

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

_____	)	
In re:	)	Chapter 11
	)	
DOMINION PAVING & SEALING, INC.,	)	Case No. 15-32966
	)	
DEBTOR.	)	
_____	)	

**DISCLOSURE STATEMENT FOR JOINT  
CHAPTER 11 PLAN OF REORGANIZATION**

**August 8, 2016**

\_\_\_\_\_  
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**NOTICE**

**Dominion Paving & Sealing, Inc. (the “Debtor”) submits this Disclosure Statement to describe the Joint Plan of Reorganization (as hereinafter defined) filed by the Debtor and the Official Committee of Unsecured Creditors Committee (“Committee”) in its Chapter 11 bankruptcy case. The Debtor and the Committee recommend that holders of Claims entitled to vote on the Plan vote to accept the Plan in accordance with the voting instructions set forth in this Disclosure Statement. To vote on the Plan, your Ballot must be duly completed, executed, and actually received no later than the Voting Deadline. Holders of Claims entitled to vote on the Plan should read and carefully consider this Disclosure Statement, the Plan, and the exhibits thereto in their entirety.**

**The Disclosure Statement contains summaries of certain provisions of the Plan, statutory provisions, documents related to the Plan, and events in the Bankruptcy Case. Although the Debtor believes that the summaries of the Plan and related documents are fair and accurate, the summaries in this Disclosure Statement are qualified to the extent that they do not set forth the entire text of such documents or statutory provisions. If the terms of this Disclosure Statement and the Plan are inconsistent, the Plan will control.**

**Except as set forth in this Disclosure Statement, no person has been authorized by the Debtor in connection with the Plan or the solicitation to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits annexed hereto or incorporated by reference or referred to herein. Accordingly, you should not rely on any such information as having been authorized by the Debtor.**

**The statements contained in this Disclosure Statement are made as of the date hereof (unless otherwise indicated) and should not under any circumstance create any implication that the information contained herein is correct at any time subsequent to the date hereof. Any estimates of Claims and Equity Interests set forth in this Disclosure Statement may vary from the amounts of Claims and Equity Interests ultimately Allowed by the Bankruptcy Court.**

**The information contained in this Disclosure Statement is included for purposes of soliciting acceptances of the Plan. As to any judicial proceedings in any court, including any adversary proceedings or contested matters that may be filed in the Bankruptcy Court, this information is not to be construed as an admission or stipulation.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH**

**DISCUSSION IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN AND OTHER MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**TABLE OF CONTENTS**

**ARTICLE I. INTRODUCTION.....1**

    (A) Plan Summary .....1

    (B) This Disclosure Statement .....1

    (C) Recommendation .....1

**ARTICLE II. OVERVIEW OF THE PLAN .....1**

    (A) Administrative Claims .....2

    (B) Tax Claims .....2

    (C) Other Priority Claims .....2

    (D) Secured Claims .....2

    (E) Equipment Lessors .....2

    (F) General Unsecured Claims .....3

    (G) Equity Interest Holders .....3

    (H) Executory Contracts and Unexpired Leases .....3

**ARTICLE III. SOLICITATION AND VOTING PROCEDURES.....3**

    (A) Chapter 11 Generally .....3

    (B) Solicitation of Acceptances of the Plan .....4

    (C) Voting on the Plan .....4

    (D) Voting Procedures .....5

    (E) Withdrawal of Votes on the Plan .....6

    (F) Other General Information .....6

**ARTICLE IV. BACKGROUND REGARDING DEBTOR.....6**

    (A) General Background .....6

    (B) The Unsecured Creditor Body .....9

    (C) Bankruptcy Proceedings .....10

**ARTICLE V. DESCRIPTION OF THE PLAN .....11**

    (A) Treatment of Unclassified Claims .....11

    (B) Treatment of Classified Claims and Equity Interests .....13

    (C) Effect of Confirmation of the Plan .....15

**ARTICLE VI. MEANS FOR IMPLEMENTATION OF THE PLAN .....17**

    (A) Plan Funding and Sources of Cash .....17

    (B) Contingent Claims .....17

    (C) Equity Interests .....17

    (D) Avoidance Actions and Other Actions .....18

    (E) Operations of the Debtor Between the Confirmation Date and Effective Date .....18

    (F) Creditors’ Committee .....18

    (G) Plan Completion .....18

**ARTICLE VII. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....18**

    (A) Claims Based on Assumption of Executory Contracts and Unexpired Leases .....18

    (B) The GE Capital Lease .....19

    (C) Claims for Rejection Damages .....19

    (D) Objections to Proofs of Claim Based on Rejection Damages .....20

<b>ARTICLE VIII. PROVISIONS GOVERNING DISTRIBUTIONS .....</b>	<b>20</b>
(A) Distributions .....	20
(B) Distributions on Account of Disputed Claims Once Allowed .....	20
(C) Estimation of Claims .....	20
(D) Interest on Allowed Claims.....	20
(E) Setoff and Recoupment .....	21
(F) Manner of Payments; Delivery of Distributions.....	21
<b>ARTICLE IX. OTHER PLAN MATTERS.....</b>	<b>21</b>
(A) Conditions Precedent to the Effective Date.....	21
(B) Retention of Jurisdiction.....	22
(C) Modification of the Plan.....	23
(D) Revocation or Withdrawal of this Plan.....	23
<b>ARTICLE X. MISCELLANEOUS PROVISIONS OF THE PLAN .....</b>	<b>24</b>
(A) Exemption from Transfer Taxes Under Section 1146(a) .....	24
(B) Nonconsensual Confirmation .....	24
(C) Releases of Liens .....	24
(D) Governing Law.....	24
(E) Notices and Distributions .....	24
(F) Other Documents and Actions.....	25
<b>ARTICLE XI. CONFIRMATION OF THE PLAN .....</b>	<b>25</b>
(A) Acceptance of the Plan .....	25
(B) Confirmation.....	25
(C) Satisfaction of Certain Conditions Precedent to Confirmation Under the Bankruptcy Code .....	29
(D) Feasibility of the Plan.....	33
(E) Confirmation Without Acceptance By All Impaired Classes .....	33
<b>ARTICLE XII. ALTERNATIVES TO THE PLAN .....</b>	<b>33</b>
<b>ARTICLE XIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN .....</b>	<b>34</b>
<b>ARTICLE XIV. RECOMMENDATION AND CONCLUSION.....</b>	<b>35</b>
<b><u>EXHIBIT A</u> -- Plan of Reorganization</b>	
<b><u>EXHIBIT B</u> -- Liquidation Analysis</b>	

## ARTICLE I. INTRODUCTION

The Debtor and Committee are providing this disclosure statement (the “**Disclosure Statement**”) to describe Dominion Paving & Sealing, Inc.’s Joint Chapter 11 Plan of Reorganization (the “**Plan**”). A copy of the Plan is attached to this Disclosure Statement as Exhibit A. Terms herein with an initial capital letter not required by standard capitalization rules are defined terms, and each term used but not parenthetically or otherwise defined in this Disclosure Statement shall have the meaning given to it in the Plan.

### (A) Plan Summary

This Plan is designed to restructure the Debtor’s secured and unsecured debt, provide distributions to Creditors, resolve certain issues with the IRS and DOL, and establish a financially strong business aided by (i) revised payment terms under new loan documents with the Debtor’s secured creditors; and (ii) improved operations and business processes.

### (B) This Disclosure Statement

On \_\_\_\_\_, 2016, the Bankruptcy Court entered an order conditionally finding that this Disclosure Statement contains “adequate information” within the meaning of section 1125 of the Bankruptcy Code. “Adequate information” is generally defined as “information of a kind, and in sufficient detail that would enable a hypothetical investor to make an informed judgment about the plan.” The Bankruptcy Court has also authorized the Debtor to use this Disclosure Statement to solicit votes for the Plan.

The Disclosure Statement will be approved on a final basis if no objections have been filed by the objection deadline set in the Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Hearing and Objection Deadline on Final Approval of Disclosure Statement, (III) Scheduling Hearing and Objection Deadline on Plan Confirmation, (IV) Approving the Form of Ballots, Voting Deadline and Solicitation Procedures, and (V) Approving Form and Manner of Notice (the “**Conditional Approval Order**”). If any objection is filed to final approval of the Disclosure Statement, a hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ before the Honorable Keith L. Phillips, United States Bankruptcy Court, 701 East Broad Street, Suite 5000, Richmond, Virginia 23219.

### (C) Recommendation

The Debtor and the Committee recommend that Creditors vote to accept the Plan.

## ARTICLE II. OVERVIEW OF THE PLAN

The following is a brief overview of the material provisions of the Plan, and the following overview is qualified in its entirety by the full text of the Plan, which is attached as Exhibit A hereto. The Plan is discussed in more detail in Article V. Upon confirmation of the

Plan, the Debtor will become “Reorganized Debtor” and the Reorganized Debtor shall be responsible for effectuating the Plan.

**(A) Administrative Claims**

As required by the Bankruptcy Code, the Plan provides that Claims arising after the Petition Date, such as Professional fees and operating expenses, will be fully paid in cash at confirmation or in accordance with their terms, subject to any necessary court approval or orders entered in the Bankruptcy Case. (All Professional fees must be approved by the Bankruptcy Court after notice to Creditors). The Cash necessary to pay all Administrative Claims will be available from income from operations and sales of surplus equipment not necessary for the reorganization.

**(B) Tax Claims**

Pursuant to § 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its unpaid Priority Tax Claim, regular quarterly installment payments in Cash beginning no later than 90 days after the Effective Date, of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date with interest at the rate of three percent (3%) annually.

**(C) Other Priority Claims**

Certain Claims, such as employee wage and 401(k) claims, other than Administrative Claims and Priority Tax Claims are given priority treatment under Bankruptcy Code section 507(a). Other Priority Claims will be paid in full on the later of 90 days after the Effective Date and the date such Other Priority Claim becomes Allowed, or as soon as practicable thereafter. The Cash necessary to pay the Other Priority Tax Claims will be available from operations of the Reorganized Debtor and sales of surplus equipment not necessary for the reorganization.

**(D) Secured Claims**

Unless otherwise agreed, holders of Allowed Secured Claims will receive payments over time in accordance with the terms of the revised loan documents between the Debtor and each such secured creditor.

**(E) Equipment Lessors**

Unless otherwise agreed, Equipment Lessors will be paid in the installment amounts established in the original debt instruments until principal and interest are paid in full. Any arrearages existing as of the Petition Date will be paid in full at the end of the respective contract term.

**(F) General Unsecured Claims**

Holders of General Unsecured Claims will receive distributions from the Plan Administrator for a period of five (5) years in full satisfaction of their Claim, representing their pro rata share of Class 4 Assets which will consist of at least thirty-five percent (35%) of all General Unsecured Allowed Claims plus net recoveries from Avoidance Actions.

**(G) Equity Interest Holders**

The Equity Interest Holder in the Debtor consists of the Trustee of the ESOP. The Equity Interest Holder's interest shall be cancelled, shall be of no further force, whether surrendered for cancellation or otherwise, and the obligations of the Debtor thereunder or any way related thereto shall be discharged.

If this Plan is not accepted by each Impaired Class, section 1129(b) of the Bankruptcy Code allows the Bankruptcy Court to Confirm the Plan anyway, provided, however, that several conditions are met. One of the applicable conditions is that creditors in a junior class cannot receive anything under the Plan unless the senior classes of creditors are paid in full. See 11 U.S.C. § 1129(b)(2)(B). This is called the "absolute priority rule." In this Plan, the class consisting of Equity Interests is junior to all other classes.

