

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

In re:  DELTROPICO DESIGNS, LLC,  Debtor.	Case No. 15-25767-BKC-RAM  Chapter 11
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**FIRST AMENDED DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR'S FIRST  
AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

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Dated: July 19, 2016

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN WILL BE SET BY  
SEPARATE ORDER OF THE BANKRUPTCY COURT. IN ORDER TO BE COUNTED,  
YOUR BALLOT MUST BE RECEIVED BY THE BANKRUPTCY COURT ON OR  
BEFORE THAT DATE.**

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*COUNSEL FOR DEBTOR*

## **ARTICLE I**

### **INTRODUCTION**

Chapter 11 debtor-in-possession, Deltropico Designs, LLC (the “Debtor”) submits this First Amended Disclosure Statement pursuant to Bankruptcy Code section 1125 in support of the Debtor’s First Amended Chapter 11 Plan of Reorganization, as it may be amended. A true and correct copy of the Plan is attached hereto as **Exhibit 1**.

This Disclosure Statement sets forth certain information regarding Debtor’s pre-petition operations and financial history, events leading to Debtor’s chapter 11 bankruptcy, significant events that have occurred during the Chapter 11 Case, and the means for implementing a restructuring of Debtor’s liabilities through the Plan. This Disclosure Statement also describes terms and provisions of the Plan, including certain alternatives to the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. Additionally, this Disclosure Statement discusses the confirmation process and the voting procedures and requirements for voting on the Plan.<sup>1</sup>

#### **A. Summary of Transactions and Distributions under the Plan<sup>2</sup>**

**THE FOLLOWING IS INTENDED TO BE A BRIEF SUMMARY OF THE TREATMENT OF CREDITORS UNDER THE PLAN. IT IS NOT INTENDED TO BE A SUMMARY OF ALL THE PROVISIONS OF THE PLAN, AND SHOULD BE READ IN CONJUNCTION WITH THE ENTIRE PLAN.**

The Plan provides for the emergence of a Reorganized Debtor on the Effective Date, which will continue the Debtor’s business operations. The Debtor’s available cash, including cash loaned from Simplemente Madera Millworks (“SMM”) to the extent necessary,<sup>3</sup> will fund payment to allowed creditors in accordance with the distribution and priority scheme set forth under the Bankruptcy Code and the terms of the Plan. The Debtor believes that the Plan is in the best interests of Creditors and Interestholders and, accordingly, urge all Creditors and Interestholders who are entitled to vote on the Plan to vote in favor of the Plan.

Distributions to Holders of Allowed Claims and Equity Interests and the anticipated recoveries to Allowed Creditors and Interestholders under the Plan are summarized below. **The following description is a summary only and qualified in its entirety by the treatment provided under Article III of the Plan. To the extent of any inconsistency between the**

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<sup>1</sup> Except as otherwise provided herein, capitalized terms used herein shall have the meanings ascribed to them in the Plan. Any capitalized term used in this Disclosure Statement that is not defined in the Plan or this Disclosure Statement shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, whichever is applicable.

<sup>2</sup> The description of the Plan contained in this section of the Disclosure Statement is a summary description only and qualified by the terms of the Plan itself. Creditors, equity security holders and parties in interest should read the Plan carefully for a complete description of its terms and transactions that will be implemented thereunder.

<sup>3</sup> SMM is an affiliate of the Nicaraguan company, both owned and controlled by Mr. Arnold Ponçon and family, that owns the factory in Managua, Nicaragua that manufactures the Debtor’s furniture, and will continue in such capacity for the Reorganized Debtor post-confirmation.

**treatment of Claims and Interests provided under Article III of the Plan and the following summary, the terms of the Plan shall control.**

<b>Class</b>	<b>Type</b>	<b>Treatment</b>
N/A	Administrative Claims	Allowed Administrative Claims will be paid in full on Effective Date or such later date that any such Claim becomes Allowed, or in such other manner as agreed to by the holder of any particular Administrative Claim.
N/A	Priority Tax Claims	Allowed Priority Tax Claims will be paid in full on Effective Date or such later date that any such Claim becomes Allowed.
1	Priority Non-Tax Claims (Unimpaired)	Allowed Priority Non-Tax Claims will be paid in full on Effective Date or such later date that any such Claim becomes Allowed.
2	Administrative Convenience Claims (Impaired)	Allowed Administrative Convenience Claims (General Unsecured Claims of \$1,000.00 or less) will be paid in full on Effective Date or such later date that any such Claim becomes Allowed.
3	General Unsecured Claims (Impaired)	Allowed General Unsecured Claims will be paid 50% over 3 years by 12 quarterly installment payments beginning October 1, 2016, unless paid off earlier.
4	SMM Post-Petition Loan Claim (Unimpaired)	Allowed SMM Post-Petition Loan Claim will be paid full principal amount plus 5.0% annual interest (accruing from June 1, 2016) in quarterly payments over 6 years commencing June 1, 2017, as agreed to by SMM and Debtor.
5	Equity Interests (Unimpaired)	Holders of Allowed Equity Interests will retain their Interests in the Reorganized Debtor from and after the Effective Date.

Under the Plan, the Reorganized Debtor will fund payment of Allowed Claims from the Debtor's available cash on-hand on the Effective Date and operating cash flow, augmented as necessary from funds loaned by SMM, over the 3-year life of the Plan.

The foregoing recovery analysis relies upon certain assumptions concerning the aggregate amount of Claims that will ultimately be Allowed Claims in the Chapter 11 Case.

#### **B. Chapter 11 Case**

Deltropico Designs, LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on August 31, 2015 (the "Petition Date"), in the United States Bankruptcy Court for Southern District of Florida. The Debtor remains in possession and control of its assets and business affairs pursuant to 11 U.S.C. §§ 1107 and 1108, as no chapter 11 trustee has been appointed in this case.

**C. Purpose of Disclosure Statement**

This Disclosure Statement is submitted in accordance with Bankruptcy Code section 1125 for the purpose of soliciting acceptances of the Plan from Holders of certain Claims and Equity Interests. Acceptances of the Plan are being sought only from Creditors and Interestholders whose Claims or Interests are “impaired” (as that term is defined in Bankruptcy Code section 1124) by the Plan and who are receiving or retaining property under the Plan. Holders of Claims that are not impaired are deemed to have accepted the Plan.

Subject to the disclaimers set forth below, the Debtor has prepared this Disclosure Statement pursuant to Bankruptcy Code section 1125, which requires that a copy of the Plan, or a summary thereof, be submitted to all Holders of Claims against, and Equity Interests in, the Debtors, along with a written disclosure statement containing adequate information about the Debtors of a kind, and in sufficient detail, as far as is reasonably practicable, that would enable a hypothetical, reasonable investor typical of Holders of Claims and Equity Interests to make an informed judgment in exercising their right to vote on the Plan.

**D. Disclaimers**

**THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO BUT NOT YET APPROVED BY THE BANKRUPTCY COURT. THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. THE MATERIAL CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED SOLELY FOR THE USE OF CREDITORS IN EVALUATING THE PLAN AND VOTING TO ACCEPT OR REJECT THE PLAN AND, ACCORDINGLY, MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN THE DETERMINATION OF HOW TO VOTE ON, OR WHETHER TO OBJECT TO, THE PLAN. THE REORGANIZATION OF THE DEBTOR PURSUANT TO THE PLAN IS SUBJECT TO NUMEROUS CONDITIONS AND VARIABLES, AND THERE CAN BE NO ABSOLUTE ASSURANCE THAT THE PLAN, AS CONTEMPLATED, WILL BE EFFECTUATED.**

**NEITHER THE FILING OF THE PLAN NOR ANY STATEMENT OR PROVISION CONTAINED IN THE PLAN OR IN THE DISCLOSURE STATEMENT, NOR THE TAKING BY ANY PARTY IN INTEREST OF ANY ACTION WITH RESPECT TO THE PLAN, SHALL (I) BE OR BE DEEMED TO BE AN ADMISSION AGAINST INTEREST AND (II) UNTIL THE EFFECTIVE DATE, BE OR BE DEEMED TO BE A WAIVER OF ANY RIGHTS ANY PARTY IN INTEREST MAY HAVE (A) AGAINST ANY OTHER PARTY IN INTEREST OR (B) IN ANY OF THE ASSETS OF ANY OTHER PARTY IN INTEREST, AND, UNTIL THE EFFECTIVE DATE, ALL SUCH RIGHTS ARE SPECIFICALLY RESERVED. IN THE EVENT THAT THE PLAN IS NOT CONFIRMED OR FAILS TO BECOME EFFECTIVE, NEITHER THE PLAN NOR THE DISCLOSURE STATEMENT, NOR ANY STATEMENT CONTAINED IN THE PLAN OR IN THE DISCLOSURE STATEMENT, MAY BE USED OR RELIED ON IN ANY MANNER IN ANY SUIT, ACTION, PROCEEDING OR CONTROVERSY,**

**WITHIN OR WITHOUT THE DEBTOR'S CHAPTER 11 CASE, INVOLVING THE DEBTOR, EXCEPT WITH RESPECT TO CONFIRMATION OF THE PLAN.**

