and their value;
26 (3) the anticipated future of the company;

- 1 (4) the source of information stated in the disclosure statement;
- 2 (5) a disclaimer;
- 3 (6) the present condition of the debtor while in Chapter 11;
- 4 (7) the scheduled claims;
- 5 (8) the estimated return to creditors under a Chapter 7 liquidation;
- 6 (9) the accounting method utilized to produce financial information
- 7 and the name of the accountants responsible for such information;
- 8 (10) the future management of the debtor;
- 9 (11) the Chapter 11 plan or a summary thereof;
- 10 (12) the estimated administrative expenses, including attorneys' and
- 11 accountants' fees;
- 12 (13) the collectability of accounts receivable;
- 13 (14) financial information, data, valuations or projections relevant to
- 14 the creditors' decision to accept or reject the Chapter 11 plan;
- 15 (15) information relevant to the risks posed to creditors under the plan;
- 16 (16) the actual or projected realizable value from recovery of
- 17 preferential or otherwise voidable transfers;
- 18 (17) litigation likely to arise in a nonbankruptcy context;
- 19 (18) tax attributes of the debtor; and
- 20 (19) the relationship of the debtor with affiliates.

21 In re Metrocraft Pub. Servs. Inc., 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984);
22 accord, e.g., In re Reilly, 71 B.R. 132, 134 (Bankr. D. Mont. 1987).

23 The Disclosure Statement provides extensive information about the Debtors'
24 chapter 11 cases and a detailed explanation of the Plan and the financial information and
25 assumptions that underlie the Plan. Among other things, the Disclosure Statement sets forth
26 the following:

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- A description of the events leading to the filing of the Debtors' chapter 11 petitions (Section VIII.H);
- Descriptions of the Debtors' assets and the values of such assets (Sections VIII.F and XIII.A, and Exhibits 6);
- Information regarding the anticipated future operations and performance of the reorganized Debtors (Sections IX.C, IX.D, and XI and Exhibits 3,9, and 10);
- A detailed disclaimer regarding the Plan, the assumptions underlying the Plan, and future projections (Section II);
- A summary of significant events and the Debtors' performance during the bankruptcy cases (Section IX);
- A discussion of claims asserted against the Debtors (Sections VIII.F.2 and IX.A.14);
- The estimated return to impaired classes of creditors in a hypothetical chapter 7 liquidation (Section XII and Exhibit 5);
- The estimated reorganization value of the Debtors (Sections XI and XIII and Exhibit 7);
- A detailed summary of the operative provisions of the Plan (Section X);
- The Debtors' estimated administrative expenses and professional fees (Sections IX.A and X.A.1.a);
- Substantial financial information, including projected cash flow, balance sheet, and income statements (Exhibits 3, 4, 5, 6, 7, and 8);
- A discussion of the tax consequences of the Plan to the Debtors' creditors (Section XV);
- A detailed summary of non-bankruptcy legal proceedings by and against the Debtors (Sections IX.A.15 and IX.B and Exhibit 2); and

1 • A detailed discussion of the risks to creditors under the Plan (Section XIV)
2 The Disclosure Statement therefore clearly provides “adequate information”
3 within the meaning of Bankruptcy Code section 1125 and should be approved for use in
4 soliciting the votes of the Debtors’ creditors.

5 **B. The Proposed Procedures for the Form, Scope, and Nature of**
6 **Solicitation, Balloting, Tabulation, and Notices are Reasonable and**
7 **Appropriate.**

8 **1. Distribution of the Solicitation Package is Appropriate Under**
9 **Bankruptcy Rule 3017(d).**

10 Bankruptcy Rule 3017(d) requires that a plan proponent mail copies of the plan,
11 the disclosure statement, and a notice regarding the deadlines for voting on the plan and the
12 date of the confirmation hearing to all creditors and equity security holders. Fed. R. Bankr. P.
13 3017(d). In accordance with Bankruptcy Rule 3017(d), the Debtors propose to send to all
14 creditors, interest holders, and other parties in interest (other than parties to Resident
15 Agreements) Solicitation Packages including the Plan and Disclosure Statement, the
16 Confirmation Hearing Notice, and, if appropriate, a ballot.