**(H) Executory Contracts and Unexpired Leases**

Except as otherwise stated herein and subject to Article V of the Plan, all of the Debtor's executory contracts and unexpired leases will be assumed by the Debtor upon the Effective Date with any pre-petition defaults being paid at the end of the lease term. The executory contracts or any equipment lease with any equipment lessor that may be determined to be a party to a true lease and not a Secured Creditor in Class 2, will have their contract and lease assumed. The entry of the Confirmation Order shall constitute approval of any such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

**ARTICLE III. SOLICITATION AND VOTING PROCEDURES**

**(A) Chapter 11 Generally**

Under Chapter 11 of the Bankruptcy Code, a debtor may reorganize its business or sell its assets for the benefit of its creditors, equity interest holders (such as shareholders, partners or members), and other parties in interest. The culmination of a Chapter 11 case is the confirmation and consummation of either a plan of reorganization or a plan of liquidation, which specifies the treatment to be afforded to holders of Claims against or Equity Interests in the debtor in exchange for the discharge and cancellation of such Claims and Equity Interests. A plan of reorganization or liquidation is implemented only after it has been confirmed by the Bankruptcy Court. Confirmation of a plan of reorganization or liquidation by the bankruptcy court makes the plan binding on the debtor, any issuer of securities under the plan, any person acquiring property



under the plan, and any Creditor or Equity Interest holder of the debtor. Subject to certain limited exceptions, confirmation of the plan releases the debtor from any debt that arose before the date of confirmation of the plan in exchange for the consideration specified under the confirmed plan. Thus, following confirmation, Creditors and Equity Interest holders are largely deprived of their pre-bankruptcy rights and entitlements and, instead, are limited solely to the rights and entitlements specified by the plan.

Here, the Plan specifies the payments, distributions, and other treatment to be afforded to holders of Allowed Claims against and Equity Interests in the Debtor. Certain holders of Allowed Claims, as specified in the Plan, are entitled to vote on the Plan. To confirm the Plan, certain voting requirements and statutory tests must be satisfied. The statutory tests are designed in large measure to protect the interests of holders of Claims or Equity Interests in the Debtor that either are not entitled to vote on the Plan or that vote to reject the Plan, but nevertheless will be bound by the provisions of the Plan if confirmed. A more detailed discussion of these statutory tests is set forth in Article XI(B) of this Disclosure Statement.

#### **(B) Solicitation of Acceptances of the Plan**

Under the Plan, all Claims and Equity Interests that are required to be designated in Classes pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code have been placed in various Classes based on the nature and priority of the Claims or Equity Interests. Each Class is either Impaired or Unimpaired under the Plan. A Class of Claims or Equity Interests that is Unimpaired is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, accordingly, is not entitled to vote on the Plan. Similarly, a Class of Claims or Equity Interests that does not receive or retain any property under the Plan is conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, likewise, is not entitled to vote on that Plan.

#### **(C) Voting on the Plan**

The Voting Deadline is \_\_\_\_\_ at 5:00 p.m. (prevailing Eastern Time). To be counted for purposes of voting on the Plan, all the information requested on the applicable Ballot must be provided. The Debtor reserves the right, in consultation with the Committee, to extend the Voting Deadline, in which case the term "Voting Deadline" will mean the latest date on which a Ballot will be accepted.

If you are entitled to vote to accept or reject the Plan, enclosed is a Ballot for the acceptance or rejection of the Plan and a pre-addressed return envelope for the return of the Ballot.

**BALLOTS FOR ACCEPTANCE OR REJECTION OF THE PLAN ARE BEING PROVIDED ONLY TO HOLDERS OF IMPAIRED CLAIMS IN CLASSES 2 AND 4 BECAUSE THEY ARE THE ONLY HOLDERS OF CLAIMS THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN.**

Please use only the official Ballot or Ballots that accompany this Disclosure Statement. All votes to accept or reject the Plan must be cast using a Ballot. Votes that are cast in any manner other than on the designated Ballot will not be counted. Ballots must be actually received by the Debtor, at the addresses indicated on the Ballot, by no later than the Voting Deadline. If you elect to vote on the Plan, you should complete and sign the Ballot in accordance with the instructions on the Ballot, being sure to fill in the amount of your Claim in the appropriate space provided and check the appropriate box entitled “Accept the Plan” or “Reject the Plan.” You may not split your vote on the Plan with respect to a particular Class.

If you are the holder of a Claim in Class 2 and 4 and did not receive a Ballot, received a damaged or illegible Ballot, or lost your Ballot, or if you are a party in interest and have any questions concerning this Disclosure Statement, the Plan, or the voting procedures in respect thereof, please contact Debtor’s counsel as set forth at the end of this Disclosure Statement. After carefully reviewing this Disclosure Statement, the Plan, and the exhibits annexed hereto and thereto, please indicate on the enclosed Ballot your vote with respect to the Plan.

FAILURE TO COMPLY WITH THE VOTING REQUIREMENTS MAY RESULT IN YOUR VOTE NOT BEING COUNTED. YOU MUST RETURN YOUR BALLOT TO THE DEBTOR BY THE VOTING DEADLINE. THE DEBTOR AND THE COMMITTEE BELIEVE THAT PROMPT CONFIRMATION AND IMPLEMENTATION OF THE PLAN IS IN THE BEST INTERESTS OF ALL HOLDERS OF CLAIMS. THE DEBTOR AND THE COMMITTEE STRONGLY URGE CREDITORS TO VOTE TO ACCEPT THE PLAN.

**(D) Voting Procedures**

Failure by a holder of a Claim to deliver a duly signed Ballot will constitute an abstention by that holder with respect to a vote on the Plan. Abstentions will not be counted as either acceptances or rejections of the Plan. Because abstentions will have no effect on voting with respect to the Plan, it is extremely important that you timely return your executed Ballot to indicate whether you accept or reject the Plan. Any executed Ballots that are timely received but do not indicate either an acceptance or a rejection of the Plan or indicate both an acceptance and a rejection of the Plan will not be counted.

Submission of all Ballots must be made directly to the Debtor in accordance with the instructions on the Ballots. In all cases, sufficient time should be allowed to assure timely delivery. You may receive multiple solicitation packages. You should only vote one Ballot for each Class of which you are a member.

**(E) Withdrawal of Votes on the Plan**

The solicitation of acceptances of the Plan will expire on the Voting Deadline. A properly submitted Ballot may be withdrawn by delivering a written notice of withdrawal to the Debtor at the address set forth on the Ballot at any time before the Voting Deadline. Thereafter, withdrawal of a properly submitted Ballot may be effected only with the approval of the Bankruptcy Court, pursuant to Bankruptcy Rule 3018(a).

To be valid, a notice of withdrawal must:

- specify the name of the Claim holder who submitted the vote on the Plan to be withdrawn;
- contain the description of the Claim; and
- be signed by the Claim holder in the same manner as on the Ballot.

The Debtor expressly reserves the absolute right to contest the timeliness or validity of any withdrawals of votes on the Plan.

In addition to the withdrawal of a properly executed Ballot as specified above, any Claim holder who has previously submitted a properly executed Ballot on or before the Voting Deadline may revoke and change its vote by submitting to the Debtor a subsequent properly executed Ballot. If more than one properly executed Ballots are received from an individual Creditor with respect to the same Claim before the Voting Deadline, only the last properly executed Ballot received by the Debtor on or before the Voting Deadline will be deemed to reflect the Claim holder's intent and will supersede and revoke all prior Ballot(s) submitted in connection with such Claim.

**(F) Other General Information**

The Debtor believes that the Plan provides greater value to Creditors than other available alternatives. The Debtor believes that acceptance of the Plan is in the best interests of each and every Creditor entitled to vote on the Plan and recommends that each Creditor vote to accept the Plan. For a more detailed analysis of the alternatives to the Plan, see Article XII of this Disclosure Statement.

**ARTICLE IV. BACKGROUND REGARDING DEBTOR**

**(A) General Background**

On November 30, 2005 Dave's Asphalt & Sealing, Inc. merged with Dominion Paving & Sealing, Inc. (the "Company"). The Company is a Virginia corporation and is treated as an S Corporation for tax purposes. The Company is engaged in the construction industry as a

paving/milling contractor and asphalt sealer and striping contractor. The Company performs work under fixed-price contracts, usually less than one year, in the central Virginia area. The business is seasonal with little to no operations from late December to early March.

On December 23, 2005, Dominion Paving & Sealing, Inc. Employee Stock Ownership Plan and Trust (the "**ESOP**") purchased 100% of the outstanding stock of the Company. The purchase price for the outstanding stock was \$6.1 million, financed by a promissory note (the "**Note**") with the three former shareholders: (i) the President, David L. Atkinson ("**Atkinson**"); (ii) Atkinson's wife and Secretary, Jackie Atkinson ("**Jackie**"); and the Vice President of Sales, Atkinson's nephew, James Garland Johnson ("**Johnson**"). The Note was payable over 10 years with monthly payments of principal and including interest at 5% per annum. After the first year the interest increased each year by 1% until reaching 10%.

Combined net income for the year ended December 31, 2005, was \$460,000 on sales of \$8,764,000. During the five years after the purchase of the Company sales fluctuated between \$9 million and \$11 million for an average of \$10.5 million per year. Net income averaged \$585,000 per year during this five-year period.

#### 2009 – 2013

As a result of the economic downturn that began in 2008, the Company's management restated the Note by freezing the principal payment monthly of \$50,833 and reducing the interest rate from 8% to 5% annually as of October 2009. In accordance with the Restated Note monthly payments then included interest only from October 1, 2009 thru September 30, 2011.

The Company was a party to litigation from December 2010, through August 2011, involving claims by and against Atkinson who resigned from the Company as a Director, President and Trustee of the ESOP on December 1, 2010. The matter was settled August 10, 2011, whereby payments to Atkinson under the Restated Note were reduced to \$750,000 from \$1,287,000 (the "**Atkinson Settlement**"). The Company paid Atkinson in full with \$200,000 on August 20, 2011 and \$550,000 on October 9, 2011. Funds for the payment were provided, in part, from a note payable to SunTrust Bank for \$550,000 with monthly payments of principal and interest \$10,386 at 5% annual interest.

Following Atkinson's resignation, additional personnel were terminated, including Jackie and Karen Berrier, the Company's controller. Johnson became the new President and Trustee of the ESOP on December 1, 2010. Stephen H. Parham ("**Parham**"), a CPA, became the Secretary/Treasurer. 2010 revenues of the Company were \$11,420,000, an increase of \$2,334,000 from the prior year.

In late 2010, management relocated the Company assets from Atkinson's property in Moseley, Virginia, to its current location at 10900 Paulbrook Drive, Midlothian, Virginia. On December 7, 2010, the Company executed an agreement to lease and purchase its current facilities consisting of 10,200 square feet of office, garage and storage space located on 4.15

acres of land. This transaction eliminated over \$70,000 of annual rental expense paid to the Atkinson and Jackie. The Company leased the Paulbrook property for \$6,000 monthly until October 26, 2011, when the Company purchased the Paulbrook property for \$950,000. The property was financed with a commercial note payable of \$850,000 from SunTrust Bank, payable in 83 monthly installments of \$5,087, including interest at 3.85% with a balloon payment on October 26, 2018.

During 2011, the Company acquired two milling machines at a total cost of \$1,076,000. The purchases were financed with SunTrust Bank, with 5 year notes at 5% interest payable monthly at approximately \$17,000. On October 26, 2011 the Company established a bank operating line of credit up to \$1,000,000 with SunTrust Bank that bore interest at the rate of LIBOR plus 2 ½% per annum, with a floor of 3% rate of interest and subject to various covenants. The line was secured by the Company's accounts receivable, inventory, property and equipment, general intangibles and the personal guarantees of the Johnson and Parham. The outstanding balance on this line was \$725,000 as of December 31, 2011. 2011 revenues of the Company were \$15,189,000, an increase of \$3,783,000 over 2010. Income for 2011 after litigation expenses attributed to the Atkinson dispute, was \$1,043,234.

Under the terms of the Atkinson Settlement, the Company refinanced six loans that Atkinson guaranteed totaling \$972,218 with Capital One Finance resulting in a lower monthly payment from \$37,796 to \$29,116. This note was later refinanced with First Citizens Bank in 2013 in the amount of \$748,603 over a new 36 month period at an interest rate of 3.20% and a monthly installment payment of \$21,852. Revenues of the Company for 2012 were \$15,157,545 but resulted in a net loss of \$90,460.

As of December 31, 2012, the Company had no availability on the SunTrust line of credit \$1,000,000 of which was outstanding. In January 2013, a \$50,000 payment was made to the line and \$50,000 was advanced in March 2013 with no available line of credit thru the year end. As a result of violations of certain affirmative financial covenants of the line of credit, SunTrust was unwilling to increase the line. Efforts were made by management to replace the line of credit throughout 2013. A lengthy credit review was performed by a Richmond Virginia accounts receivable factoring company, however management rejected the lending arrangement due to its cost. Another lender was approached and performed a review and was inclined to making the factoring facility available but wanted to wait until the Company restarted operations in March 2014. Revenues of the Company for 2013 declined to \$13,292,951. The net loss for 2013 amounted to \$64,892.