**THE DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PROPOSED PLAN. PLEASE READ THIS DOCUMENT THOROUGHLY AND CAREFULLY. THE PURPOSE OF THE DISCLOSURE STATEMENT IS TO PROVIDE YOU WITH "ADEQUATE INFORMATION" OF A KIND, AND IN SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE DEBTORS' NATURE AND HISTORY AND THE CONDITION OF ITS BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL REASONABLE INVESTOR TYPICAL OF HOLDERS OF CLAIMS OR INTERESTS OF THE RELEVANT CLASS TO MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN.**

**FOR THE CONVENIENCE OF CREDITORS AND INTERESTHOLDERS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ANY SUMMARY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.**

**NO REPRESENTATIONS CONCERNING THE DEBTOR'S FINANCIAL CONDITION OR ANY ASPECT OF THE PLAN ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THE DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN AS CONTAINED IN OR INCLUDED WITH THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION TO ACCEPT OR REJECT THE PLAN.**

**THE FINANCIAL INFORMATION CONTAINED HEREIN, UNLESS OTHERWISE INDICATED, IS UNAUDITED.**

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION ("SEC") NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THIS DISCLOSURE STATEMENT OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH CREDITOR OR INTERESTHOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT AS TO LEGAL, TAX AND OTHER MATTERS CONCERNING HIS OR HER CLAIM.**

**IN ARRIVING AT YOUR DECISION TO ACCEPT OR REJECT THE PLAN, YOU SHOULD NOT RELY ON ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN WHICH ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT, AND**

**ANY SUCH OTHER REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO THE UNITED STATES TRUSTEE FOR APPROPRIATE ACTION AND TO THE DEBTOR'S COUNSEL, WHO SHALL DELIVER THAT INFORMATION TO THE BANKRUPTCY COURT FOR APPROPRIATE ACTION.**

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION.**

**E. Sources of Information**

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtor, its business, assets and management have been prepared from information contained in the Debtor's books and records.

Certain of the materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are digests of other documents. While the Debtor has made every effort to retain the meaning of such other documents or portions that have been summarized, it urges that any reliance on the contents of such other documents should depend on a thorough review of the documents themselves. In the event of a discrepancy between this Disclosure Statement and the actual terms of any document summarized or described herein, the actual terms of the document shall govern and apply.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection herewith shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtor, the value of its property, or the value of any benefit offered to the Holder of a Claim or Equity Interest under the Plan should be relied upon other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement, and any such additional representations or inducements should be immediately reported to counsel for the Debtor.

**ARTICLE II**  
**EXPLANATION OF CHAPTER 11**

**A. Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor-in-possession attempts to reorganize its business and financial affairs for the benefit of the debtor, its creditors, and other interested parties.

The commencement of a chapter 11 case creates an estate comprising all of the debtor's legal and equitable interests in property as of the date the petition is filed. Unless the Bankruptcy Court orders the appointment of a trustee (as in this Chapter 11 Case), Bankruptcy Code sections



1101, 1107 and 1108 provide that a chapter 11 debtor may continue to operate its business and control the assets of its estate as a “debtor-in-possession.”

The filing of a chapter 11 petition also triggers the automatic stay under Bankruptcy Code section 362. The automatic stay essentially halts all attempts to collect pre-petition claims from the debtor or to otherwise interfere with the debtor’s business or its bankruptcy estate.

Formulating a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims of creditors against, and interests of equity security holders in, the debtor. Unless a trustee is appointed, only the debtor may file a plan during the first 120 days of a chapter 11 case. This 120-day period is called the “Exclusive Period.” After the Exclusive Period has expired, a creditor or any other interested party may file a plan, unless the debtor files a plan within the Exclusive Period. In this case, the Debtor’s exclusive periods to file and solicit acceptances for a chapter 11 plan were extended twice and expire on May 26, 2016, and July 25, 2016, respectively.

## **B. Chapter 11 Plan**

After a plan has been filed, the holders of claims against, or equity interests in, a debtor are permitted to vote to accept or reject the plan. Chapter 11 does not require that each holder of a claim against, or equity interest in, a debtor vote in favor of a plan in order for the plan to be confirmed. At a minimum, however, a plan must be accepted by a majority in number and two-thirds in dollar amount of those claims actually voting from at least one class of claims impaired under the plan. The Bankruptcy Code also defines acceptance of a plan by a class of equity interests as acceptance by holders of two-thirds of the number of shares actually voted.

Classes of claims or equity interests that are not “impaired” under a chapter 11 plan are conclusively presumed to have accepted the plan, and therefore are not entitled to vote. A class is “impaired” if the plan modifies the legal, equitable, or contractual rights attaching to the claims or equity interests of that class. Modification for purposes of impairment does not include curing defaults and reinstating maturity or payment in full in cash. Conversely, classes of claims or equity interests that receive or retain no property under a chapter 11 plan are conclusively presumed to have rejected the plan, and therefore are not entitled to vote.

Even if all classes of claims and equity interests accept a chapter 11 plan, the Bankruptcy Court may nonetheless deny confirmation. Bankruptcy Code section 1129 sets forth the requirements for confirmation and, among other things, requires that a plan be in the “best interests” of impaired and dissenting creditors and interestholders and that the plan be feasible. The “best interests” test generally requires that the value of the consideration to be distributed to impaired and dissenting creditors and interestholders under a plan may not be less than those parties would receive if the debtor were liquidated under a hypothetical liquidation pursuant to chapter 7 of the Bankruptcy Code. A plan must also be determined to be “feasible,” which generally requires a finding that there is a reasonable probability that the debtor will be able to perform the obligations incurred under the plan and that the debtor will be able to continue operations without the need for further financial reorganization or liquidation (unless such liquidation is provided for under the plan).

The Bankruptcy Court may confirm a chapter 11 plan even though fewer than all of the classes of impaired claims and equity interests accept the plan. The Court may do so under the “cramdown” provisions of Bankruptcy Code section 1129(b). In order for a plan to be confirmed under the cramdown provisions, despite the rejection of a class of impaired claims or interests, the proponent of the plan must show, among other things, that the plan does not discriminate unfairly and that it is fair and equitable with respect to each impaired class of claims or equity interests that has not accepted the plan.

The Bankruptcy Court must further find that the economic terms of the particular plan meet the specific requirements of Bankruptcy Code section 1129(b) with respect to the subject objecting class. If the proponent of the plan proposes to seek confirmation of the plan under the provisions of Bankruptcy Code section 1129(b), the proponent must also meet all applicable requirements of Bankruptcy Code section 1129(a) (except section 1129(a)(8)). Those requirements include the requirements that (i) the plan comply with applicable Bankruptcy Code provisions and other applicable law, (ii) that the plan be proposed in good faith, and (iii) that at least one impaired class of creditors or interestholders has voted to accept the plan.

### **ARTICLE III**

#### **VOTING PROCEDURES AND CONFIRMATION REQUIREMENTS**

A Ballot for voting to accept or reject the Plan is enclosed with this Disclosure Statement, and has been mailed to Creditors and Interestholders (or their authorized representative) entitled to vote. After carefully reviewing the Disclosure Statement, including all exhibits, each Creditor and Interestholder (or its authorized representative) entitled to vote should indicate its vote on the enclosed Ballot.

By a separate scheduling order, the Bankruptcy Court will set a deadline for eligible parties in interest to file Ballots with the Clerk of the Bankruptcy Court for the acceptance or rejection of the Plan. Instructions for filling out and submitting your ballot will be contained on the Ballot. Please review and follow those instructions carefully.

All Creditors (or their authorized representatives) entitled to vote must:

- carefully review the Ballot and corresponding instructions,
- execute the Ballot, and
- return it to the address indicated on the ballot by the Voting Deadline for the Ballot to be considered

**THE BANKRUPTCY COURT WILL SET THE VOTING DEADLINE BY SEPARATE ORDER. ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BALLOT BY SENDING A WRITTEN REQUEST TO THE DEBTOR’S COUNSEL AT THE ADDRESS LISTED ON THE BALLOT.**



### **A. Creditors and Interestholders Entitled to Vote**

Unless otherwise specified, any Holder whose Claim or Equity Interest is Impaired under the Plan is entitled to vote if either (i) the Debtor has scheduled the Claim or Interest in its Schedules and such Claim or Interest is not scheduled as disputed, contingent, or unliquidated; or (ii) the Holder has filed a proof of claim or interest on or before the General Claims Bar Date or such other applicable Bar Date. **Returning the ballot does not constitute filing a proof of claim or equity interest.**

Any Holder of a Claim or Interest to which an Objection has been filed (and such Objection is still pending on the Voting Deadline) is not entitled to vote, unless the Bankruptcy Court, upon motion filed by such party whose Claim or Interest is subject to an Objection, temporarily allows the Claim or Interest in a specific amount for the purpose of voting to accept or reject the Plan. Such motion must be heard and determined by the Bankruptcy Court at or before the Confirmation Hearing. A vote may be disregarded if the Bankruptcy Court determines that the Holder's acceptance or rejection was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code.

Under Bankruptcy Code section 1126(f), a class that is not impaired under a chapter 11 plan, and each Holder of a Claim or Equity Interest in such class, are conclusively presumed to have accepted the chapter 11 plan. Under Bankruptcy Code section 1126(g), a class is deemed not to have accepted a chapter 11 plan if the Holders of Claims or Equity Interests in such class do not receive or retain any property under the chapter 11 plan on account of such Claims or Equity Interests. Holders of Claims or Equity Interests that are unimpaired under the Plan, or that are not entitled to receive or retain any property under the Plan, are not entitled to vote to accept or reject the Plan.