17 As stated above, the Debtors intend to assume each of their thousands of
18 Resident Agreements under the Plan and believe that there has been no default in any of these
19 agreements and that no cure amounts are owing. The Debtors therefore submit that serving
20 the thousands of aged and infirm persons (or their survivors, guardians, or conservators) that
21 are parties to the Resident Agreements with the Solicitation Package is unnecessary and cost
22 prohibitive. Notice by publication and posting of the Confirmation Hearing Notice is such
23 notice as is appropriate under these circumstances and will provide these parties with the
24 necessary information and deadlines to object to the assumption of the Resident Agreements.
25 Finally, as set forth in the Confirmation Hearing Notice, parties to Resident Agreements will
26 nonetheless have the opportunity to receive, at no charge, the full Solicitation Package by
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1 sending a written request to the Debtors' reorganization counsel.

2 **2. Publication of the Notice Regarding the Confirmation Hearing is**
3 **Appropriate Under Bankruptcy Rules 2002(i) and 9008.**

4 Bankruptcy Rule 2002(i) states that a bankruptcy court may order notice by
5 publication if it wishes to supplement notice by mail. Fed. R. Bankr. P. 2002(i) ("The court
6 may order notice by publication if it finds that notice by mail is impracticable or that it is
7 desirable to supplement the notice."). Whenever a court requires notice by publication,
8 Bankruptcy Rule 9008 indicates that the court shall determine the form and manner of the
9 service by publication, including the newspaper to be used and the number of publications.
10 Fed. R. Bankr. P. 9008 ("Whenever these rules require or authorize service or notice by
11 publication, the court shall, to the extent not otherwise specified in these rules, determine the
12 form and manner thereof, including the newspaper or other medium to be used and the
13 number of publications.").

14 To help provide all potential creditors and other parties in interest with notice of
15 the Confirmation Hearing and an opportunity to obtain copies of the Plan and Disclosure
16 Statement, the proposed procedures provide for the Debtors to cause the Publication Notice to
17 be published one time in the Wall Street Journal (national edition), Los Angeles Times,
18 Orange County Register, Fresno Bee, Houston Chronicle, Dallas Morning News, Fort Worth
19 Star-Telegram and Austin Statesman. The Publication Notice will also be posted in each of
20 the Debtors' 48 long-term care facilities. Such notice as is proposed is appropriate under the
21 circumstances and consistent with the notice procedures established by the Court in this case
22 in connection with its Order fixing August 30, 2002 as the last date for timely filing of proofs
23 of claim. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Chemtron
24 Corp. v. Jones, 72 F.3d 341 (3d Cir. 1995) (finding notice by publication sufficient to
25 discharge environmental claims of former residents).

1 **3. The Proposed Procedures for Transmitting the Solicitation Package**
2 **to Beneficial Owners of 11¼% Notes is Appropriate Under**
3 **Bankruptcy Rule 3017(e).**

4 Bankruptcy Rule 3017(e) provides that “[a]t the hearing held [regarding the
5 adequacy of information in a disclosure statement], the court shall consider the procedures for
6 transmitting the documents and information . . . to beneficial holders of stock, bonds,
7 debentures, notes, and other securities, determine the adequacy of the procedures, and enter
8 any orders the court deems appropriate.” Fed. R. Bankr. P. 3017(e). The purpose of this rule
9 is clear:

10 *Subdivision (e) is designed to ensure that appropriate measures*
11 *are taken for the plan, disclosure statement, ballot, and other*
12 *materials . . . to reach the beneficial holders of securities held in*
13 *nominee name. Such measures may include orders directing the*
14 *trustee or debtor in possession to reimburse the nominees out of*
15 *the funds of the estate for the expenses incurred by them in*
16 *distributing materials to beneficial holders. In most cases, the*
 plan proponent will not know the identities of the beneficial
 holders and therefore it will be necessary to rely on the nominal
 holders of the securities to distribute the plan materials to the
 beneficial owners.

17 Fed. R. Bankr. P. 3017 (Advisory Committee's Note) (emphasis added).

18 The procedure proposed by the Debtors for the transmittal of the Solicitation
19 Package to beneficial owners of 11¼% Notes is within the scope of Bankruptcy Rule 3017(e)
20 in providing that the Institutional Nominees transmit Solicitation Packages to the beneficial
21 owners. The proposed procedures are in the best interests of the Estates because they will
22 ensure that the maximum number of beneficial owners receive the Solicitation Package and
23 the opportunity to vote on the Plan.