#### 2014- 2015

The Company obtained financing from Equify Financial, LLC ("**Equify**") in the amount of \$934,431 in early 2014 and the funds were used to pay numerous debts including: \$371,445 to the Internal Revenue Service (the "**IRS**") for federal withholding and payroll taxes; \$495,983 to payoff First Citizens Bank note \$495,983. The Equify note was payable starting April 29, 2014,

in 36 monthly installments of \$29,179 of principal and interest at the annual rate of 8% and was collateralized by certain equipment.

On May 9, 2014, Johnston and the Company reached several agreements. First, Johnston resigned his position as Trustee of the ESOP and Parham assumed that position. Johnston and the Company also agreed to a modification of the Restated Note whereby monthly payments were reduced from \$10,728 plus interest at 5% per annum to \$10,000 monthly including principal and interest at 5% per annum for 120 months. Additionally, the Company and Johnston entered into an employment agreement wherein Johnston resigned his position as Chairman of the Board and President and became a Senior Vice President. At the annual meeting on August 1, 2014, Parham was elected Chairman of the Board, President, Treasurer and Secretary.

On June 18, 2014, the Company entered into an agreement with Crestmark Bank to provide up to \$2,500,000 revolving credit facility that was secured by the Company's eligible accounts receivable that are less than 90 days old from the original invoice date. The new revolving line of credit paid off an existing line of credit with SunTrust Bank in the amount of \$985,000 and provided working capital. The initial funding from Crestmark in the amount of \$195,000 was used to pay the Internal Revenue Service for federal withholding and payroll taxes due for the second quarter of 2014.

As a result of paying off the prior line of credit and past due payroll taxes, cash was short to meet the obligations of payroll taxes, vendor payments and indebtedness during the third and fourth quarters of 2014. The Company was pressured by vendors to pay or enter into payment agreements to pay the vendor accounts and avoid legal costs. Several vendors required the President to guarantee the payment arrangements. Revenues of the Company for 2014 were \$11,584,416, a decline of \$1,708,000 from 2013. The net loss for 2013 amounted to \$1,492,036.

The Internal Revenue Service filed a tax lien in April 2015, resulting in Crestmark notifying the Company that no lending would be made until the lien was resolved. As a result of the lack of funding, the Company continued to fall further behind on its obligations. On May 22, 2015 the Company's checking accounts, including \$91,000 at Wells Fargo, were seized by a garnishment order for debt owe to Carter Machinery, Inc. The Company was forced to temporarily cease operations on May 27, 2015. On June 9, 2015, all available funds held in First Citizens Bank were applied by the Bank under the lending agreement with First Citizens Bank to loans owed to the Bank. The Company filed for protection under Chapter 11 on June 10, 2015.

#### **(B) The Unsecured Creditor Body**

Prior to filing Chapter 11, the Debtor's vendors were being paid in the ordinary course of business. The Creditor Body consists of approximately \$1 million of unsecured trade vendor and related claims and \$2.5 million of insider claims. The Debtor intends to object to the insider claims seeking their subordination, recharacterization, and/or disallowance, leaving only the trade vendor and related claims.

### **(C) Bankruptcy Proceedings**

On July 8, 2015, the Committee was appointed. The Committee is comprised of two (2) members, S.B. Cox and Carter Machinery Company, Inc., both of whom are trade creditors of the Debtor. The Committee has taken an active role in the Bankruptcy Case and assisted the Debtor in the formulation of the Joint Plan of Reorganization.

At the outset of the Bankruptcy Case, Capital Solutions Bancorp, LLC (the “**DIP Lender**”), agreed to provide a debtor-in-possession financing factoring agreement (the “**DIP Financing Agreement**”) to the Debtor, which was approved by the Bankruptcy Court. The DIP Financing Agreement has provided valuable liquidity to the Debtor immediately following the completion of each of the Debtor’s contract jobs. This lending arrangement provides funding on invoices in the amount of 80% and a reserve of 20% is released to the Company upon full payment by the customer less a fee of 1% of the invoice for each ten day period outstanding. The Company was funded approximately \$1,469,000 from July 2015 thru June 30, 2016. There is no owed balance under the DIP Financing Agreement.

The Debtor’s goal through the Bankruptcy Case was to emerge from bankruptcy as a financially viable and sustainable business, which was not possible without restructuring its debt. The Debtor believes that this Plan will accomplish that goal and will result in the continuance of a successful and vibrant business.

The Debtor’s financial performance throughout the Bankruptcy Case has been consistent with its historical performance. The Company’s focus, after the bankruptcy effective date, was to improve the nature of revenue pursued, more efficient management of operations in the field, and retention of key employees. Pre-petition, the work force had dwindled by 2/3 (100 employees to 33 employees). The Company worked diligently to stabilize its employee base. The field operations supervisor, Irvin Atkinson, has over 10 years with the Company and over 30 years of experience in the construction industry. The Company hired a second salesman, who have focused on an improved strategy as to the type of work the Company was pursuing. Management determined that the work previously acquired outside the central Richmond area was not providing adequate profit. Immediately the focus turned to short term contracts providing paving, repair and milling work in the central Virginia area. Additionally, the Company increased its revenues with a local asphalt producer who has provided a steady stream of projects subcontracted to Dominion. This relationship has contributed to obtaining referrals for work from other local contractors for milling and paving services. Sealcoating and striping work was completed by an outside contractor after the bankruptcy filing thus eliminating the cost of employees, materials and equipment for this type of revenue. Pothole patching operations were eliminated and three pothole trucks were sold.

The Company’s revenue for 2015 was \$4,053,000. The Company has continued to focus on paving, repair and milling which is projected to be 90% of 2016 revenues.

The Company identified excess equipment with a liquidation value of \$562,000 in total and obtained a Court approved process for the sale of this equipment. The Company has sold excess equipment for \$288,363. As of July 31, 2016, secured debt totaled \$2,070,000.

The Company has actively negotiated with the IRS and the Department of Labor regarding tax and employee issues. The result of these negotiations has allowed the Debtor to satisfy certain claims over a period of time, thereby improving cash flow. Further, the Debtor has been in active negotiations with a new lender and SunTrust regarding the new lender's acquisition of the SunTrust debt and additional equipment sales that will provide initial funding for the Plan while reducing the overall secured debt.

## **ARTICLE V. DESCRIPTION OF THE PLAN**

### **(A) Treatment of Unclassified Claims**

Certain types of Claims are not placed into voting Classes; instead, they are unclassified. These Claims are not considered Impaired, and the holders of these Claims do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code.

#### **(1) Administrative Claims**

Administrative Claims are Claims for costs or expenses of administering the Debtor's Bankruptcy Case, which are provided for in Bankruptcy Code Section 507(a)(2). The Bankruptcy Code requires that all Administrative Claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to different treatment.

If the Plan is confirmed, the Court will send out a separate notice of a deadline known as the Administrative Claim Bar Date for the filing of all requests for payment of Administrative Claims. Any request for payment of an Administrative Claim that is not timely filed on or before the Administrative Claim Bar Date will be forever barred and Disallowed.

Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims must be filed and served on the Reorganized Debtor and its counsel no later than the Administrative Claims Bar Date. Any Person or Entity that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such a request shall be forever barred, estopped, and enjoined from asserting such Claim or participating in distributions under the Plan on account thereof. Such request for payment of Administrative Claims must include at a minimum (i) the name of the holder of the Administrative Claim, (ii) the amount of the Administrative Claim, (iii) the basis of the Administrative Claim, and (iv) supporting documentation for the Administrative Claim. FAILURE TO FILE AND SERVE SUCH REQUEST FOR PAYMENT OF ADMINISTRATIVE CLAIM TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE CLAIM BEING FOREVER BARRED AND RELEASED.



UNDER THE PLAN, THE ADMINISTRATIVE CLAIMS BAR DATE IS THE DATE THAT IS THE FIRST BUSINESS DAY THIRTY (30) CALENDAR DAYS AFTER THE EFFECTIVE DATE OF THE PLAN. ALL REQUESTS FOR PAYMENT OF ADMINISTRATIVE CLAIMS ARISING ON OR BEFORE THE EFFECTIVE DATE, EXCLUDING CLAIMS OF PERSONS AND ENTITIES THAT SUPPLIED GOODS OR RENDERED SERVICES TO THE DEBTOR IN THE ORDINARY COURSE OF BUSINESS, MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE REORGANIZED DEBTOR ON OR BEFORE THE ADMINISTRATIVE CLAIMS BAR DATE OR BE FOREVER BARRED.

The following chart lists all of the Debtor's known and anticipated § 507(a)(2) Administrative Claims and their treatment under the Plan. Of course, the Administrative Claims may be greater than the amounts estimated below.

<b>Name</b>	<b>Approximate Amount Owed</b>	<b>Treatment</b>
DIP Financing Agreement super-priority Administrative Claim, if any	\$ TBD	Paid on the Effective Date
Cash Collateral super-priority Administrative Claim	\$ TBD	Paid on the Effective Date
Professional Fees and expenses for Debtor's Bankruptcy Court authorized Professionals	\$ TBD	Paid on the Effective Date, subject to and after allowance through Bankruptcy Court approval of fees
Professional Fees and expenses for Committee's Bankruptcy Court authorized Professionals	\$ TBD	Paid on the Effective Date, subject to and after allowance through Bankruptcy Court approval of fees
Clerk's Office Fees	\$ 0.00	Paid in full on Effective Date

Name	Approximate Amount Owed	Treatment
U.S. Trustee Fees	\$ TBD	Paid in full on Effective Date

**(2) Bankruptcy Court Approval of Professional Fees**

Professional Fees Claims are treated in all respects as Administrative Claims under the Plan and, thus, subject to the Administrative Claims Bar Date. As a prerequisite to allowance and therefore payment, the Bankruptcy Court must, upon a timely request for payment of Professional Fees, consider and may approve all Professional Fees listed in the chart above. Professional Fees that are not approved are Disallowed and will not be paid. For all Professional Fees, except Clerk's Office fees and U.S. Trustee's fees, the Professional in question must file and serve a properly noticed Professional Fee application, and the Bankruptcy Court must rule on the application. Only the amount of Professional Fees Allowed by the Bankruptcy Court will be required to be paid under the Plan.

**(3) Payment of Administrative Claims in General**

Except to the extent a holder of an Allowed Administrative Claim agrees to other, lesser treatment, each holder of an Allowed Administrative Claim (including holders of Allowed Professional Fee Claims) will receive, in full satisfaction of its Allowed Administrative Claim, Cash equal to the Allowed amount of such Administrative Claim on the Effective Date or if the Administrative Claim is not Allowed as of the Effective Date, when Allowed.

**(4) Priority Tax Claims**

Priority Tax Claims are Claims asserted by Governmental Units that are entitled to priority under section 507(a)(8) of the Bankruptcy Code. The Bankruptcy Code does not require Priority Tax Claims to be classified under the Plan, but requires that such Claims receive the treatment described below. Pursuant to § 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its unpaid Priority Tax Claim, regular installment payments in Cash of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date with interest at the rate of three percent (4%) annually.

**(B) Treatment of Classified Claims and Equity Interests**

All Claims and Equity Interests, except Administrative Claims and Priority Tax Claims, are placed in the following Classes:

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims (Excluding the IRS)	Unimpaired	Not Entitled to Vote; Deemed to Accept
2	Secured Claims	Impaired	Entitled to Vote
3	Equipment Lessors	Unimpaired	Not Entitled to Vote; Deemed to Accept
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Equity Interests	Impaired	Deemed to Reject

**(1) Summary of Estimated Distributions**

**If you are the holder of an Allowed Administrative or Priority Tax Claim.** In accordance with section 1129(a)(9) of the Bankruptcy Code, Allowed Administrative Claims, including Allowed Professional Fee Claims, and Allowed Priority Tax Claims will be paid in Cash in full on the Effective Date or, if such Claims are not Allowed as of the Effective Date, when Allowed. Accordingly, holders of Allowed Administrative Claims, including Allowed Professional Fee Claims, and Allowed Priority Tax Claims will receive 100% of the Allowed amount of their Claims.

**If you are the holder of a Class 1 Other Priority Claim.** Each holder of an Allowed Other Priority Claim shall be paid in full in Cash on the later of 90 days after the Effective Date and the date such Other Priority Claim becomes Allowed, or as soon as practicable thereafter.