### **B. Bar Date for Filing Proofs of Claim**

The deadline for non-governmental creditors to file proofs of pre-petition claims in the Debtor's Chapter 11 Case was January 7, 2016, and such deadline for governmental creditors was February 29, 2016.

### **C. Definition of Impairment**

Under Bankruptcy Code section 1124, a class of Claims or Equity Interests is impaired under a plan of reorganization unless, with respect to each Claim or Equity Interest of such class, the Plan:

- (1) leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or equity interest; or
- (2) notwithstanding any contractual provision or applicable law that entitles the holder of a claim or equity interest to receive accelerated payment of such claim or equity interest after the occurrence of a default:

- (a) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in Bankruptcy Code section 365(b)(2);
- (b) reinstates the maturity of such claim or equity interest as it existed before the default;
- (c) compensates the holder of such claim or equity interest for damages incurred as a result of reasonable reliance on such contractual provision or applicable law; and
- (d) if such claim or such interest arises from any failure to perform a non-monetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
- (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

**D. Classes Entitled to Vote on the Plan**

Claims in the following Classes are impaired under the Plan. Therefore, holders of those Claims are eligible, subject to the voting limitations described below, to vote to accept or reject the Plan.

- 1. Class 2: Administrative Convenience Claims**
- 2. Class 3: General Unsecured Claims**

The Bankruptcy Code entitles only holders of impaired claims or equity interests who receive some distribution under a proposed plan to vote to accept or reject the plan. Holders of claims or equity interests that are unimpaired under a proposed plan are conclusively presumed to have accepted the plan and are not entitled to vote on it. The Holders of Priority Non-Tax Claims in Class 1, the SMM Post-Petition Loan Claim in Class 4 and the Equity Interests in Class 5 are not Impaired under the Plan. Thus, pursuant to section 1126(f) of the Bankruptcy Code, the claimants in Classes 1, 4 and 5 are deemed to have accepted the Plan and are not entitled to vote on the Plan.

The holders of Claims in Class 2 (Administrative Convenience Claims) and Class 3 (General Unsecured Claims) are Impaired and are entitled to receive or retain property under the plan and thus may vote to either accept or reject the Plan. The Debtor has enclosed Ballots with this Disclosure Statement to solicit the votes of all Claimants in Classes 2 and 3.

**E. Vote Required for Class Acceptance**

The Bankruptcy Code defines acceptance of a plan by a class of creditors or interestholders as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the Claims or Equity Interests of that class that actually cast ballots for

acceptance or rejection of the Plan; that is, acceptance takes place only if creditors holding Claims constituting at least two-thirds in dollar amount of the total amount of Claims or Equity Interests and more than one-half in number of the creditors or interestholders actually voting cast their ballots in favor of acceptance.

**F. Confirmation of Plan**

**Solicitation of Acceptances.** The Debtor is soliciting your vote in favor of the Plan.

**NO REPRESENTATIONS OR ASSURANCES, IF ANY, CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED BY THE DEBTOR, OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON TO SECURE YOUR VOTE, OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT, SHOULD NOT BE RELIED ON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO THE DEBTOR'S COUNSEL FOR APPROPRIATE ACTION.**

**THIS IS A SOLICITATION SOLELY BY THE DEBTOR, AND IS NOT A SOLICITATION BY ANY SHAREHOLDER, ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL FOR THE DEBTOR. THE REPRESENTATIONS, IF ANY, MADE IN THIS DISCLOSURE STATEMENT ARE THOSE OF THE DEBTOR AND NOT OF SUCH SHAREHOLDERS, ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS, EXCEPT AS MAY BE OTHERWISE SPECIFICALLY AND EXPRESSLY INDICATED.**

Under the Bankruptcy Code, a vote for acceptance or rejection of a plan generally may not be solicited unless the claimant has received a copy of a disclosure statement approved by the Bankruptcy Court prior to, or concurrently with, such solicitation. This Disclosure Statement has not yet been approved by the Court.

**G. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of Bankruptcy Code section 1129 have been satisfied, in which event the Bankruptcy Court shall enter an order confirming the Plan. For the Plan to be confirmed, Bankruptcy Code section 1129 requires that:

- (a) The Plan complies with the applicable provisions of the Bankruptcy Code;
- (b) The Debtor has complied with the applicable provisions of the Bankruptcy Code;
- (c) The Plan has been proposed in good faith and not by any means forbidden by law;
- (d) Any payment or distribution made or promised by the Debtor or by a Person issuing securities or acquiring property under the Plan for services or for costs and expenses in connection with the Plan has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or

if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

- (e) The Debtor has disclosed the identity and affiliation of any individual proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint plan with the Debtor, or a successor to the Debtor under the Plan; the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and interest holders and with public policy; and the Debtor has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor and the nature of any compensation for such insider;
- (f) Any government regulatory commission with jurisdiction (after confirmation of the Plan) over the rates of the Debtor has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval;
- (g) With respect to each impaired Class of Claims or Equity Interests, either each holder of a Claim or Equity Interest of the Class has accepted the Plan, or will receive or retain under the Plan on account of that Claim or Equity Interest, property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under chapter 7 of the Bankruptcy Code. If Bankruptcy Code section 1111(b)(2) applies to the Claims of a Class, each holder of a Claim of that Class will receive or retain under the Plan on account of that Claim property of a value, as of the Effective Date, that is not less than the value of that holder's interest in the Debtor's interest in the property that secures that claim;
- (h) Each Class of Claims or Equity Interests has either accepted the Plan or is not impaired under the Plan;
- (i) Except to the extent that the Holder of a particular Allowed Administrative Claim, Allowed Priority Tax Claim, or Allowed Priority Non-Tax Claim has agreed to a different treatment of its Claim, the Plan provides that such Claims shall be paid in full on the later of the Effective Date or ten (10) days after the Allowance Date;
- (j) If a Class of Claims or Equity Interests is impaired under the Plan, at least one such Class of Claims or Equity Interests has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim or Equity Interest of that Class; and
- (k) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Debtor believes that the Plan satisfies all of the statutory requirements of the Bankruptcy Code for confirmation and that the Plan was proposed in good faith. The Debtor believes that it has complied, or will have complied, with all the requirements of the Bankruptcy Code governing confirmation of the Plan.

## **H. Acceptances Necessary to Confirm the Plan**

Voting on the Plan by each eligible Creditor and Interestholder (or its authorized representative) is important. Chapter 11 of the Bankruptcy Code does not require that each Creditor and Interestholder vote in favor of the Plan in order for the Court to confirm the Plan. Generally, to be confirmed under the acceptance provisions of Bankruptcy Code section 1126(a), the Plan must be accepted by each Class of Claims and Equity Interests that is impaired under the Plan by parties holding at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims or Equity Interests of such Class actually voting in connection with the Plan. Even if all Classes of Claims or Equity Interests accept the Plan, the Bankruptcy Court may refuse to confirm the Plan.

## **I. Cramdown**

In the event that any impaired Class of Claims or Equity Interests does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtor if, as to each impaired Class that has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.” A chapter 11 plan does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity interests. “Fair and equitable” has different meanings for holders of secured and unsecured claims and equity interests.

With respect to a secured claim, “fair and equitable” means either (i) the impaired secured creditor retains its liens to the extent of its allowed claim and receives deferred cash payments at least equal to the allowed amount of its claims with a present value as of the effective date of the plan at least equal to the value of such creditor’s interest in the property securing its liens; (ii) property subject to the lien of the impaired secured creditor is sold free and clear of that lien, with that lien attaching to the proceeds of sale, and such lien proceeds must be treated in accordance with clauses (i) and (iii) hereof; or (iii) the impaired secured creditor realizes the “indubitable equivalent” of its claim under the plan.

With respect to an unsecured claim, “fair and equitable” means either (i) each impaired creditor receives or retains property of a value equal to the amount of its allowed claim, or (ii) the holders of claims and equity interests that are junior to the claims of the dissenting class will not receive any property under the plan.

With respect to equity interests, “fair and equitable” means either (i) each impaired equity interest receives or retains, on account of that equity interest, property of a value equal to the greater of the allowed amount of any fixed liquidation preference to which the holder is entitled, any fixed redemption price to which the holder is entitled, or the value of the equity interest, or (ii) the holder of any equity interest that is junior to the equity interest of that class will not receive or retain under the plan, on account of that junior equity interest, any property.

The Debtor believes that the Plan does not discriminate unfairly and is fair and equitable with respect to each impaired Class of Claims and Equity Interests. In the event at least one Class of impaired Claims or Equity Interests rejects or is deemed to have rejected the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and

equitable and does not discriminate unfairly against any rejecting impaired Class of Claims or Equity Interests.

In the event that any creditor or interested party objects to the Plan on the basis of the “absolute priority rule” – *i.e.*, that the Debtor’s two members are retaining their equity interests in the Reorganized Debtor though senior classes of General Unsecured Claims are not being paid in full, the Debtor reserves the right to either waive its right to chapter 11 plan exclusivity or propose other consideration to qualify as “new value” in a form and amount sufficient to satisfy the “new value exception” or “new value corollary” to the absolute priority rule.