24 **4. The Proposed Record Date Is Appropriate Under Bankruptcy Rules**
25 **3017(d) and 3018(a).**

26 Bankruptcy Rule 3017(d) provides that “[f]or the purposes of this subdivision,
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1 creditors and equity security holders shall include holders of stock, bonds, debentures, notes,
2 and other securities of record on the date the order approving the disclosure statement is
3 entered or another date fixed by the court, for cause, after notice and a hearing." Fed. R.
4 Bankr. P. 3017(d). Bankruptcy Rule 3018(a) similarly provides that a creditor or interest
5 holder whose claim is based upon a security "shall not be entitled to accept or reject a plan
6 unless the equity security holder or creditor is the holder of record of the security on the date
7 the order approving the disclosure statement is entered or another date fixed by the court, for
8 cause, after notice and a hearing." Fed. R. Bankr. P. 3018(d).

9 The Debtors do not know precisely when the order approving the Disclosure
10 Statement will be entered on the Court's docket. As a result, because that date is uncertain, it
11 cannot feasibly be used as a record date for identifying the holders of 11¼% Notes in time to
12 permit a mailing of Solicitation Packages promptly after the entry of the order. Accordingly,
13 the Debtors propose that April 15, 2003 (the date of the hearing on this Motion), at 5:00 p.m.
14 Pacific Time, be the Record Date, regardless of whether an order approving the Disclosure
15 Statement actually is entered on the docket on that date.

16 The use of a record date that is the same as the date of the hearing on approval
17 of the disclosure statement expressly is contemplated in the advisory committee notes to
18 Bankruptcy Rule 3017:

19 Subdivision (d) is amended to provide flexibility in fixing the
20 record date for the purpose of determining the holders of
21 securities who are entitled to receive documents pursuant to this
22 subdivision. For example, if there may be a delay between the
23 oral announcement of the judge's order approving the disclosure
24 statement and entry of the order on the court docket, the court
25 may fix the date on which the judge orally approves the
26 disclosure settlement as the record date so that the parties may
27 expedite preparation of the lists necessary to facilitate the
28 distribution of the plan, disclosure statement, ballots, and other
related documents.

Fed. R. Bankr. P. 3017 (Advisory Committee's Note); accord Fed. R. Bankr. P. 3018

1 (Advisory Committee's Note).

2 As such, the Court should approve the requested Record Date.

3 **5. The Proposed Form of Confirmation Hearing Notice, Publication**
4 **Notice, And Ballots Is Appropriate Under Bankruptcy Rule 3017(d).**

5 As noted above, Bankruptcy Rule 3017(d) requires that a proponent send to all
6 creditors and interest holders a notice of (a) the deadlines for balloting on the plan and for
7 objecting to confirmation, and (b) the procedures for obtaining a complete copy of the plan
8 and disclosure statement at the expense of the proponent. Bankruptcy Rule 3017(d) further
9 requires that “a form of ballot conforming to the appropriate Official Form shall be mailed to
10 creditors and equity security holders entitled to vote on the plan.” Fed. R. Bankr. P. 3017(d);
11 see also Fed. R. Bankr. P. 3018(c) (“An acceptance or rejection shall . . . conform to the
12 appropriate Official Form.”).

13 Both the Confirmation Hearing Notice and the Publication Notice provide the
14 information required by Bankruptcy Rule 3017(d). Accordingly, the Court should approve
15 the form of those notices. See Fed. R. Bankr. P. 9007 (“When notice is to be given under
16 these rules, the court shall designate . . . the form and manner in which the notice shall be
17 given.”).

18 Similarly, the forms of ballot proposed by the Debtors conform in all material
19 respects with Official Bankruptcy Form 14, with modifications only to match the particular
20 needs of the various classes of creditors and interest holders that are entitled to vote on the
21 Plan. The Court therefore also should approve the form of those ballots.

22 **6. The Proposed Balloting Deadline Is Appropriate Under The**
23 **Circumstances.**

24 Bankruptcy Rule 3017(c) provides that, “[o]n or before approval of the
25 disclosure statement, the court shall fix a time within which holders of claims and interest
26 may accept or reject the plan.” Fed. R. Bankr. P. 3017(c). The Debtors therefore request that
27 the Court set May 30, 2003, at 5:00 p.m. Pacific Time, as the Balloting Deadline. Because the
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1 Debtors will serve the Solicitation Packages on or before April 30, 2003 the proposed
2 Balloting Deadline should provide creditors with enough time within which to review the
3 solicitation material and to cast ballots on the Plan.