**If you are the holder of a Class 2 Secured Claim.** Unless otherwise agreed, holders of Allowed Secured Claims will receive payments over time in accordance with the terms of the loan documents between the Debtor and each such secured creditor.

**If you are holder of a Class 3 Equipment Lessor Claim.** The Debtor assumed the lease with TCF and negotiated a partial assumption of the GE Capital lease as negotiated post-petition. Holders of those claims will be paid in accordance with the applicable lease agreements.

**If you are a holder of a Class 4 Unsecured Creditor Claim.** In full satisfaction of their Claims, holders of Allowed Class 4 Unsecured Creditor Claims shall receive distributions for a period of 5 years representing their pro rata share of Class 4 Assets (as defined in the Plan) of at least thirty-five percent (35%) of their Allowed Claim.

**If you are a holder of an Equity Interest.** The Equity Interest Holder's interest shall be cancelled, shall be of no further force, and the obligations of the Debtor thereunder shall be discharged.

**(C) Effect of Confirmation of the Plan**

**(1) Binding Effect**

On and after the Confirmation Date, and subject to the occurrence of the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interests in, the Debtor and its respective successors and assigns, whether or not the Claim or Equity Interest of such holder is Impaired under the Plan, whether or not such holder has voted to accept the Plan, and whether or not such holder will receive a distribution.

**(2) Revesting of Estate Assets**

At the Effective Date, all Assets shall be revested in the Reorganized Debtor as provided in section 1141 of the Bankruptcy Code free and clear of all liens, security interests, recording taxes, and other interests, choate or inchoate, resulting from all Claims and Equity Interests of all Creditors, Equity Interest Holders and Parties in Interest, except as provided for in the Plan.

**(3) Discharge**

The Debtor will receive a discharge pursuant to 11 U.S.C. § 1141(d)(3). All Entities, Persons, Creditors, parties in interest, and Equity Interest Holders will be bound by the Plan, as confirmed, and will not have Claims against the Debtor other than as specifically stated in the Plan. The sole remedy and right of collection of the Creditors, on account of any Claim, shall be pursuant to the provisions of this Plan.

**(4) Exculpation and Injunction**

**i) Injunction Against Interference with the Plan**

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests, Insiders, and other parties in interest, along with their respective present and former employees, agents, officers, directors, and principals shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan or to violate the terms of the Plan. This section does not preclude the pursuit of any appeals of the order confirming this plan.

**ii) Limitation of Liability**

The Debtor, the Committee, and their respective officers, directors, managers, employees, members, agents, advisors, representatives and Professionals (collectively, the "**Exculpated Parties**"), will neither have nor incur any liability to any Entity for any action in good faith taken

or omitted to be taken after the Petition Date in connection with or related to the Chapter 11 Case or the formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any agreement created or entered into in connection with the Plan; provided, however, that this limitation will not affect or modify the obligations created under this Plan, or the rights of any holder of an Allowed Claim to enforce its rights under the Plan and shall not release any action (or inaction) constituting willful misconduct, fraud or gross negligence (in each case subject to determination of such by Final Order of a court of competent jurisdiction); provided that any Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to his, her or its duties and responsibilities (if any) under this Plan and such reasonable reliance shall form an absolute defense to any such claim, cause of action, or liability. Without limiting the generality of the foregoing, each Exculpated Party shall be entitled to and granted the protections of section 1125(e) of the Bankruptcy Code.

### **iii) Injunction**

Except as otherwise expressly provided in this Plan, all Entities and Persons who have held, hold or may hold Claims or causes of action against the Debtor are permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtor, its Estate, the Committee, the Professionals, or any of their property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) enforcing, attaching, collecting or recovering by any manner or in any place or means any judgment, award, decree or order; (ii) creating, perfecting, or enforcing any lien or encumbrance of any kind; (iii) asserting any right of setoff, right of subrogation or recoupment against any obligation, debt or liability due to the Debtor (except as provided for under the Bankruptcy Code), and (iv) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan with respect to such Claim. Except as expressly provided herein, the Debtor expressly reserves all rights and defenses that the Debtor may have (including, without limitation, the rights of subrogation and recoupment) with respect to any obligation, debt or liability allegedly due to any Entity. By accepting distributions pursuant to this Plan, each holder of an Allowed Claim receiving distributions pursuant to this Plan will be deemed to have specifically consented to the injunctions set forth herein. Nothing in this section shall prohibit the holder of a timely filed proof of Claim from litigating its right to seek to have such Claim declared an Allowed Claim and paid in accordance with the distribution provisions of this Plan, or enjoin or prohibit the interpretation or enforcement by the holder of any obligations of the Debtor under this Plan.

### **iv) Post-Confirmation Liability of Debtor**

The Debtor and the Indemnified Parties shall not be liable for any and all liabilities, losses, damages, claims, causes of action, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, to the holders of Claims for any action or inaction taken in good faith in connection with the performance or discharge of his or her duties under this Plan, except the Indemnified Parties will be liable for actions or inactions that are grossly negligent, fraudulent, or which constitute willful misconduct (in each case, liability shall be subject to determination by

Final Order of the Bankruptcy Court). However, any act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, fraud or willful misconduct.

**v) Indemnification**

The Debtor and the Estate shall, to the fullest extent permitted by the laws of the Commonwealth of Virginia, indemnify and hold harmless the Indemnified Parties from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Debtor's Bankruptcy Case and the Estate or the implementation or administration of the Plan if the Indemnified Party acted in good faith and in a manner reasonably believed to be in or not opposed to the best interest of the Debtor and the Estate. To the extent the Debtor indemnifies and holds harmless the Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Debtor in monitoring and participating in the defense of such claims giving rise to the right of indemnification shall be paid by the Reorganized Debtor. All rights of the Persons exculpated and indemnified pursuant hereto shall survive confirmation of the Plan.

**ARTICLE VI. MEANS FOR IMPLEMENTATION OF THE PLAN**

**(A) Plan Funding and Sources of Cash**

The Cash on hand at confirmation, including cash provided by the Surplus Equipment Sales, shall provide the funding necessary to pay all Allowed Administrative Claims and Allowed Other Priority Claims limited to one hundred percent (100%) recovery on their Allowed Claims without interest. All owed Priority Tax Claims shall be paid over a period of five (5) years with interest from Cash generated by operations of the Debtor. Allowed Secured Claims shall be paid in accordance with the terms of the existing loan documents between the Secured Claimants and the Debtor.

**(B) Contingent Claims**

For purposes of this Plan, each Claim identified in the Schedules as contingent, for which (i) the scheduled Claim holder failed to file a proof of claim and (ii) the Debtor has a Valid Address is deemed Allowed in the amount identified in the Schedules for voting and distribution purposes.

**(C) Equity Interests**

As of the Effective Date, the Equity Interest in the Debtor shall be canceled and extinguished without further action under any applicable law, regulation, order or rule. The Equity Interest Holder shall not receive or retain any rights, property or distributions on account of its Equity Interest under this Plan.

Upon the Effective Date, the ESOP shall be deemed terminated. After confirmation, the Reorganized Debtor may establish a new Employee Stock Ownership Plan for all eligible employees as determined by the Reorganized Debtor in its business judgment. In any event, the ESOP Trust, which will continue to administer the funds in the Trust, shall appoint a new, independent Trustee.

**(D) Avoidance Actions and Other Actions**

On the Effective Date, the Debtor shall transfer and assign to the Plan Administrator and its agents and/or assigns, the sole right to commence any and all Causes of Action and Avoidance Actions on behalf of the Estate. Any recovery, after payment of expenses, obtained from any such action shall be made available for distribution to Holders of Allowed Class 4 Claims.

**(E) Operations of the Debtor Between the Confirmation Date and Effective Date**

The Debtor shall continue to operate as a debtor in possession during the period from the Confirmation Date through the Effective Date.

**(F) Creditors' Committee**

On the Effective Date, the Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities, and obligations relating to and arising from this Bankruptcy Case. The retention and employment of Professionals retained by the Committee shall terminate as of the Effective Date, provided, however, that the Committee shall exist, and its Professionals shall be retained, after such date with respect to any disputes concerning the occurrence of the Effective Date and with respect to requests for the payment of Professional Fee Claims.

**(G) Plan Completion**

Upon the payment of all monies required to be paid by the Plan, all ongoing obligations of the Reorganized Debtor pursuant to the Plan shall terminate, except that any unpaid final distributions shall be made pursuant to the terms of Article VIII.

**ARTICLE VII. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**(A) Claims Based on Assumption of Executory Contracts and Unexpired Leases**

Except as otherwise stated herein or in the Plan, all of the Debtor's Executory Contracts and Unexpired Leases will be assumed by the Debtor upon the Effective Date with any pre-petition defaults being paid at the end of the lease term. The executory contracts or any

equipment lease with any equipment lessor that may be determined to be a party to a true lease and not a Secured Creditor in Class 2, will have their contract and lease assumed. The entry of the Confirmation Order shall constitute approval of any such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

In addition, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for claims in accordance with the terms and provisions of such Insurance Policies. The Insurance Policies that have expired as of the Confirmation Date (whether entered into prior or subsequent to the Petition Date) are not executory contracts subject to assumption or rejection. The issuers of Insurance Policies shall be responsible for continuing coverage obligations under such Insurance Policies, regardless of the payment status of any retrospective or other insurance premiums. To the extent that any Insurance Policy is determined to be an executory contract, this Plan shall constitute a motion to assume the Insurance Policy and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that assumption of the Insurance Policy is in the best interest of the Debtor and its Estate, and all parties in interest in the Bankruptcy Case, and otherwise satisfies the provisions of the Bankruptcy Code. Nothing contained in this Plan shall constitute or be deemed to be a waiver of any cause of action that the Debtor may hold against any Person, including without limitation, any issuer under any Insurance Policy of the Debtor.

**(B) The GE Capital Lease**

The Master Lease Agreement between Debtor and GE Capital Commercial, Inc. and General Electric Credit Corporation of Tennessee, along with Equipment Schedule 001, shall be assumed.

Schedules 002 and 003 of The GE Capital Lease have been rejected pursuant to section 365(a) and Order dated January 13, 2016 [Docket No. 211].

**(C) Claims for Rejection Damages**

Proofs of Claim for damages allegedly arising from the rejection of any Executory Contract or Unexpired Lease pursuant to this Plan must be filed with the Bankruptcy Court not later than **30 days after the Effective Date**. All proofs of Claim for such damages not timely filed and properly served as prescribed herein shall be forever barred and the holder of such a Claim shall not be entitled to participate in any distribution under this Plan. Allowed Claims arising from the rejection of Executory Contracts and/or Unexpired Leases shall be classified and treated as Class 4 Claims.



**(D) Objections to Proofs of Claim Based on Rejection Damages**

Objections to any proof of Claim arising from the rejection of an Executory Contract or Unexpired Lease must be filed by the Claims Objection Bar Date.

**ARTICLE VIII. PROVISIONS GOVERNING DISTRIBUTIONS**

**(A) Distributions**

In accordance with section 4.01 of the Plan, the Reorganized Debtor shall make quarterly distributions to the Plan Administrator to pay the Allowed Class 4 Claims beginning ninety (90) days following the Effective Date, and each successive quarter for five (5) years thereafter or as soon as practicable thereafter, all amounts available for distribution according to the terms of this Plan. The Plan Administrator shall fund distributions to the holders of Allowed Class 4 Claims from (i) the funds received by the Plan Administrator from quarterly distributions from the Debtor beginning no later than ninety (90) days following the Effective Date, and continuing for a period of five (5) years, of thirty-five percent (35%) of their Allowed Claims under the Class 4 Note; (ii) net recoveries from Avoidance Actions and all other causes of actions assigned to the Plan Administrator herein; and (iii) a payment of \$50,000 by the Reorganized Debtor to the Plan Administrator within 30 days of the Effective Date.

**(B) Distributions on Account of Disputed Claims Once Allowed**

On each distribution date, the Reorganized Debtor and/or Plan Administrator will make all distributions on account of any Disputed Claim that has become an Allowed Claim.

**(C) Estimation of Claims**

Subject to section 5.02 of the Plan, the Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c) regardless of whether the Debtor or any other party in interest previously objected to such Claim, or whether the Bankruptcy Court has ruled on any such objection. If the Bankruptcy Court estimates any Claim, that estimated amount will constitute the Allowed amount of such Claim for voting on this Plan, but will not constitute a maximum limitation on such Claim for distribution purposes unless the parties agree to allow the estimation to serve as such a maximum.