## **ARTICLE IV**

### **BACKGROUND OF THE DEBTOR**

#### **A. Description of Debtor’s Business**

##### **1. Background**

The Debtor is a Miami-based family-owned company formed in 2003 that acts as an importer and wholesale distributor of high-end furniture, under the well-known and established “Deltropico Designs” brand, that it sells to commercial customers including Marriott and Wyndham hotels, upscale restaurants and other similar-type customers in the hospitality industry.

More detailed information regarding the Debtor’s business, brand, furniture lines and catalog is available on its website [www.deltropicodesigns.com](http://www.deltropicodesigns.com).

##### **2. Events Leading to Bankruptcy**

The Debtor’s chapter 11 filing was precipitated by the shutdown of its Honduras manufacturing plant (owned by a Honduran company, Manufacturas Del Tropico), temporarily rendering the Debtor unable to process and fill customer orders. As a result, the Debtor was forced to seek chapter 11 bankruptcy protection to enable the transition of its manufacturing operations from Honduras to Nicaragua while offering its pre-petition customers with pending orders the option of canceling their orders, with their deposit claims to be treated and paid under a chapter 11 plan, or keeping their orders to be filled after the Debtor’s transition to the Nicaraguan factory.

In total, approximately 53 pre-petition customers canceled their orders due to the delay caused by the Honduran factory shutdown while 11 pre-petition customers kept their orders in place; of this latter group, approximately 16 pre-petition customer orders have been or will be filled post-petition, as a result of the Debtor’s transition to the Nicaraguan factory and the SMM post-petition loan, satisfying approximately \$183,000.00 in pre-petition Customer Deposit Claims that existed as of the Petition Date. *See* D.E. 53, 90.



**B. Corporate Information****1. The Debtor**

- Deltropico Designs, LLC, a Florida limited liability company established in 2003.

**2. Existing Equity Structure**

- Luis R. Fernandez: 60% member and co-manager.
- Luis R. Fernandez, Jr.: 40% member and co-manager.

**3. Current Management of Debtor-in-Possession and Post-Petition Operations**

Deltropico Designs, LLC (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on August 31, 2015 (the “Petition Date”), in the United States Bankruptcy Court for Southern District of Florida. The Debtor remains in possession and control of its assets and business affairs pursuant to 11 U.S.C. §§ 1107 and 1108, as no chapter 11 trustee has been appointed in this case.

In or around October-November, 2015, the Debtor transitioned its manufacturing operation to a factory in Managua, Nicaragua owned and controlled by Mr. Arnold Ponçon, a French citizen who the Debtor’s members met with pre-petition to explore a strategic partnership or joint venture to enable the Debtor’s manufacturing operation to continue in Nicaragua through a factory owned by Mr. Ponçon and his family. To facilitate and fund this transition to Nicaragua, the Debtor obtained an unsecured post-petition loan from SMM, a Nicaraguan affiliate of the Managua factory also owned and controlled by Mr. Ponçon, to fund necessary working capital and operating expenses including the processing of pre-petition customer orders by the factory through payment of customer deposits. This post-petition working capital loan was approved by the Court in the total amount of \$388,706.00. These loaned funds have resulted in, or will result in prior to plan confirmation, the satisfaction of approximately \$183,000.00 in pre-petition Customer Deposit Claims and payment of \$78,585.46 in pre-petition employee wages and sales representatives’ commissions, approved by Court orders [*see* D.E. 53, 54, 90].

The Debtor filed objections to the pre-petition claims that were satisfied post-petition, as described above, which objections were sustained in full by the Court. *See* D.E. 104, 105.

**C. Financial Information**

For a complete report and information on the Debtor’s post-petition performance and operations, parties are directed to the monthly operating reports filed in the Chapter 11 Case. As of April 30, 2016, the amount of the Debtor’s cash held in its debtor-in-possession operating accounts totaled \$30,568.14. The Debtor is also operating at a net profit on a monthly basis [*see*

D.E. 88, 89]. The full amount of the Debtor's Cash on-hand on the Effective Date will vest in the Reorganized Debtor and be available to fund payment of Allowed Claims under the Plan.

To the extent of any Cash shortfall in the amount necessary to make Effective Date payments under the Plan (estimated to total approximately \$100,000.00), SMM has committed to loan funds sufficient to cover this shortfall prior to Confirmation. Prior to the Confirmation Hearing, and as a condition to Confirmation, the Debtor or its counsel will file a declaration with the Court evidencing sufficient Cash on hand to fund all Effective Date payments under the Plan.

## **D. Claims Against the Estate**

### **1. General Unsecured Claims (Customer Deposit and Other Claims)**

The total amount of General Unsecured Claims filed against or scheduled by the Debtor as undisputed, non-contingent and liquidated (not including duplicate creditors, claims subject to pending objections and claims disallowed or withdrawn) is approximately \$755,000.00, consisting of approximately \$482,000.00 in Customer Deposit Claims (net of those amounts paid or satisfied post-petition by way of furniture orders shipped post-petition)<sup>4</sup> and \$272,000.00 in Other General Unsecured Claims (trade/loan claims other than Customer Deposit Claims).

The Debtor's former Honduran manufacturer, Manufacturas Del Tropico, holds a General Unsecured Claim in the amount of \$619,200.00, as identified on amended Schedule F [D.E. 44]. Claimant has agreed to waive its right to a Distribution under the Plan on account of such claim.

Approximately \$20,000.00 of General Unsecured Claims have been disallowed by Court orders upon the Debtor's claims objections filed in the Chapter 11 Case, while another approximate \$183,000.00 of Customer Deposit Claims have been or will have been paid by July 31, 2016, satisfied by orders filled and shipped post-petition, and are subject to pending objections on that basis.

By Court order entered November 17, 2015 [D.E. 53], the Court approved a post-petition loan from SMM to the Debtor in the total amount of \$388,706.00 on an unsecured, non-priority basis to fund necessary working capital and operating expenses in the Chapter 11 Case. An additional amount of \$123,244.00 will be loaned and deposited by SMM with the Debtor prior to the Confirmation Hearing to augment the Debtor's Available Cash to fund Effective Date payments under the Plan and the initial quarterly payment to Class 3, and additional necessary operating expenses to the extent available. The SMM loan will be repaid under the Plan (Class 4) over 6 years commencing June 1, 2017, at 5.0% annual interest.

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<sup>4</sup> The Debtor does not believe that the customer deposit claims qualify for priority treatment under 11 U.S.C. § 507(a)(7) since the deposits are for commercial purposes and not "the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use...." 11 U.S.C. § 507(a)(7).

## **2. Secured Claims**

The only secured claim scheduled by the Debtor is the Chapter 11 Case was held by Crestmark Bank, in the amount of \$6,766.56 as of the Petition Date, and arose from a pre-petition factoring agreement between the Debtor and Crestmark Bank under which Crestmark Bank served as the Debtor's account receivables factor. This claim was satisfied post-petition directly by payment from a pre-petition customer of the Debtor whose receivable had been factored by Crestmark Bank pre-petition, so no remaining amount is owed to Crestmark Bank. Accordingly, Crestmark Bank's secured claim was disallowed by an agreed order entered by the Court in the Chapter 11 Case [D.E. 69].

## **3. Administrative Claims**

### **a. Administrative Trade Claims**

The Debtor has incurred post-petition trade liabilities in the operation of the its business which it has paid in the ordinary course under the terms of the particular agreements giving rise to such trade claims. The Debtor believes there will be no other Administrative Claims (not including Professional Claims and the Debtors' ordinary course operating expenses) payable under the Plan.

### **b. Professional Claims**

Subject to the final hearings on fee applications filed by Professionals, the Debtor estimates that the allowed amount of Professional Claims in the Chapter 11 Case will total approximately \$50,000.00, though the allowed amount *actually payable* by the Debtor on the Effective Date will be reduced by the pre-petition retainer held in trust by the Debtor's counsel in the amount of \$23,200.00. All Allowed Professional Claims will be paid in full on the Effective Date of the Plan or such later date that any particular Professional Claim becomes Allowed or as agreed to by the Debtor or Reorganized Debtor and any particular Professional.

## **4. Priority Claims**

### **a. Priority Tax Claims**

The only Priority Tax Claims in the Chapter 11 Case were filed by the IRS (claim no. 3) in the total priority amount of \$10,710.54 and State of Florida - Department of Revenue (claim no. 7) in the total priority amount of \$105.35.

### **b. Priority Non-Tax Claims**

The Priority Non-Tax Claims, consisting of pre-petition unpaid employee wages and sales representatives' commissions, entitled to priority under section 507(a)(4) of the Bankruptcy Code, total \$64,739.57 (net of the \$78,585.46 amount paid post-petition as authorized by the Bankruptcy Court [D.E. 54]).

### E. Debtor's Assets

For a complete description of the Debtor's assets and liabilities as of the Petition Date, interested parties are directed to the Debtor's Schedules filed October 2, 2015 [D.E. 27, as amended by D.E. 44 filed November 4, 2015], which may be obtained from the Court's electronic docket in the Chapter 11 Case. The Schedules were prepared by the Debtor and its counsel.