4 **7. The Proposed Procedures for Balloting and Tabulation of Votes are**
5 **Appropriate under the Circumstances.**

6 Generally, only holders of allowed claims or interests are entitled to vote to
7 accept or reject a proposed plan of reorganization. See 11 U.S.C. § 1126(a). The Debtors
8 therefore have proposed the procedures set forth in Sections 6.d and 8 of the Motion to ensure
9 that only the votes of holders of allowed claims are counted in the tabulation of ballots on the
10 Plan. The Debtors submit that the proposed procedures are reasonable and appropriate under
11 the circumstances.

12 **C. The Proposed Procedures And Deadlines For Briefing And The**
13 **Confirmation Hearing Are Reasonable And Appropriate.**

14 Bankruptcy Rule 3017(c) provides that “[o]n or before approval of the
15 disclosure statement, the court . . . may fix a date for the hearing on confirmation.” Fed. R.
16 Bankr. P. 3017(c). Similarly, Bankruptcy Rule 3020(b) provides that “[a]n objection to
17 confirmation of the plan shall be filed and served . . . within a time fixed by the court,” Fed.
18 R. Bankr. P. 3020(b), and Bankruptcy Rule 2002(b) provides that the plan proponent must
19 provide at least twenty-five days notice of the deadline for filing such objections.

20 The Debtors submit that the proposed dates for the Confirmation Hearing, the
21 associated deadlines for objecting to the Plan and for responding to such objections, and the
22 related procedures set forth in the Motion fall within the scope of the above-noted rules and
23 are appropriate under the circumstances.

24 **III.**

25 **CONCLUSION**

26 For all of the foregoing reasons, the Debtors respectfully request that the Court
27 grant the Motion and order and authorize the relief requested above and such other relief as is
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1 appropriate under the circumstances.

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3 DATED: March 10, 2003

Brendt C Butler

BRENDT C. BUTLER, an Attorney with
KLEE, TUCHIN, BOGDANOFF & STERN LLP
Proposed Reorganization Counsel for
Debtors and Debtors in Possession

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KLEE, TUCHIN, BOGDANOFF & STERN LLP
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including myself.

5. All financial data referenced in the Disclosure Statement and accompanying Plan has been generated by the Debtors from information in their books and records.

6. All facts and representations in the Disclosure Statement and the accompanying Plan are true to the best of my knowledge. To the best of my knowledge, the Disclosure Statement includes facts that would be material to a creditor or equity security holder in determining whether to vote to accept or reject the Plan.

7. I believe that the relief requested in the Motion is in the best interests of the Debtors' estates because it will facilitate and streamline the solicitation and confirmation process with respect to the Plan and because it will increase the likelihood that all creditors and interest holders receive notice of the Plan, the Disclosure Statement, and the hearing on confirmation and, if appropriate, the opportunity to vote on the Plan.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Foothill Ranch, California, this 7 day of March 2003.



BOYD HENDRICKSON

PROOF OF SERVICE

I am over eighteen years of age, and I am not a party to this action. I am employed by Klee, Tuchin, Bogdanoff & Stern LLP, and my business address is: 1880 Century Park East, Suite 200, Los Angeles, California 90067-1698. Klee, Tuchin, Bogdanoff & Stern LLP employs a member of the bar of the State of California at whose direction this service was made.

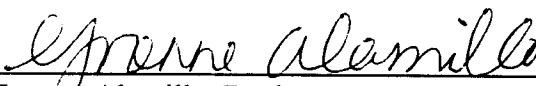
On March 10, 2003, I served the following pleading:

NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING AND APPROVING: (A) ADEQUACY OF "DEBTORS' DISCLOSURE STATEMENT REGARDING JOINT PLAN OF REORGANIZATION (DATED MARCH 10, 2003)"; (B) FORM, SCOPE, AND NATURE OF SOLICITATION, BALLOTING, TABULATION, AND NOTICES WITH RESPECT THERETO; AND (C) RELATED CONFIRMATION PROCEDURES, DEADLINES, AND NOTICES; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF BOYD HENDRICKSON IN SUPPORT THEREOF

on the interested parties in this action by placing true and correct copies of the pleading with the United States Postal Service, enclosed in sealed envelopes, with postage fully paid, addressed as indicated on the attached list.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED on March 10, 2003, at Los Angeles, California.



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