**(D) Interest on Allowed Claims**

Unless otherwise specifically provided for or contemplated elsewhere in the Plan or Confirmation Order, or required by applicable bankruptcy law to render a Claim Unimpaired or otherwise, post-Petition Date interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

**(E) Setoff and Recoupment**

The Reorganized Debtor may set-off against any Allowed Claim (and distributions to be made thereto), the claims, rights and causes of action of any nature (regardless of whether such claims, rights, or causes of action are reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured) that the Debtor, the Estate, or The Reorganized Debtor may hold under applicable non-bankruptcy law (and notwithstanding any limitations or restrictions placed on such rights under the Bankruptcy Code) against the holder of such Allowed Claim or any recipient of any distribution in respect of an Allowed Claim.

**(F) Manner of Payments; Delivery of Distributions**

The Reorganized Debtor and/or Plan Administrator shall make all distributions under this Plan in Cash made by check drawn on a domestic bank or by wire transfer from a domestic bank. Subject to the provisions of Bankruptcy Rule 2002(g) and except as otherwise provided under this Plan, the Reorganized Debtor and/or Plan Administrator will make distributions to holders of Allowed Claims at each holder's address set forth on the Schedules filed with the Bankruptcy Court unless superseded by a different address set forth in a timely filed proof of Claim filed by the holder or if the Reorganized Debtor or Plan Administrator has been notified in writing of a change of address at the following address.

The Plan Administrator will make all distributions of Cash required under this Plan to holders of Allowed Class 4 Claims from time to time. Other than distributions on account of Allowed Class 4 Claims, which shall be made by the Plan Administrator, the Debtor will make all other distributions required under this Plan.

**ARTICLE IX. OTHER PLAN MATTERS**

**(A) Conditions Precedent to the Effective Date**

The following are conditions precedent to the Effective Date of this Plan: (a) the Bankruptcy Court has entered the Confirmation Order in a form reasonably acceptable to the Debtor and Committee; (b) the Confirmation Order becomes a Final Order; and (c) all of the other actions needed to be taken or documents needed to be executed or approved to implement this Plan (including but not limited to the Class 4 Note), have been taken, executed, or approved, including without limitation, the transfer of funds to the Plan Administrator. The Plan Proponents, in their sole discretion, may jointly waive any of the foregoing conditions and deem the Plan effective without their occurrence.

If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived, the Confirmation Order may be vacated by the Bankruptcy Court upon request by the Debtors or the Committee. If the Confirmation Order is vacated, the Plan shall be null and

void in all respects, and nothing contained in this Plan shall constitute a waiver or release of any Claims against the Debtor.

**(B) Retention of Jurisdiction**

From and after the Effective Date, and notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain exclusive jurisdiction over the Bankruptcy Case and all matters arising under, arising out of, or related to, the Bankruptcy Case, this Plan, and the Confirmation Order to the fullest extent permitted by law, including, but not limited to, jurisdiction to:

- (a) hear and determine motions, applications, adversary proceedings, and contested matters pending or commenced after the Effective Date;
- (b) hear and determine objections to Claims (whether filed before or after the Effective Date), or requests for estimation of any Claim, and to enter any order requiring the filing of proof of any Claim before a particular date;
- (c) estimate any Claim at any time, including, without limitation, during litigation concerning any objection to such Claim, including any pending appeal;
- (d) ensure that distributions to holders of Allowed Claims are accomplished as provided in this Plan;
- (e) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (f) issue or construe such orders or take any action as may be necessary for the implementation, execution, enforcement and consummation of this Plan and the Confirmation Order, and hear and determine disputes arising in connection with the foregoing;
- (g) hear and determine any applications to modify this Plan, to cure any defect or omission or to reconcile any inconsistency in this Plan, the Disclosure Statement, or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;
- (h) hear and determine all applications for Professional Fee Claims;
- (i) hear and determine other issues presented or arising under this Plan, including disputes among holders of Claims and arising under agreements, and the documents or instruments executed in connection with this Plan;

- (j) hear and determine any action concerning the recovery and liquidation of the Estate's Assets, wherever located, including without limitation, litigation to liquidate and recover the Estate's Assets or other actions seeking relief of any sort with respect to issues relating to or affecting Estate Assets;
- (k) hear and determine any action concerning the determination of Taxes, Tax refunds, Tax attributes, and Tax benefits and similar or related matters with respect to the Debtor or the Estate including, without limitation, matters concerning federal, state, and local Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (l) hearing and determine any disputes between the Plan Administrator and the Reorganized Debtor concerning the Class 4 Note;
- (m) hear and determine any other matters related hereto and not inconsistent with Chapter 11 of the Bankruptcy Code; and
- (n) enter the Final Decree.

**(C) Modification of the Plan**

The Plan Proponents, may alter, amend, or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and before the substantial consummation of this Plan, any party in interest in the Bankruptcy Case may, so long as the treatment of holders of Claims or Equity Interests under this Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and intentions of this Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

**(D) Revocation or Withdrawal of this Plan**

The Plan Proponents may revoke or withdraw this Plan at any time before the Confirmation Date. If the Debtor revokes or withdraws this Plan before the Confirmation Date, this Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by any Person or to prejudice in any manner the rights of any Person in any further proceeding.

The Equity Interest Holders and the Related Released Parties reserve their rights, in their sole discretion, to withhold the funding of this Plan prior to the Confirmation Hearing based on balloting results.

## **ARTICLE X. MISCELLANEOUS PROVISIONS OF THE PLAN**

### **(A) Exemption from Transfer Taxes Under Section 1146(a)**

All transfers of the Estate's Assets made pursuant to the terms of this Plan, to the fullest extent permitted by law, shall be exempt from all stamp, transfer, and similar Taxes within the meaning of section 1146(c) of the Bankruptcy Code. The Confirmation Order shall direct the appropriate state or local government officials or agents to forego the collection of any such Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Tax or governmental assessment.

### **(B) Nonconsensual Confirmation**

If any Impaired Class of Claims entitled to vote on the Plan should not accept the Plan by the requisite majorities provided in section 1126(c) of the Bankruptcy Code, the Debtor reserves the right to amend the Plan in accordance with section 1127 of the Bankruptcy Code or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code.

### **(C) Releases of Liens**

Except as otherwise provided in this Plan or in any contract, instrument, or other document created pursuant to this Plan, on the Effective Date, all pre-Petition Date Liens against Assets of the Estate, except those Liens of holders of Class 2 Secured Creditor Claims identified in section 2.06(2), shall be fully released and discharged and all of the right, title, and Debtor's interest in such Assets shall be distributed in accordance with this Plan.

### **(D) Governing Law**

Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal or state laws are applicable, the laws of the Commonwealth of Virginia shall govern the construction, implementation, and enforcement of the Plan and all rights and obligations arising under the Plan, without giving effect to the principles of conflicts of law.

### **(E) Notices and Distributions**

On and after the Effective Date, all notices, requests and distributions to a holder of a Claim or Equity Interest shall be sent to the last known address of (i) the holder or its attorney of record as reflected in the holder's proof of Claim or Administrative Claim filed by or on behalf of such holder, or (ii) if there is no such evidence of a last known address, to the last known address of the holder according to the books and records of the Debtor. Any holder of a Claim or Equity Interest may designate another address by providing Reorganized Debtor written notice of

such address, which notice will be effective upon receipt by Reorganized Debtor of the written designation.

**(F) Other Documents and Actions**

The Reorganized Debtor may execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and take such other action as is reasonable, necessary, or appropriate to effectuate the transactions provided for in the Plan, without any further action by or approval of the Bankruptcy Court. At least seven (7) days prior to the Confirmation Date, the Debtor shall file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**ARTICLE XI. CONFIRMATION OF THE PLAN**

The following is a brief summary of the provisions of the Bankruptcy Code respecting acceptance and confirmation of a plan of reorganization. Holders of Claims are encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys.

**(A) Acceptance of the Plan**

This Disclosure Statement is provided in connection with the solicitation of acceptances of the Plan. The Bankruptcy Code defines acceptance of a plan of reorganization by a Class of Impaired Claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the Allowed Claims of that Class that have actually voted to accept or reject a plan.

If one or more Impaired Classes rejects the Plan, the Debtor may, in its discretion, nevertheless seek confirmation of the Plan if the Debtor believes that it will be able to meet the requirements of section 1129(b) of the Bankruptcy Code for confirmation of the Plan (which are set forth below), despite lack of acceptance by all Impaired Classes.

**(B) Confirmation**

**(1) Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. Notice of the Confirmation Hearing of the Plan will be provided to all known holders of Claims or their representatives. The Bankruptcy Court has scheduled a hearing on Confirmation of the Plan at 9:00 a.m. (Prevailing Eastern Time), on \_\_\_\_\_, before the Honorable Keith L. Phillips, United States Bankruptcy Judge, United States Bankruptcy Court, 701 East Broad Street, Suite 5000, Richmond, Virginia 23219. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court

without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Pursuant to the Conditional Approval Order, any objections to confirmation of the Plan, must be in writing, must conform with the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, must set forth the name of the objecting party, the nature and amount of Claims held or asserted by the objecting party against the Debtor's Estate or property, and the basis for the objection and the specific grounds in support thereof. Such objections must be filed with the Clerk of the Bankruptcy Court, 701 East Broad Street, Suite 4000, Richmond, Virginia 23219, together with proof of service thereof, and served upon: (i) counsel to the Debtor, Christopher L. Perkins, Esquire, LeClairRyan, P.O. Box 2499, Richmond, VA 23218; (ii) counsel to the Committee, Gary H. Leibowitz and G. David Dean, Cole Schotz P.C., 300 East Lombard Street, Suite 1450, Baltimore, MD 21202; (iii) counsel for SunTrust, William H. Schwarzschild, III, Williams Mullen, 200 South 10<sup>th</sup> Street, Suite 1600, Richmond, Virginia, 23219; and (iv) Robert B. Van Arsdale, Esquire, Office of the United States Trustee, 701 East Broad Street, Suite 4000, Richmond, VA 23219, so as to be **ACTUALLY RECEIVED** on or before 5:00 p.m. (Prevailing Eastern Time), on \_\_\_\_\_, unless such deadline is otherwise extended by the Debtor in consultation with the Committee. **PURSUANT TO ORDER OF THE BANKRUPTCY COURT, UNLESS A WRITTEN OBJECTION TO CONFIRMATION IS DULY AND TIMELY FILED AND SERVED, THE BANKRUPTCY COURT IS NOT REQUIRED TO CONSIDER SUCH OBJECTION.**

## **(2) Confirmation Requirements Under the Bankruptcy Code**

In order for a plan of reorganization to be confirmed, the Bankruptcy Code requires, among other things, that such plan be proposed in good faith, that the proponent of such plan disclose specified information concerning payments made or promised to insiders and that such plan comply with the applicable provisions of chapter 11 of the Bankruptcy Code. Section 1129(a) of the Bankruptcy Code also imposes requirements that each dissenting member of a class receive at least as much under the plan as it would receive in a chapter 7 liquidation of the debtor, that at least one class of impaired claims has accepted the plan, that confirmation of the plan is not likely to be followed by the need for further financial reorganization and that the plan "does not discriminate unfairly against" and is "fair and equitable" with respect to each class of claims that is impaired under the plan and fails to accept the plan by the required majorities. The Bankruptcy Court will confirm a plan only if it finds that all of the applicable requirements enumerated in section 1129(a) of the Bankruptcy Code have been met or, if all of the requirements of section 1129(a) other than the requirements of section 1129(a)(8) have been met (*i.e.*, that all impaired classes have accepted the plan), that all of the applicable requirements enumerated in section 1129(b) of the Bankruptcy Code have been met.

In particular, section 1129(a) of the Bankruptcy Code provides that:

- i) The plan must comply with the applicable provisions of the Bankruptcy Code.