## ARTICLE V CAUSES OF ACTION

The Debtor's Schedules identify creditors whose Claims are disputed, and the Debtor's Statement of Financial Affairs may identify the parties who received payments and transfers from the Debtor, which payments and transfers may be avoidable under the Bankruptcy Code. Moreover, the Debtor continues to investigate Avoidance Actions and Causes of Action that the Estate may have against third parties. The Debtor has not completed this investigation of potential objections to Claims, Avoidance Actions and Causes of Action; therefore, the Debtor is unable to provide any meaningful estimate of amounts that could be recovered for the benefit of the Reorganized Debtor under the Plan. **THE PLAN DOES NOT, AND IS NOT INTENDED TO, RELEASE ANY SUCH CAUSES OF ACTION, AVOIDANCE ACTIONS, OR OBJECTIONS TO CLAIMS. ALL SUCH RIGHTS ARE SPECIFICALLY PRESERVED IN FAVOR OF THE REORGANIZED DEBTOR. PROCEEDS OF CAUSES OF ACTION WILL VEST IN THE REORGANIZED DEBTOR AND NOT BE DISTRIBUTED TO CREDITORS.**

Creditors and interested parties should understand that legal rights, Claims and Causes of Action that the Debtor may have against them, if any exist, are retained under the Plan and will vest in the Reorganized Debtor unless a specific order of the Court authorizes the Debtor to release such Claims. As such, Creditors and interested parties are cautioned not to rely on (i) the absence of the listing of any legal right, Claim or Cause of Action against a particular creditor in the Disclosure Statement, Plan, Schedules or Statement of Financial Affairs or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Reorganized Debtor does not possess or does not intend to prosecute a particular right, claim or cause of action if a particular Creditor or Interestholder votes to accept the Plan. It is the expressed intention of the Plan to preserve the Debtor's rights, Claims, and Causes of Action, whether now known or unknown, for the benefit of the Debtor's Estate. Notwithstanding the foregoing, however, the Debtor has not identified and does not expect to preserve for the benefit of the Reorganized Debtor, any Claims or Causes of Action against any particular Creditor.

**ARTICLE VI**  
**POST-PETITION OPERATIONS AND**  
**SIGNIFICANT EVENTS DURING CHAPTER 11 CASE**

**A. Post-Petition Operations**

For detailed financial information regarding the Debtor's post-petition operations, creditors and parties in interest are directed to the monthly operating reports filed with the Bankruptcy Court, which may be obtained from the Court's electronic docket.

**B. Employment of Professionals**

Pursuant to orders entered by the Bankruptcy Court, the following professionals have been retained in the Chapter 11 Case pursuant to sections 327, 328 and/or 1103 of the Bankruptcy Code, compensable by the Estate pursuant to section 330 of the Bankruptcy Code:

Professional	Role
Mancuso Law, P.A.	Debtor's General Bankruptcy Counsel
Goldstein Schechter Koch	Debtor's Accountant

To the extent allowed, the Professional Claims of these retained Professionals will be paid on or about the Effective Date or Allowance Date (or such other date as may be agreed to) pursuant to separate Order of the Bankruptcy Court. Subject to the filing of final fee applications by these Professionals, the Debtor estimates that the amount of Allowed Professional Claims payable on the Effective Date will total approximately \$50,000.00 less the \$23,200.00 pre-petition retainer held by the Debtor's counsel to be applied to any allowed amount of its compensation awarded in the Chapter 11 Case.

**C. Schedules and Statement of Financial Affairs**

The Debtor's Schedules and Statements of Financial Affairs were filed in the Court on October 2, 2015 [D.E. 27, as amended by D.E. 44 on November 4, 2015], describing the nature and extent of its assets and liabilities as of the Petition Date, and its pre-petition financial affairs.

**D. SMM DIP Loan**

By Court order entered November 17, 2015 [D.E. 53], the Court approved a post-petition loan from SMM to the Debtor in the total amount of \$388,706.00 on an unsecured, non-priority basis to fund necessary working capital and operating expenses in the Chapter 11 Case. An additional amount of \$123,244.00 will be loaned and deposited by SMM with the Debtor prior to the Confirmation Hearing to augment the Debtor's Available Cash to fund Effective Date payments and the initial quarterly payment to Class 3 under the Plan, and to fund necessary operating expenses to the extent available. The SMM loan will be repaid under the Plan (Class 4) over 6 years commencing June 1, 2017, at 5.0% annual interest.

**E. Transition of Debtor's Manufacturing Operation from Honduras to Nicaragua During Chapter 11 Bankruptcy**

In or around October-November, 2015, the Debtor transitioned its manufacturing operation to a factory in Managua, Nicaragua owned and controlled by Mr. Arnold Ponçon, a French citizen who the Debtor's members met with pre-petition to explore a strategic partnership or joint venture to enable Debtor's manufacturing operation to continue in Nicaragua through a factory owned by Mr. Ponçon and his family. This transition to Nicaragua was facilitated and funded in part by SMM, a Nicaraguan affiliate of the Managua factory also owned and controlled by Mr. Ponçon and his family, through an unsecured loan (described above) to fund necessary working capital and operating expenses including the completion of pre-petition customer orders by the factory through payment of customer deposits. These loaned funds and resulting completion and shipment of pre-petition customer orders have resulted in, or will result in prior to Plan confirmation, the satisfaction of approximately \$183,000.00 in pre-petition Customer Deposit Claims and payment of \$78,585.46 in pre-petition employee wages and sales representatives' commissions, approved by Court orders [*see* D.E. 53, 54, 90].

**ARTICLE VII**  
**SUMMARY DESCRIPTION OF THE PLAN**

**A. Introduction**

A summary of the principal provisions of the Plan and the treatment of Classes of Allowed Claims and Equity Interests is outlined below. This Disclosure Statement is only a summary of the terms of the Plan; the Plan (and not the Disclosure Statement) governs the rights and obligations of the parties.

**B. Designation of Claims and Equity Interests/ Impairment**

The following is a designation of the Classes of Claims and Equity Interests under the Plan. In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following Classes. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and is classified in another Class(es) to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Class(es). A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released or otherwise satisfied before the Effective Date; a Claim or Equity Interest that is not an Allowed Claim or Equity Interest is not in any Class. Notwithstanding anything to the contrary in the Plan, no Distribution shall be made on account of any Claim that is not an Allowed Claim.

Classes of Claims against and Equity Interests in the Debtors are designated as follows:

- |          |                                   |
|----------|-----------------------------------|
| Class 1: | Priority Non-Tax Claims           |
| Class 2: | Administrative Convenience Claims |
| Class 3: | General Unsecured Claims          |



Class 4: SMM Post-Petition Loan Claim  
 Class 5: Equity Interests

Allowed Priority Non-Tax Claims in Class 1, the SMM Post-Petition Loan Claim in Class 4 and Equity Interests in Class 5 are not Impaired under the Plan. Pursuant to Bankruptcy Code section 1126(f), Holders of Claims and Interests within these Classes are conclusively presumed to have accepted the Plan and therefore are not entitled to vote to accept or reject the Plan. All other Classes of Claims (Classes 2 and 3) are Impaired and thus may vote to either accept or reject the Plan.

### **C. Treatment of Unclassified Claims**

**1. Allowed Administrative Claims.** Subject to the allowance procedures and deadlines provided in this Plan and except as otherwise provided in this Plan or Order of the Bankruptcy Court, each Holder of an Allowed Administrative Claim shall receive on account of such Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Claim (a) Cash in an amount equal to the full amount of the Allowed Administrative Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the Allowance Date, and (iii) another date agreed to by the Debtor or Reorganized Debtor and the Holder of such Administrative Claim; or (b) such other treatment on such other terms and conditions as may be agreed to in writing by the Debtor or Reorganized Debtor and the Holder of such Claim, as the case may be, or as the Bankruptcy Court may order. However, Allowed Professional Claims shall be paid in accordance with Section 2.2 of the Plan, and U.S. Trustee Fees shall be paid in accordance with Section 2.3 of the Plan.

**The Debtor estimates that the amount of Allowed Administrative Claims payable on the Effective Date (net of the pre-petition retainer held by the Debtor's counsel) will total approximately \$25,000.00.**

**2. Professional Claims.** Each Professional in the Chapter 11 Case must have filed with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Confirmation Date by the deadline set by separate Order of the Bankruptcy Court. Any Professional Claim for which an application or other request for payment was not filed by such deadline shall be discharged and forever barred.

**3. U.S. Trustee Fees.** The Reorganized Debtor will pay the U.S. Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) within ten (10) days from the entry of an order confirming the Plan for pre-Confirmation periods and simultaneously provide to the U.S. Trustee an appropriate affidavit indicating the cash disbursements for the relevant period. In addition, the Reorganized Debtor will pay the U.S. Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Reorganized Debtor in connection with all payments made pursuant to the Plan, until the earlier of the closing of this case by the issuance of a final decree by the Bankruptcy Court, or upon the entry of an order by the Bankruptcy Court dismissing the Chapter 11 Case or converting the case to another chapter under the Bankruptcy Code, and the Reorganized Debtor will provide to the

U.S. Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all cash disbursements for the relevant period.