- ii) The proponent of the plan must comply with the applicable provisions of the Bankruptcy Code.
- iii) The plan must be proposed in good faith and not by any means forbidden by law.
- iv) Any payment made or to be made by the proponent, by the debtor or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, must have been approved by, or be subject to the approval of, the court as reasonable.
- v) The proponent of the plan must disclose the identity and affiliations 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; and
  - a. the appointment to, or continuance in, such office of such individual must be consistent with the interests of creditors and equity security holders and with public policy; and
  - b. the proponent of the plan must disclose the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.
- vi) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor must have approved any rate change provided for in the plan, or such rate change must be expressly conditioned on such approval.
- vii) With respect to each impaired class of claims:
  - a. each holder of a claim of such class
    - i. must have accepted the plan; or
    - ii. must receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date; or
  - b. if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class must receive or retain under the



plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claim.

- viii) With respect to each class of claims:
  - a. such class must have accepted the plan; or
  - b. such class must not be impaired under the plan.
- ix) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan must provide that
  - a. with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
  - b. with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6) and 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive
    - i. if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
    - ii. if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and
  - c. with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim must receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.
- x) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan must have accepted the plan, determined without including any acceptance of the plan by any insider.
- xi) Confirmation of the plan must not be 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.

- xii) All fees payable under section 1930 of Title 28, as determined by the court at the hearing on confirmation of the plan, must have been paid or the plan must provide for the payment of all such fees on the effective date of the plan.
- xiii) The plan must provide for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

THE DEBTOR BELIEVES THAT THE PLAN SATISFIES OR WILL SATISFY, AS OF THE CONFIRMATION DATE, ALL OF THE REQUIREMENTS FOR CONFIRMATION.

**(C) Satisfaction of Certain Conditions Precedent to Confirmation Under the Bankruptcy Code**

**(1) Acceptance by Impaired Classes**

By this Disclosure Statement, the Debtor is seeking the affirmative vote of each Impaired Class of Claims under the Plan that is proposed to receive a distribution under the Plan (i.e., Classes 2 and 4). Pursuant to section 1126(f) of the Bankruptcy Code, a Class that is not Impaired under the Plan will be conclusively presumed to have accepted the Plan (i.e., Classes 1 and 3 under the Plan); solicitation of acceptances with respect to such Class is not required.

Pursuant to section 1124 of the Bankruptcy Code, a Class is Impaired unless the Plan (a) leaves unaltered the legal, equitable and contractual rights to which the Claim entitles the holder thereof, or (b) (i) cures any default (other than defaults resulting from the breach of an insolvency or financial condition provision), (ii) reinstates the maturity of such Claim, (iii) compensates the holder of such Claim for any damages incurred as a result of any reasonable reliance by such holder on any contractual provision or applicable law entitling such holder to demand or receive accelerated payments after the occurrence of a default and (iv) does not otherwise alter the legal, equitable or contractual rights to which the holder of such Claim is entitled.

Pursuant to section 1126(c) of the Bankruptcy Code, a Class of Impaired Claims has accepted a plan of reorganization when such plan has been accepted by Creditors (other than an Entity designated under section 1126(e) of the Bankruptcy Code) that hold at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class held by Creditors (other than any Entity designated under section 1126(e) of the Bankruptcy Code) that have actually voted to accept or reject the Plan. Section 1126(e) of the Bankruptcy Code allows the Bankruptcy Court to designate the votes of any party that did not vote in good faith or whose vote was not solicited or procured in good faith or in accordance with the Bankruptcy Code. Holders of Claims who fail to vote are not counted as either accepting or rejecting the Plan.

## **(2) Best Interests of Claim Holders**

### **i) Generally**

Even if a plan is accepted by each Class of Claim holders, the Bankruptcy Code requires a bankruptcy court to determine that the plan is in the best interests of all Claim holders, individually, that are Impaired by the plan and have voted to reject the plan. Specifically, section 1129(a)(7) of the Bankruptcy Code requires, with respect to each Impaired Class, that each holder of an Allowed Claim in such Class either (a) has accepted the plan or (b) will receive or retain under the plan on account of such Claim property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on the effective date. This is the so-called “best interests test.” This test considers, hypothetically, the fair salable value of the debtor’s Assets through liquidation in a chapter 7 bankruptcy proceeding and the costs that would be incurred and the additional liabilities that would arise in such proceeding. The hypothetical chapter 7 return to Creditors is then calculated, giving effect to Secured Claims, distribution priorities established by the Bankruptcy Code that apply in a chapter 7 proceeding and subordination agreements.

The first step in meeting this test is to determine the dollar amount that would be generated from the liquidation of the Debtor’s Assets and properties in the context of a chapter 7 liquidation case. The total Cash available would be the sum of the proceeds (net of transaction costs) from the disposition of the Debtor’s Assets and the Cash held by the Debtor at the time of the commencement of the chapter 7 case. The next step would be to reduce that total by the amount of any Claims secured by such Assets, the costs and expenses of the liquidation and such additional Administrative Expense Claims and priority Claims that may result from the termination of the Debtor’s business and the use of chapter 7 for the purposes of liquidation. Next, any remaining Cash would be allocated to Creditors in strict priority in accordance with section 726 of the Bankruptcy Code. Finally, the present value of such allocations (taking into account the time necessary to accomplish the liquidation) would be compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The Debtor’s costs of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those that would be payable to attorneys and other professionals that such a trustee would engage, plus any unpaid expenses incurred by the Debtor during its chapter 11 case and allowed in the chapter 7 case. These expenses could include compensation for attorneys, financial advisors, appraisers, accountants and other professionals, and costs and expenses of members of the statutory committee of unsecured creditors appointed by the United States Trustee pursuant to section 1102 of the Bankruptcy Code and any other committee so appointed. In addition, Claims would arise by reason of the breach or rejection of obligations incurred and executory contracts entered into by the Debtor both prior to, and during the pendency of, the chapter 11 case, which would either take precedence (in the case of post-petition obligations) or dilute the recoveries available for unsecured Creditors.

The foregoing types of Claims, costs, expenses and fees and such other Claims that may arise in a liquidation case or result from any pending chapter 11 case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-chapter 11 priority and unsecured Claims.

As more fully described in Article V B. hereof, entitled “Treatment of Classified Claims and Equity Interests,” Claims in Classes 2 and 4 of the Plan are Impaired and either (i) the holders of such Claims will receive partial distributions under the Plan and/or (ii) the legal, equitable and contractual rights of the holders of such Claims will be altered. Therefore, if any holder of a Claim in any such Class votes to reject the Plan, the “best interests test” must be satisfied with respect to such Class. To determine if the Plan is in the best interests of holders of such Claims, it is necessary to compare the value of distributions offered to such holders of Claims under the Plan with the value of distributions to such holders from proceeds of a hypothetical chapter 7 liquidation, less the estimated costs and expenses attributable thereto. **THE DEBTOR BELIEVES THAT THE HOLDERS OF CLASS 2 AND 4 CLAIMS WILL RECEIVE GREATER RECOVERIES UNDER THE PLAN THAN IN A CHAPTER 7 LIQUIDATION.**

ii) Liquidation Valuation of Debtor

The Debtor believes that there are no net Cash proceeds available for unsecured Creditors in a hypothetical chapter 7 liquidation. A liquidation analysis as of June 14, 2016 for the Debtor is attached hereto as Exhibit B. Underlying this opinion is a number of estimates and assumptions that are inherently subject to significant uncertainties.

The Debtor’s Liquidation Analysis assumes that its Assets would be broken up and sold by a chapter 7 trustee or its duly appointed advisors, brokers or liquidators, irrespective of their current use. The Debtor’s Assets comprise personal property, including without limitation, intangible property such as the Membership Agreements and permits, as well as tangible property such as furniture, fixtures and equipment utilized in the operation of the Debtor’s business. Some of the Debtor’s Assets when broken up may not be able to be sold or may realize minimal proceeds. Additionally, pursuant to the DIP Financing Order, Loch Levan holds a post-petition first-priority lien on certain of the Debtor’s post-petition assets, which would significantly reduce the Assets available for distribution to Creditors in a liquidation.

Another material factor is that the Debtor does not own the real estate and improvements used in its operations, which is owned by Loch Levan and utilized by the Debtor pursuant to the Loch Levan Lease. Additionally, the costs associated with a chapter 7 liquidation of the Debtor, including the fees that would be associated with a chapter 7 trustee, would reduce potential Cash available for distribution to Creditors.

iii) Application of the Best Interests Test

As indicated above, to determine if the Plan is in the best interests of the holders of Impaired Claims, i.e., holders of Allowed Claims in Classes 2 and 4, it is necessary to compare the value of distributions offered to such holders of Claims under the Plan with the value of distributions to such holders from the net proceeds of a hypothetical chapter 7 liquidation.

- a) ***Class 3 Allowed Secured Equipment Claims.*** Pursuant to Section 2.06(2) of the Plan, Class 2 consists of the Secured Claims. Under the Plan, each holder of a Secured Equipment Claim on account of a Lien will receive installment payments equal to those in the original debt instruments between each holder of a Secured Equipment Claim and the Debtor. Arrearages existing as of the Petition Date will be paid in full at the end of the contract term. The Debtor estimates a one hundred percent (100%) recovery by holders of Secured Claims. By contrast, the holders of Secured Claims likely would receive a lower percentage return in a chapter 7 liquidation depending on the value of the collateral in which the holder of the Secured Equipment Claim has a Lien.
- b) ***Class 4 General Unsecured Claims.*** Pursuant to Section 2.06(4) of the Plan, holders of General Unsecured Claims will annual distributions from the Plan Administrator that will result in a recovery of at least 35%. The holders of Allowed Class 4 Claims would receive no distribution in a chapter 7 liquidation.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to Creditors in the Chapter 11 case, including (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (b) the erosion in value of the Debtor's Assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail, (c) the adverse effects on the marketability of the Debtor's Assets resulting from the departure of key employees, (d) substantial increases in Claims that would be satisfied on a priority basis or on a priority with Creditors in this Chapter 11 case and (e) the substantial time that would elapse to complete the liquidation process and, therefore, before which Creditors would receive any distributions with respect to their Claims, the Debtor believes that confirmation of the Plan will provide each Creditor with a recovery that is not less, and, in most cases, likely considerably greater, than the distribution received in a chapter 7 liquidation proceeding. Therefore, the Debtor believes that confirmation of the Plan is in the best interests of its Creditors, satisfying the requirements of section 1129(a)(7) of the Bankruptcy Code.

**(D) Feasibility of the Plan**

Pursuant to section 1129(a)(11) of the Bankruptcy Code, among other things, the Bankruptcy Court must determine that confirmation of the Plan of reorganization is not likely to be followed by the liquidation or need for further financial reorganization of the Debtor or any successors to the Debtor under the Plan. The Debtor believes that the Plan satisfies this requirement.

**(E) Confirmation Without Acceptance By All Impaired Classes**

As to any Class that votes to reject the Plan, the Debtor is seeking confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code, referred to as the “cramdown” provision, provides that the Bankruptcy Court may still confirm a 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.” In general, a plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting Class is treated equally with respect to other Classes of equal rank and is treated more favorably than Classes of junior rank.

Section 1129(b)(2)(B) of the Bankruptcy Code provides that with respect to a non-accepting class of Impaired unsecured Claims, “fair and equitable” includes the requirement that: (a) the plan provide that each holder of a Claim in such Class receives or retains property of a value as of the effective date equal to the allowed amount of its claim; or (b) the holders of Claims in Classes that are junior to the Claims of the dissenting Class will not receive or retain any property under the plan on account of such junior Claim.

The Debtor believes that the Plan does not discriminate unfairly against, and is fair and equitable as to, each Impaired Class under the Plan because the Creditors in each such Class are treated equally with respect to other Classes of equal rank and is treated more favorably than junior Classes.

**ARTICLE XII. ALTERNATIVES TO THE PLAN**

The Debtor believes that the Plan is the optimal means of providing maximum recoveries to the Debtor’s Creditors. Alternatives to the Plan include: (1) the Debtor selling its Assets and the proceeds thereof going to its Creditors holding Administrative Claims, likely yielding little or no recovery for Creditors in Classes 2-4 or (2) a liquidation of the Debtor’s assets under Chapter 7 of the Bankruptcy Code.

As more fully described herein in ARTICLE XI(C)(2) hereof, entitled “Best Interests of Claim Holders,” the Debtor has determined that confirmation of the Plan will provide each Creditor with a recovery that is greater than or equal to that which it would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code. Therefore, the Debtor has

concluded that confirmation of the Plan, rather than a chapter 7 liquidation of the Debtor, is in the best interests of its Creditors.

Based upon consultation with the Debtor's professionals and the evaluation and business judgment of the Debtor's management, the Debtor believes that no merger or sale opportunities for some or all of the Debtor's Assets are available that would result in greater recoveries for the Debtor's Creditors than the distributions provided for in the Plan.

Similarly, the Debtor believes that confirmation of the Plan, as opposed to some other plan of reorganization formulated over time, provides the greatest and most certain recoveries to the Debtor's Creditors within a reasonable time period. If the Plan is not confirmed, the Debtor (or other parties-in-interest) could attempt to formulate an alternative Chapter 11 plan; however, such plan would be hampered significantly by the fact that the Debtor does not own the Facilities and the Assets of the Debtor are insufficient to operate the Debtor's business without the Facilities. Any attempt to formulate an alternative Chapter 11 plan will necessarily delay Creditors' receipt of any distributions from the Debtor, will result in the incurrence of ongoing substantial administrative expenses during the period of delay, and could result in the deterioration of the Debtor's business caused by a prolonged stay in Chapter 11. Accordingly, the Debtor believes that the Plan will enable Creditors to realize the greatest possible recovery on their Claims with the least delay and expense.

In general, following careful and thorough consideration and evaluation of the alternatives, the Debtor has concluded that the Plan provides the greatest and most certain recoveries to Creditors on a more expeditious timetable, and in a manner that minimizes certain risks in any other course of action available in this Bankruptcy Case.

### **ARTICLE XIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE FOLLOWING IS NOT INTENDED TO BE A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, AND LOCAL TAX CONSEQUENCES OF THE PLAN FOR HOLDERS OF CLAIMS AND INTERESTS ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR AN INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OR HER OWN INDIVIDUAL TAX ADVISOR REGARDING THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO THAT HOLDER.

A holder of an Allowed Claim will generally recognize ordinary income to the extent that the amount of Cash or property received (or to be received) under the Plan is attributable to interest that accrued on the Claim but was not previously included in income by the holder of the Allowed Claim. A holder of an Allowed Claim or Allowed Equity Interest will generally recognize gain or loss equal to the difference between the holder's adjusted basis in the

Claim or the Equity Interest and the amount realized by the holder upon consummation of the Plan that is not attributable to accrued but unpaid interest. The amount realized will equal the sum of Cash and fair market value of other consideration received (or to be received).

The character of any gain or loss that is recognized will depend upon a number of factors, including the status of the holder, the nature of the Claim or Equity Interest in its hands, whether the Claim was purchased at a discount, whether and to what extent the Creditor has previously claimed a bad debt deduction with respect to the Claim, and the holder's holding period for the Claim or Equity Interest. If the Claim or Equity Interest possessed by the holder is a capital asset, the gain or loss realized will be generally characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the holder is a non-corporate taxpayer and held such Claim or Equity Interest for longer than one year or short-term capital gain or loss if the holder held such Claim or Equity Interest for less than one year. Holders should consult with their own tax advisors as to the tax character of any gain or loss with respect to amounts received under the Plan and the application of any special limitations on the deduction of any loss that is realized.

A holder of an Allowed Claim or Allowed Equity Interest who receives, in respect of its Claim or Equity Interest, an amount that is less than its tax basis in such Claim or Interest may be entitled to a bad debt deduction or a worthless securities deduction. However, whether a holder of Claims or Equity Interests will recognize a bad debt deduction, a deduction for worthless securities or any other tax treatment will depend upon facts and circumstances that are specific to the nature of the holder and its Claims or Equity Interests. Accordingly, holders of Claims and Equity Interests should consult their own tax advisors.

The Reorganized Debtor will withhold distributions provided under the Plan and required by law to be withheld and will comply with all applicable reporting requirements of the Tax Code. Under the Tax Code, interest, dividends, and other "reportable payments" may under certain circumstances be subject to "backup withholding." Backup withholding generally applies if the holder (i) fails to furnish his social security number or other taxpayer identification number ("TIN"), (ii) furnishes an incorrect TIN, (iii) fails to report interest or dividends, or (iv) under certain circumstances fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct TIN and the holder is not subject to backup withholding.

#### **ARTICLE XIV. RECOMMENDATION AND CONCLUSION**

The Debtor, the Committee, and their professional advisors have analyzed different scenarios and believe that the Plan will provide for a larger distribution to holders of Allowed Claims than would otherwise result if an alternative restructuring plan were proposed or the Assets of the Debtor were liquidated. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in potentially smaller distributions to the holders of Allowed Claims. Accordingly, the Debtor recommends confirmation of the Plan and urges all holders of Class 2 and 4 Claims to vote to



accept the Plan, and to evidence such acceptance by returning their Ballots so that they will be received by no later than the Voting Deadline.

Submitted this 9<sup>th</sup> day of August 2016:

DOMINION PAVING & SEALING, INC.

/s/ Christopher L. Perkins

Counsel

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LeClairRyan, A Professional Corporation  
919 East Main Street, 24<sup>th</sup> Floor  
Richmond, VA 23219  
(804) 783-7550

*Counsel for Debtor*

**EXHIBIT A**  
**(Plan of Reorganization)**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:	)	
	)	Chapter 11
	)	
DOMINION PAVING & SEALING, INC.,	)	Case No. 15-32966
	)	
Debtor.	)	
	)	

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**JOINT CHAPTER 11 PLAN OF REORGANIZATION**

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*Counsel for the Official Committee of Unsecured Creditors*

**TABLE OF CONTENTS**

*Plan Summary* ..... 1

**ARTICLE I. DEFINITIONS AND INTERPRETATION** ..... **2**

    1.01 *Rules of Interpretation and Time Computation* ..... 2

    1.02 *Computation of Time* ..... 2

    1.03 *Defined Terms* ..... 2

**ARTICLE II. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS** ..... **10**

    2.01 *General Overview* ..... 10

    2.02 *Unclassified Claims* ..... 11

        (1) *Administrative Claims* ..... 11

        (2) *Bankruptcy Court Approval of Professional Fees Required* ..... 11

        (3) *DIP Financing Agreement Administrative Claim* ..... 11

        (4) *Cash Collateral Administrative Claim* ..... 12

    2.03 *Payment of Administrative Claims in General* ..... 12

    2.04 *Payment of Priority Tax Claims* ..... 12

    2.05 *U.S. Trustee Fees under 28 U.S.C. § 1930* ..... 14

    2.06 *Summary of Classification and Treatment of Claims and Equity Interests* ..... 14

        (1) *Class 1 – Other Priority Claims* ..... 15

        (2) *Class 2 – Secured Claims* ..... 15

        (3) *Class 3-Equipment Lessors (TCF and GE Capital)* ..... 16

        (4) *Class 4— General Unsecured Claims* ..... 17

        (5) *Class 5—Equity Interests* ..... 17

**ACCEPTANCE OR REJECTION OF THIS PLAN** ..... **17**

    2.07 *Classes and Claims Entitled to Vote* ..... 17

    2.08 *Nonconsensual Confirmation (cramdown)* ..... 17

**ARTICLE III. EFFECTS OF CONFIRMATION** ..... **18**

    3.01 *Effect of Confirmation* ..... 18

    3.02 *Revesting of Estate Assets* ..... 18

    3.03 *Discharge* ..... 18

    3.04 *Authority to Effectuate this Plan* ..... 18

    3.05 *Injunction against Interference with Plan* ..... 18

    3.06 *Exculpation and Limitation of Liability* ..... 18

    3.07 *Injunction* ..... 19

    3.08 *Post-Confirmation Liability of Debtor* ..... 19

    3.09 *Indemnification* ..... 20

**ARTICLE IV. MEANS OF IMPLEMENTATION OF THIS PLAN** ..... **20**

    4.01 *Corporate Reorganization* ..... 20

    4.02 *Plan Funding and Sources of Cash* ..... 20

        (1) *Distributions to Allowed General Unsecured Claims:* ..... 21

        (2) *Plan Administrator’s Post-Effective Date Role:* ..... 21

    4.03 *Contingent Claims* ..... 22

    4.04 *Equity Interests* ..... 22

    4.05 *Surplus Equipment Sales* ..... **Error! Bookmark not defined.**

    4.06 *Avoidance Actions and Other Actions* ..... 23

    4.07 *Operations of the Debtor Between the Confirmation Date and Effective Date* ..... 23

    4.08 *Creditors’ Committee* ..... 23

    4.09 *Plan Completion* ..... 24

<b>ARTICLE V. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....</b>	<b>24</b>
5.01 <i>Claims Based on Assumption of Executory Contracts and Unexpired Leases</i> .....	24
5.02 <i>The GE Capital Leases</i> .....	24
5.03 <i>Claims for Rejection Damages</i> .....	25
5.04 <i>Objections to Proofs of Claim Based on Rejection Damages</i> .....	25
<b>ARTICLE VI. RESOLUTION PROCEDURES FOR DISPUTED CLAIMS .....</b>	<b>25</b>
6.01 <i>Objections to Claims</i> .....	25
6.02 <i>Authority to Prosecute Objections</i> .....	25
6.03 <i>No Distributions on Disputed or Disallowed Claims</i> .....	26
6.04 <i>Late Claims Void</i> .....	26
<b>ARTICLE VII. PROVISIONS GOVERNING DISTRIBUTIONS .....</b>	<b>26</b>
7.01 <i>Distributions</i> .....	26
7.02 <i>Estimation of Claims</i> .....	26
7.03 <i>Interest on Allowed Claims</i> .....	26
7.04 <i>Setoff and Recoupment</i> .....	27
7.05 <i>Manner of Payments; Delivery of Distributions</i> .....	27
7.06 <i>Undeliverable Distributions</i> .....	27
7.07 <i>Uncashed Checks</i> .....	27
7.08 <i>Fractional Amounts</i> .....	28
7.09 <i>Compliance with Tax Requirements</i> .....	28
<b>ARTICLE VIII. OTHER PLAN MATTERS.....</b>	<b>28</b>
8.01 <i>Conditions Precedent to the Effective Date</i> .....	28
8.02 <i>Retention of Jurisdiction</i> .....	29
8.03 <i>Modification of this Plan</i> .....	30
8.04 <i>Revocation or Withdrawal of this Plan</i> .....	30
<b>ARTICLE IX. MISCELLANEOUS PROVISIONS.....</b>	<b>31</b>
9.01 <i>Exemption from Transfer Taxes</i> .....	31
9.02 <i>Releases of Liens</i> .....	31
9.03 <i>Closing of the Bankruptcy Case</i> .....	31
9.04 <i>No Admission</i> .....	31
9.05 <i>Controlling Documents</i> .....	31
9.06 <i>Governing Law</i> .....	32
9.07 <i>Severability</i> .....	32
9.08 <i>Continuing Viability of Other Orders/Agreements</i> .....	32
9.09 <i>Notices and Distributions</i> .....	32
9.10 <i>Binding Effect</i> .....	33
9.11 <i>Other Documents and Actions</i> .....	33

## INTRODUCTION

Dominion Paving & Sealing, Inc. (the “**Debtor**”), and the Official Committee of Unsecured Creditors appointed in the case (the “**Committee**”), jointly propose the following Joint Chapter 11 Plan of Reorganization (this “**Plan**”) to resolve the outstanding claims against and equity interests in the Debtor. The Debtor and Committee (together, the “**Plan Proponents**”) have the right to modify this Plan before or after confirmation and before consummation of this Plan, but only in accordance with the Bankruptcy Code. All claims against and interests in the Debtor, absolute or contingent, including all claims arising from the rejection of executory contracts and/or unexpired leases, whether resulting in an Allowed Claim,<sup>1</sup> and all holders of all claims and Equity Interests shall be bound by the provisions of this Plan.

This Plan is structured to ensure the maximum possible return to Creditors while also ensuring the continuation of the Debtor’s business and the strengthening of its finances, which will serve as a source of payments to Creditors on their Claims.

Reference is made to the Disclosure Statement, filed contemporaneously with this Plan, for a summary and analysis of this Plan. There also may be other agreements and documents, which are or will be filed with the Bankruptcy Court, that are referenced in this Plan or the Disclosure Statement and that will be available for review prior to any vote on this Plan.

### *Plan Summary*

This Plan is designed to restructure the Debtor’s secured and unsecured debt, provide distributions to Creditors, resolve certain issues with the IRS and DOL, and establish a financially strong business aided by (i) revised payment terms under new loan documents with the Debtor’s secured creditors; and (ii) improved operations and business processes.