**4. Priority Tax Claims.** Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, each Holder of an Allowed Priority Tax Claim shall receive on account of such Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Claim (a) Cash in an amount equal to the full amount of the Allowed Priority Tax Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the Allowance Date, (iii) the date that any such Allowed Claim becomes due and payable under applicable non-bankruptcy law, and (iv) another date agreed to by the Reorganized Debtor and the Holder of such Priority Tax Claim; or (b) such other treatment on such other terms and conditions as may be agreed to in writing by the Reorganized Debtor and the Holder of such Claim, as the case may be, or as the Bankruptcy Court may order.

**The Debtor estimates that the amount of Allowed Priority Tax Claims payable on the Effective Date will total approximately \$10,815.89.**

#### **D. Treatment of Classified Claims and Interests**

Pursuant to section 1122 of the Bankruptcy Code, a designation of the Classes of Claims and Interests regarding the Debtor are listed below. A Claim or Equity Interest is designated in a particular Class only to the extent that such Claim or Equity Interest is an Allowed Claim or Equity Interest and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date. The treatment of and consideration to be received by Holders of Allowed Claims and the treatment of Interests pursuant to the Plan will be in full satisfaction, settlement, release and extinguishment of their respective Allowed Claims against, or Equity Interests in the Debtor and the Debtor's Estate, except as otherwise expressly provided in the Plan or the Confirmation Order.

**1. Class 1: Priority Non-Tax Claims (Unimpaired).** Class 1 consists of all Allowed Claims given priority in payment pursuant to section 507 of the Bankruptcy Code, but not including Priority Tax Claims. In accordance with section 1129(a)(9)(B) of the Bankruptcy Code, each Holder of an Allowed Priority Non-Tax Claim shall receive either (a) Cash in an amount equal to the Allowed amount of its Claim on, or as soon as reasonably practicable after, the later of (i) the Effective Date, (ii) the Allowance Date, and (iii) another date agreed to by the Reorganized Debtor and such Holder; or (b) such other treatment on such other terms and conditions as may be agreed to in writing by the Reorganized Debtor and such Holder, as the case may be, or as the Bankruptcy Court may order. Class 1 is Unimpaired and not entitled to vote on the Plan.

**The Debtor estimates that the amount of Allowed Priority Non-Tax Claims payable on the Effective Date will total \$64,739.57.**

**2. Class 2: Administrative Convenience Claims (Impaired).** Class 2 consists of General Unsecured Claims in Allowed amounts not greater than \$1,000.00. Each Holder of an Allowed Administrative Convenience Claim shall receive either (a) Cash in an amount equal to the Allowed amount of its Claim on, or as soon as reasonably practicable after,

the later of (i) the Effective Date, (ii) the Allowance Date, and (iii) another date agreed to by the Reorganized Debtor and such Holder; or (b) such other treatment on such other terms and conditions as may be agreed to in writing by the Reorganized Debtor and such Holder, as the case may be, or as the Bankruptcy Court may order. Class 2 is Impaired and entitled to vote on the Plan.

**The Debtor estimates that the amount of Allowed Administrative Convenience Claims payable on the Effective Date will total \$6,123.83.**

**3. Class 3: General Unsecured Claims (Impaired).** Class 3 consists of all General Unsecured Claims (including Customer Deposit Claims and Other General Unsecured Claims). Each Holder of an Allowed General Unsecured Claim shall receive a Distribution in a total amount equal to 50% of the principal amount of its Allowed Claim (or some lesser amount agreed to by any particular such Holder and the Debtor or Reorganized Debtor),<sup>5</sup> payable in 12 equal quarterly installments over 3 years commencing October 1, 2016, unless paid off earlier by the Debtor with Court approval. Class 3 is Impaired and entitled to vote on the Plan.

**The Debtor estimates the amount of Allowed General Unsecured Claims will total approximately \$747,000.00, so that the amount payable to Holders of such Claims over the 3-year life of the Plan will total approximately \$373,500.00, or approximately \$10,375.00 per month and \$31,125.00 per quarter.**

**4. Class 4: SMM Post-Petition Loan Claim (Unimpaired).** Class 4 consists of the SMM Post-Petition Loan Claim. SMM (or its assignee) shall be repaid the full principal amount of its Allowed Claim (estimated to be \$511,950.00 as of the anticipated Confirmation Date, including the Cash to be deposited with the Debtor prior to the Confirmation Hearing to fund payments under this Plan) plus 5.0% annual interest accruing from June 1, 2016, in quarterly installments paid over 6 years commencing June 1, 2017, as agreed to by SMM and the Debtor. Class 4 is Unimpaired and not entitled to vote on the Plan.

**5. Class 5: Equity Interests (Unimpaired).** Class 5 consists of all Equity Interests in the Debtor. Holders of Allowed Equity Interests shall retain their Equity Interests in the Reorganized Debtor from and after the Effective Date of the Plan. Class 5 is Unimpaired and not entitled to vote on the Plan.

**It is not possible to predict precisely the total amount of Claims in a particular Class or the Distributions that will ultimately be paid to Holders of Claims in the different Classes because of the variables involved in the calculations (including the results of the claims objection process).**

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<sup>5</sup> One or more Allowed Class 3 Creditors may agree to accept some Distribution of less than 50% to enable the Reorganized Debtor to make the other Class 3 quarterly installment payments required hereunder from its available cash.

**E. Assumption and Rejection of Executory Contracts under the Plan.**

As of the Effective Date, any Executory Contract not specifically rejected by the Debtor by Final Order of the Court, or subject to a motion to reject that remains pending as of the Effective Date, pursuant to section 365(a) of the Bankruptcy Code, shall be deemed assumed as of the Confirmation Date (the “Assumed Contracts”). The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumption of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code. The Debtor believes that no cure amounts need be paid under the Assumed Contracts pursuant to section 365(b) of the Bankruptcy Code since no Pre-Petition Claims reflecting any such amounts were timely filed by the General Claims Bar Date, and that the Debtor has paid all Post-Petition liabilities of the Debtor and the Estate in the ordinary course of the Debtor’s business.

**F. Discharge, Exculpation, Injunction and Automatic Stay**

**1. Distributions in Complete Satisfaction.** The Distributions and rights provided under the Plan shall be in complete satisfaction and release, effective as of the Effective Date, of all Claims against and Interests in the Estate and all liens upon any Property of the Estate; provided, however, that this Plan does not operate or intend to resolve any other claims, Causes of Action, related defenses or other rights that the Estate, Debtor or Reorganized Debtor may have against any other Person, except as expressly provided for hereunder. The Holders of liens satisfied and released under the Plan shall execute and deliver any and all documentation reasonably requested by the Reorganized Debtor evidencing the satisfaction and release of such liens.

**2. Discharge.** Commencing on the Effective Date, except as otherwise expressly provided herein, all Holders of Claims and Interests shall be precluded forever from asserting against the Debtor’s estate, the Debtor or its assets, or the Reorganized Debtor, any other or further liabilities, liens, obligation, claims or equity interest, arising or existing prior to the Effective Date, that were or could have been the subject of any Claim or Interest, whether or not Allowed. As of the Effective Date, the Debtor, Estate and Reorganized Debtor shall be discharged, released from and shall hold the Assets received or retained by and pursuant to the Plan, free and clear of all liabilities, liens, claims and obligations or other claims of any nature against the Debtor or Estate, except those duties and obligations created by the Plan.

**3. Binding Effect.** Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date the provisions of the Plan shall bind any Holder of a Claim against or Interest in the Debtor and such Holder’s respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under this Plan and whether or not such Holder has accepted the Plan.

**4. Stay.** Unless otherwise provided herein, all injunctions or stays provided for in the Chapter 11 Case pursuant to section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the entry of the final decree closing the Chapter 11 Case.

**5. Exculpation.** Except as otherwise specifically provided in the Plan, the Debtor and Reorganized Debtor, their officers, directors, employees, representatives, advisors, professionals, attorneys, financial advisors, or agents, or any of such parties' successors and assigns, shall not have or incur, and shall be released from, any claim, obligation, cause of action or liability to one another or to any Holder of a Claim or an Interest, or any other party in interest, or any of their respective officers, directors, members, employees, representatives, advisors, attorneys, financial advisors, agents, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their willful misconduct, bad faith, breach of fiduciary duty or gross negligence, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**6. Injunction.** Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date all Persons that have held, currently hold, or may hold, a Claim or other debt or liability that is discharged or an Equity Interest or other right of an equity security holder that is canceled or terminated pursuant to the terms of the Plan, and any successors, assigns or representatives of any of the foregoing, are permanently precluded and enjoined from taking any of the following actions on account of any such discharged Claims, debts or liabilities, or terminated or canceled Equity Interests or rights: (a) commencing or continuing in any manner any action or other proceeding against Estate, Debtor, Reorganized Debtor or the property or assets of any of the foregoing; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Estate, Debtor, Reorganized Debtor or the property or assets of any of the foregoing; (c) creating, perfecting, or enforcing any lien or encumbrance against the Estate, Debtor, Reorganized Debtor or the property or assets of any of the foregoing; (d) asserting a right of subordination, setoff, recoupment or counterclaim of any kind against any debt, liability, or obligation due to the Estate, Debtor, Reorganized Debtor or the property or assets of any of the foregoing; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

## **ARTICLE VIII**

### **MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

#### **A. Funding of Payment of Allowed Claims.**

The Debtor's Cash on hand on the Effective Date, augmented to the extent necessary by funds loaned by SMM, will directly fund full payment of Allowed Administrative Claims, Allowed Priority Claims and Allowed Administrative Convenience Claims on the Effective Date pursuant to the terms of the Plan. **The Debtor estimates that the Effective Date payments under the Plan, described above, will total approximately \$100,000.00.**

Payment of Allowed General Unsecured Claims in Class 3 of the Plan will be funded by the Reorganized Debtor's projected cash flow, augmented to the extent necessary by funds loaned by SMM, over the 3-year life of the Plan.

**B. Creation of Reorganized Debtor.**

In accordance with Article V of the Plan, the Debtor's Assets will vest in the Reorganized Debtor as of the Effective Date for the purpose of continuing operation of the Deltropico Business, objecting to and administering Claims, making Distributions to Holders of Allowed Claims and prosecuting any other Causes of Action and/or Avoidance Actions as appropriate.

**C. Vesting of Assets in Reorganized Debtor.**

On the Effective Date, the Debtor's Assets shall vest in the Reorganized Debtor free and clear of all Claims, liens, interests and encumbrances, except as expressly provided in the Plan, and shall be held, maintained and administered solely and exclusively by the Reorganized Debtor. The Debtor and Reorganized Debtor shall be authorized and directed to execute any and all documents necessary to effectuate the vesting of the Assets in the Reorganized Debtor. The Reorganized Debtor shall have sole and exclusive standing and authority to commence, prosecute, settle or otherwise dispose of the Debtor's Causes of Action vested in the Reorganized Debtor under the Plan.

The Assets include, without limitation, the Deltropico Business and related assets, including the Debtor's trademarks and brands as identified in its Bankruptcy Schedules, the Causes of Action and Avoidance Actions, and all of the Debtor's Cash on hand as of the Effective Date.

**D. Ownership and Management of Reorganized Debtor.**

Pursuant to the Plan, the Reorganized Debtor shall be created and become effective as of the Effective Date of the Plan, and continue the Deltropico Business as the same legal entity, Deltropico Designs, LLC. The equity interests in the Reorganized Debtor will vest in the same two members of the Debtor as follows: Luis R. Fernandez (60% membership interest) and Luis R. Fernandez, Jr. (40% membership interest). As of the Effective Date, these two members will serve as co-managers and directors of the Reorganized Debtor. After the Effective Date, the shareholders, officers and/or directors of the Reorganized Debtor may amend the corporate by-laws or corporate structure, enter into any agreements and engage in any other lawful activity to the extent permitted by applicable law.

**E. Purpose of Reorganized Debtor.**

The Reorganized Debtor is established for the purpose of continuing operation of the Deltropico Business, prosecuting Causes of Action and Objections to Claims, as appropriate. From and after the Effective Date, the Reorganized Debtor shall be empowered to operate and manage its business, and to engage in all activities and enter into any and all transactions in connection therewith, to the full extent allowed under applicable law without Court oversight or jurisdiction except as otherwise provided in the Plan.



## **ARTICLE IX** **FEASIBILITY**

Based upon the anticipated amount of Allowed Claims, and subject to certain risk factors discussed in Article X hereof, the Debtor will fully fund and satisfy the “Effective Date” payment obligations under the Plan from its Available Cash, as augmented by funds loaned from SMM prior to the Confirmation Hearing. The Reorganized Debtor will satisfy the 3-year payment obligations to Class 3 under the Plan from its projected net cash flow, also as augmented by funds loaned from SMM to cover any cash deficiency.

Attached hereto as **Exhibit 2** are summaries of the Debtor’s financial statements for the five calendar years (2010-2014) preceding the Petition Date, to enable the Court and Creditors to review and consider the Debtor’s historical financial performance in evaluating the ability of the Reorganized Debtor to perform its financial obligations under the Plan.

Attached hereto as **Exhibit 3** are three-year financial projections for the Reorganized Debtor beginning October 1, 2016, demonstrating sufficient available projected net cash flow to pay the anticipated total amount (approximately \$31,125.00 per quarter/\$10,375.00 per month) to Holders of Allowed Class 3 Claims over the 3-year life of the Plan.

## **ARTICLE X** **RISK FACTORS**

Creditors and Interestholders should carefully consider the following factors, as well as the other information contained in this Disclosure Statement (as well as the documents delivered herewith or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan.

The principal purpose of the Chapter 11 Case is the formulation of the Plan, which reorganizes the Debtor’s business and operations and establishes how Claims against and Equity Interests in the Debtor will be treated.

### **A. Failure to Confirm or Consummate the Plan**

If the Plan is not confirmed and consummated, it is possible that an alternative plan can be negotiated and presented to the Bankruptcy Court for approval, however, there is no assurance that the alternative plan will be confirmed, that the Chapter 11 Case will not be converted to a liquidation, or that any alternative plan could or would be formulated on terms as favorable to the Creditors as the terms of the Plan.

### **B. Allowed Claims Estimates May Be Incorrect**

There can be no assurance that the estimated Allowed Claim amounts set forth herein are correct. The actual Allowed amounts of Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions, and if one or more of such risks or uncertainties materialize, or if underlying assumptions prove incorrect, the actual allowed amounts of Claims may vary from those estimated herein.

**ARTICLE XI**  
**ALTERNATIVES TO PLAN AND BEST INTERESTS OF CREDITORS**

There are three possible consequences if the Plan is rejected or if the Bankruptcy Court refuses to confirm the Plan: (a) the Bankruptcy Court could dismiss the Chapter 11 Case, (b) the Chapter 11 Case could be converted to a liquidation case under chapter 7 of the Bankruptcy Code, or (c) the Bankruptcy Court could consider an alternative chapter 11 plan proposed by another party.

**A. Dismissal**

The most remote possibility is dismissal. If the Chapter 11 Case were to be dismissed, the Debtor would no longer have the protection of the Bankruptcy Court and the applicable provisions of the Bankruptcy Code. Dismissal would force a race among creditors to take over and dispose of the Debtor's available assets. Even the most diligent unsecured creditors would likely fail to realize any significant recovery on their claims.

**B. Chapter 7 Liquidation**

A straight liquidation bankruptcy, or chapter 7 case, requires liquidation of the bankruptcy debtor's assets by an impartial trustee. In a chapter 7 case, the amount that unsecured creditors would receive depends on the net estate available after all assets of the Debtor have been reduced to cash. The cash realized from liquidation of the Debtor's assets would be distributed in accordance with the priority and distribution scheme prescribed in Bankruptcy Code sections 507 and 726.

If the Plan is not confirmed, it is likely that the Chapter 11 Case will be converted to a case under chapter 7 of the Bankruptcy Code, in which case a trustee would be appointed to liquidate the Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Whether a bankruptcy case is a case under chapter 7 or chapter 11, Secured Claims, Administrative Claims and Priority Claims are entitled to be paid in full before unsecured creditors receive any funds.

If the Chapter 11 Case were converted to chapter 7, the present Administrative Claims may have a priority lower than priority claims generated by the chapter 7 case, such as the chapter 7 trustee's fees or the fees of attorneys, accountants and other professionals engaged by the chapter 7 trustee.

If the Chapter 11 Case were converted, the Bankruptcy Court would appoint a trustee to liquidate the Debtor's property and assets and distribute the proceeds to creditors in accordance with the Bankruptcy Code's priority scheme. It is likely that the chapter 7 trustee would have little or no experience or knowledge of the Debtor's businesses or their records or assets. A substantial period of education would be required in order for any chapter 7 trustee to wind the case up effectively.

The chapter 7 trustee would be entitled to receive the compensation allowed under Bankruptcy Code section 326. The trustee's compensation is based on 25% of the first \$5,000 or less; 10% of any amount in excess of \$5,000 but not in excess of \$50,000; 5% of any amount in

excess of \$50,000 but not in excess of \$1 million; and reasonable compensation not to exceed 3% of any amount in excess of \$1 million, on all funds disbursed or turned over in the bankruptcy case by the trustee to parties in interest (excluding the Debtor, but including the holders of Secured Claims). The trustee's compensation would be paid as a cost of administration of the chapter 7 estate, and may have priority over the costs and expenses incurred in the chapter 11 case and any payment to unsecured creditors.

It is also likely that the chapter 7 trustee would retain his own professionals (including attorneys and financial advisors) whose fees would also constitute administrative priority claims in the chapter 7 case, with a priority that may be higher than those claims arising as part of the administration of the chapter 11 case.

Finally, pursuant to section 348 of the Bankruptcy Code, the General Claims Bar Date would be reopened in the converted chapter 7 case, creating the possibility that additional allowable Claims would be filed against the Debtor's Estate and thereby reduce the aggregate Distribution available to Holders of Allowed Claims in the Chapter 11 Case.

The Debtor believes that liquidation under chapter 7 would result in lesser Distributions to Holders of Allowed General Unsecured Claims that provided under the Plan and no value for Interestholders. As previously noted, conversion to chapter 7 would give rise to (a) additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee; (b) full payment of Allowed Secured Claims, Administrative Claims and Priority Claims prior to any payments to Holders of Allowed General Unsecured Claims; and (c) the risk of additional allowable claims due to the reopening of the General Claims Bar Date.

Accordingly, the Debtor believes that the Plan is in the best interests of creditors for purposes of section 1129(a)(7) of the Bankruptcy Code. Attached hereto as **Exhibit 4** is a "liquidation analysis" calculating the estimated distribution to General Unsecured Creditors from a hypothetical orderly chapter 7 bankruptcy liquidation of the Debtor's assets as of the Effective Date of the Plan. As demonstrated by this liquidation analysis, the proposed payout to creditors under the Plan greatly exceeds the anticipated zero distribution to those creditors in a hypothetical chapter 7 liquidation of the Debtor's assets as of the Effective Date.

### **C. Alternative Plan**

If the Debtor is unable to confirm a chapter 11 plan prior to the expiration of its “exclusivity periods” under section 1121(b) and (c) of the Bankruptcy Code, any other creditor or party in interest may file a chapter 11 plan. The Debtor believes, however, that the treatment proposed herein is likely more favorable to any alternatives that could be proposed by way of a “competing plan” or otherwise.

Also, the Debtor reserves its right to waive chapter 11 plan exclusivity to allow another creditor or party in interest to propose and seek confirmation of a competing chapter 11 plan if such waiver is necessary to satisfy the “new value exception” to the absolute priority rule applicable in a “cramdown” confirmation scenario under section 1129(b) of the Bankruptcy Code (discussed in Article III above).

## **ARTICLE XII** **TAX CONSIDERATIONS**

### **A. In General**

A summary description of certain U.S. federal income tax consequences of the Plan is provided below. The description of tax consequences below is for informational purposes only and is subject to significant uncertainties. Only the principal consequences of the Plan for the Debtor and for the holders of Allowed Claims and Equity Interests who are entitled to vote to accept or reject the Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan, and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the IRS or any other taxing authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other authorities.

The following discussion of U.S. federal income tax consequences is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), regulations promulgated and proposed thereunder, and judicial decisions and administrative rulings and pronouncements of the IRS as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to Holders. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

This discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the U.S. federal tax consequences of the Plan to special classes of taxpayers (such as foreign entities, nonresident alien individuals, Pass-through entities such as partnerships and holders through such pass-through entities, S corporations, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, certain securities traders, broker-dealers and tax-exempt organizations). Furthermore, estate and gift tax issues are not addressed herein and tax consequences relating to the alternative minimum tax are generally not discussed herein.

No representations are made regarding the particular tax consequences of the Plan to any Holder of a Claim or Equity Interest. Each Holder of a Claim or Equity Interest is strongly urged to consult its own tax advisor regarding the federal, state, local and foreign tax consequences of the transactions described herein and in the Plan.

## **B. Federal Income Tax Consequences to the Debtor**

Generally, the discharge of a debt obligation by a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) gives rise to cancellation of debt (“COD”) income, which must be included in the debtor’s income. The Debtor should have COD income as a result of the Plan; the Debtor should, however, be able to utilize a special tax provision which excludes from taxable income debts discharged in a chapter 11 case. If debts are discharged in a chapter 11 case, however, certain tax attributes otherwise available must be reduced by the amount of COD income that is excludable from income. Tax attributes subject to reduction generally include net operating losses and net operating loss carryovers (collectively, “NOLs”). Any NOLs would be reduced (assuming the Debtor does not make an election pursuant to section 108(b)(5) of the Internal Revenue Code (title 26 of the United States Code) to first reduce the tax basis of depreciable property) to the extent of the COD income exclusion. The Debtor believes it is likely that the COD income generated by the debt cancellation occurring pursuant to the Plan will offset the available NOLs generated prior to the Effective Date (although such NOLs, which may be subject to usage limitations under section 382 of the Tax Code, would first be permitted to offset any taxable income generated in the tax year that includes the Effective Date).

Federal income taxes generally must be satisfied before most other claims may be paid. To the extent the Debtor have taxable income after the Effective Date, the Debtor may have NOLs to offset such income.

## **C. Federal Income Tax Consequences to Creditors and Interestholders**

Creditors should generally recognize gain (or loss) to the extent the amount realized under the Plan (generally the amount of cash received) in respect of their Claims exceeds (or is exceeded by) their respective tax bases in their Claims. The tax treatment of holders of Claims and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan will depend upon, among other things, (i) the nature and origin of the Claim, (ii) the manner in which a Creditor acquired a Claim, (iii) the length of time a Claim has been held, (iv) whether the Claim was acquired at a discount, (v) whether the Creditor has taken a bad debt deduction in the current or prior years, (vi) whether the Creditor has previously included in income accrued but unpaid interest with respect to a Claim, (vii) the method of tax accounting of a Creditor; and (viii) whether a Claim is an installment obligation for U.S. federal income tax purposes. Therefore, Creditors should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequence to such Creditors as a result thereof.

The tax treatment of a Creditor that receives distributions in different taxable years is uncertain. If such a Creditor treats the transaction as closed in the taxable year that it first receives (or is deemed to have received) a distribution of cash and/or other property, it should

recognize gain or loss for such tax year in an amount equal to the cash and the value of other property actually (and deemed) received in such tax year (other than that received in respect of accrued interest) with respect to its Claim (other than any portion of the Claim that is attributable to accrued interest) plus the estimated value of future distributions (if any) less its tax basis in its Claim (except to the extent its Claim is for accrued interest). A Creditor should then subsequently recognize additional income or loss when additional property distributions are actually received in an amount equal to the cash and/or value of such other property (other than that received in respect of accrued interest) less the Creditor's allocable tax basis in its Claim with respect to such subsequent distribution. A Creditor may have to treat a portion of any such subsequent distribution as imputed interest recognizable as ordinary income in accordance with the Creditor's method of tax accounting. If instead the open transaction doctrine applies as a result of the value of the subsequent Distributions that a Creditor may receive not being ascertainable on the Closing Date or the Effective Date, such Creditor should not recognize gain (except to the extent that the value of the cash and/or other property already received exceeds such Creditor's adjusted tax basis in its Claim (other than any Claim for accrued interest)) or loss with respect to its Claim until it receives the final distribution thereon (which may not be until the Final Distribution Date). It is the position of the IRS that the open transaction doctrine only applies in rare and extraordinary cases. The Proponent believes that the open transaction doctrine should not apply and that holders may be entitled to take the position that on the Closing Date and on the Effective Date no value should be assigned to the right to receive any subsequent Distributions. Creditors are urged to consult their own tax advisors regarding the application of the open transaction doctrine and how it may apply to their particular situations, whether any gain recognition may be deferred under the installment method, whether any loss may be disallowed or deferred under the related party rules and the tax treatment of amounts that certain Creditors may be treated as paying to other Creditors.

Holders of Allowed Claims will be treated as receiving a payment of interest (in addition to any imputed interest as discussed in the preceding paragraph) includible in income in accordance with the Holder's method of accounting for tax purposes, to the extent that any cash and/or other property received pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of cash and/or other property should be attributable to accrued but unpaid interest is unclear. The Plan provides, and the Proponent intends to take the position, that such cash and/or other property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each Creditor should consult its own tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any) and whether any such interest may be considered to be foreign source income. A Creditor generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

#### **D. Holders of Allowed Equity Interests**

The Holders of Allowed Equity Interests in the Debtor are urged to consult with their tax advisors with respect to the tax consequences under the Plan. The Holders of Allowed Equity Interests and their advisors may wish to consider, among any other relevant considerations, the extent to which the Holder of an Allowed Equity Interest may be entitled to a bad debt deduction or a worthless security loss in respect of its stock interest in the Debtor.



**E. Holders of Disputed Claims**

Though not beyond doubt, Holders of Disputed Claims should recognize gain or loss in an amount equal to: (i) the amount of cash and the fair market value of any other property actually distributed to such claimant (other than any amounts attributable to accrued and unpaid interest) less (ii) the adjusted tax basis of its Claim (other than for accrued and unpaid interest). Holders of Disputed Claims are urged to consult their own tax advisors regarding the taxation of their Disputed Claims and the timing and amount of income or loss recognized relating thereto.

**F. Information Reporting and Backup Withholding**

Certain payments, including payments of Claims pursuant to the Plan, are generally subject to information reporting by the payor to the IRS. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the backup withholding rules, a Holder of a Claim may be subject to backup withholding at the applicable tax rate with respect to distributions or payments made pursuant to the Plan, unless the Holder: (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury as to the correctness of its taxpayer identification number and certain other tax matters. Backup withholding is not an additional tax. Rather, the federal income tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of federal income taxes, a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by timely filing the appropriate claim for refund with the IRS.

**G. Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES OF THE PLAN ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CREDITOR'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**ARTICLE XIII**  
**CONCLUSION**


This Disclosure Statement provides information regarding the Debtor's bankruptcy and the potential benefits that might accrue to Creditors and Interestholders under the Plan as proposed. The Debtor believes that the Plan is feasible and will provide Creditors and Interestholders with an opportunity to receive greater benefits than those that would be received by any other alternative. The Debtor, therefore, urges eligible Creditors and Interestholders to vote in favor of the Plan.

**[SIGNATURE PAGE FOLLOWS]**

Dated: July 18, 2016

Respectfully submitted,

**DELTROPICO DESIGNS, LLC**

By:   
Luis R. Fernandez, Jr.  
Title: Manager

-and-

**MANCUSO LAW, P.A.**

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