Holders of Allowed Secured Claims will be paid pursuant to the terms of this Plan and any applicable loan documents. Holders of Allowed Priority Tax Claims, Other Priority Claims, and General Unsecured Claims will be paid from cash provided by the combination of proceeds from the Surplus Equipment Sales, funds generated by operations, as well as from the proceeds of Avoidance Actions and other claims which are property of the estate.

This Plan is designed to provide a meaningful recovery to holders of General Unsecured Claims over time, while ensuring the future financial health of the business and continued employment of its employees. The Debtor and the Committee believe that this Plan is in the best interests of its Creditors, and that all Creditors should vote in favor of this Plan.

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<sup>1</sup> Terms not defined herein shall have the meaning ascribed to them in Section 1.03 of this Plan.

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

### ***1.01 Rules of Interpretation and Time Computation***

For purposes of this Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (ii) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in this Plan to an existing document or Exhibit filed or to be filed means such document or Exhibit, as it may have been or may be amended, modified, or supplemented pursuant to this Plan or Confirmation Order; (iv) any reference to an Entity as a holder of a Claim or Interest includes that Entity's successors and assigns; (v) all references in this Plan to Sections, Articles, and Exhibits are references to Sections, Articles, and Exhibits of or to this Plan; (vi) the words "herein," "hereunder," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (viii) subject to the provisions of any contract, instrument, release, or other agreement or document entered into or delivered in connection with this Plan, the rights and obligations arising under this Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (ix) the rules of construction set forth in section 102 of the Bankruptcy Code will apply.

### ***1.02 Computation of Time***

The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed by this Plan.

### ***1.03 Defined Terms***

As used in this Plan, terms with an initial capital letter not required by standard capitalization rules are defined terms, and each such term not parenthetically or otherwise defined herein shall have the meaning ascribed to it below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**"Administrative Claim"** means a Claim for costs and expenses of administration of the Bankruptcy Case under sections 503, 507(a)(2), or 507(b) of the Bankruptcy Code, including all amounts owed under the DIP Financing Agreement, compensation for legal services and reimbursement of expenses awarded or allowed under Sections 330(a) or 331 of the Bankruptcy Code, including Professional Fee Claims, and all fees and costs assessed against the Estate pursuant to 28 U.S.C. § 1930.

**“Administrative Claim Bar Date”** means the date by which all requests for payment of Administrative Claims must be filed with the Bankruptcy Court, which shall be the date that is 30 days from the Effective Date, subject to further extension by an order of the Bankruptcy Court.

**“Allowed”** means, except as otherwise provided herein: (a) a Claim of any kind that has been allowed by a Final Order; (b) a Claim of any kind that is either not Disputed or otherwise subject to an objection as of the Claims Objection Bar Date; (c) a Claim that has been scheduled by the Debtor in its Schedules other than those scheduled as disputed, contingent (except as identified in section 5.02 herein) or unliquidated and is not Disputed or is otherwise subject to an objection as of the Claims Objection Bar Date; (d) a Claim that is allowed: (i) in any stipulation of amount and nature of Claim executed before the entry of the Confirmation Order and approved by the Bankruptcy Court; (ii) in any stipulation with the Debtor of the amount and nature of Claim or Equity Interest executed on or after the entry of the Confirmation Order and which is approved by the Committee (if prior to the Effective Date) or the Plan Administrator (if after the Effective Date); or (iii) in or pursuant to any contract, instrument, or other agreement entered into or assumed in connection herewith; (e) a Claim that is allowed pursuant to the terms hereof; or (f) a Disputed Claim as to which a proof of Claim was timely filed and as to which no objection has been filed as of the Claims Objection Bar Date.

**“Ally”** means Ally Financial, Inc. f/k/a GMAC, Inc.

**“Ally Collateral”** means those vehicles identified in Retail Installment Note/Security Agreements dated June 18, 2013, June 19, 2013, July 19, 2013, October 17, 2013, and March 31, 2014, between the Debtor and Ally.

**“Assets”** means all property of the Debtor and the Estate within the meaning of section 541 of the Bankruptcy Code of any nature whatsoever, including, without limitation, all property, real and personal, tangible and intangible, wherever situated, as such property exists on the Effective Date or thereafter.

**“Atkinson”** means Jackie Atkinson.

**“Atkinson Claim”** means proof of Claim number 66-1 filed in this Bankruptcy Case.

**“Avoidance Actions”** means any and all actions arising under or actionable by the Estate pursuant Bankruptcy Code Sections 544, 545, 547, 548, 549, 550, and/or 551 of the Bankruptcy Code, and expressly includes, but is not limited to, such actions against (i) any and all persons and entities listed on the Debtors’ Statement of Financial Affairs, Number 3, filed in this case, and (ii) Johnston.

**“Ballot”** means the form or forms distributed to each holder of an Impaired Claim entitled to vote on this Plan on which the holder indicates acceptance or rejection of this Plan.



**“Bankruptcy Case”** means the bankruptcy case filed by the Debtor in the Bankruptcy Court on the Petition Date, enumerated as Case No. 15-32966.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Eastern District of Virginia.

**“Bankruptcy Code”** means title 11 of the United States Code.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as amended and promulgated under section 2075 of title 28 of the United States Code, together with the local bankruptcy rules for the Bankruptcy Court as now in effect or as the same may from time to time hereafter be amended.

**“Bar Date”** means the deadline established by the Bankruptcy Court to file a proof of Claim, which deadline was December 7, 2015, for all governmental units, and October 14, 2015, for all other Creditors.

**“Business Day”** means any day which is not a Saturday, Sunday, or “legal holiday” within the meaning of Bankruptcy Rule 9006(a).

**“Cash”** means the legal tender of the United States of America.

**“Causes of Action”** means any and all claims, actions, adversary proceedings (other than Avoidance Actions), causes of action, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments and demands whatsoever, whether pending or not pending, known or unknown, whether or not scheduled as an asset of the Debtor, disputed or undisputed, legal or equitable, absolute or contingent, that are already pending or that have accrued or are accruing to the Debtor or the Estate, or that may be pursued derivatively by or on behalf of the Debtor or the Estate.

**“Claim”** means a “claim,” as defined in section 101(5) of the Bankruptcy Code.

**“Claims Objection Bar Date”** means the date by which the Debtor, Plan Administrator, or any other party in interest must object to a Claim, proof of which was timely filed by the applicable Bar Date, which date shall be the latest of: (a) **90 days after the Effective Date**; or (b) such other periods of limitation as may be specifically fixed by this Plan, the Confirmation Order, or a Final Order; provided, however, that the Debtor and/or Plan Administrator may seek extensions of this date from the Bankruptcy Court.

**“Class”** means a class of Claims or Equity Interests pursuant to section 1122(a) of the Bankruptcy Code, as described in Article II herein.

**“Class 4 Assets”** means those Assets identified in article 4.02 of this Plan (and the proceeds thereof), obtained by or transferred to the Plan Administrator used (i) to make

distributions to holders of Allowed Class 4 Claims as set forth in this Plan, and (ii) to pay fees and expenses incurred by the Plan Administrator.

**“Class 4 Note”** means the Promissory Note payable by the Reorganized Debtor to the Plan Administrator, the terms of which are summarized in article 4.02(a) of this Plan, and which will be filed as a plan supplement within 10 days of the Confirmation Hearing. The Class 4 Note shall be secured by a lien on substantially all of the Reorganized Debtor’s assets, subordinate to that of the Debtor’s other existing secured creditors.. The lien securing the Class 4 Note shall be for the purpose of securing the Class 4 Note obligations, and the Plan Administrator shall have no rights with respect to the disposition of the Debtor’s collateral; provided, however, that if there is an uncured payment default under the Class 4 Note, the Plan Administrator may take any steps it deems appropriate to enforce its liens, including filing suit against the Reorganized Debtor in this Court or another court of proper jurisdiction and/or exercising foreclosure remedies under applicable non-bankruptcy law. The Reorganized Debtor shall execute the Class 4 Note on the Effective Date

**“Committee”** means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee on July 8, 2015 in the Bankruptcy Case pursuant to section 1102 of the Bankruptcy Code.

**“Confirmation Date”** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court’s docket within the meaning of Bankruptcy Rules 5003 and 9021.

**“Confirmation Hearing”** means the hearing at which time the Bankruptcy Court will consider and determine whether to confirm this Plan, as such hearing may be continued from time to time.

**“Creditor”** means the holder of a Claim.

**“Debtor”** means Dominion Paving & Sealing, Inc., the debtor and debtor-in-possession in this Bankruptcy Case, and any of its predecessors in interest.

**“DIP Financing Agreement”** means that certain financing agreement, as amended, between the Debtor and Capital Solutions Bancorp, LLC (“Capital Solutions”) in which Capital Solutions agreed to provide post-petition financing to the Debtor pursuant to the terms of the agreement in the form of advance payment (factoring) of the Debtor’s account receivables.

**“DIP Financing Order”** means the Final Order Authorizing the Debtor to Obtain Post-Petition Secured Financing entered by the Court on July 31, 2015, approving the DIP Financing Agreement.

**“Disallowed”** means a Claim or portion thereof that: (i) has been disallowed by a Final Order of the Bankruptcy Court; (ii) is identified in the Schedules (a) in the amount of zero dollars, (b) in an unknown amount, or (c) as contingent (except as identified in section 5.02 herein), unliquidated or disputed, and as to which a proof of Claim was not deemed filed or actually filed by the applicable Bar Date; (iii) is not identified in the Schedules and as to which no proof of Claim has been filed or deemed filed by the Bar Date; or (iv) was not filed in a timely manner as provided by a relevant Order of the Bankruptcy Court.

**“Disclosure Statement”** means the disclosure statement that relates to this Plan (including all Exhibits and schedules thereto or referenced therein), as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified, or supplemented before or after such approval.

**“Disputed”** means any Claim or any portion thereof which is not Allowed or Disallowed and which is (i) filed for which no amount was scheduled by the Debtor in the Schedules; (ii) filed in an amount or priority different than was scheduled by the Debtor in the Schedules; (iii) scheduled or filed as unliquidated or disputed; (iv) a duplicate of another Claim; or (v) the subject of a pending application, motion, complaint, objection, or any other legal proceeding seeking to disallow, limit, subordinate, or estimate such Claim. A Claim is also a Disputed Claim if the Debtor or Plan Administrator has named the Holder of the Claim as a defendant or a counterclaim defendant in any legal or other proceeding.

**“DOL”** means the United States Department of Labor.

**“Effective Date”** means a day designated by the Debtor that is a Business Day no earlier than the date on which all conditions to the effectiveness of this Plan have been met or waived; provided, however, that the Effective Date shall be no later than thirty (30) days following the later of (i) the Confirmation Date, or (ii) the date on which the Confirmation Order becomes a Final Order.

**“Entity”** has the meaning set forth in section 101(15) of the Bankruptcy Code.

**“Estate”** means the bankruptcy estate of the Debtor in this Bankruptcy Case.

**“Equify”** means Equify Financial, LLC.

**“Equify Collateral”** means that certain property and equipment listed on Schedule A of the April 29, 2014 Security Agreement between the Debtor and Equify.

**“Equity Interest”** means any equity, stock, or other ownership interest in the Debtor.

**“Equity Interest Holder”** means the Trustee of the ESOP.

**“ESOP”** means the Employee Stock Ownership Plan dated January 1, 2015.

**“ESOP Trust”** means the Employee Stock Ownership Plan Trust that is the holder of the Company stock and other ESOP assets, and administers the ESOP on behalf of the beneficiaries of the ESOP.

**“Exculpated Parties”** means the Debtor and the Committee, along with their respective officers, directors, managers, employees, owners, members, agents, advisors, representatives, and Professionals.

**“Executory Contract or Unexpired Lease”** means a contract or lease to which the Debtor is a party that is subject to assumption, assumption and assignment, or rejection under section 365 of the Bankruptcy Code and includes any modifications, amendments, addenda or supplements thereto or restatements thereof.

**“Face Amount”** means, when used with reference to a Claim: (a) the full stated amount claimed by the holder of such Claim in any proof of Claim filed by the Bar Date or otherwise deemed timely filed under applicable law, if the proof of Claim specifies only a liquidated amount; (b) if no proof of Claim has been filed by the Bar Date or has otherwise been deemed timely filed under applicable law, or if the proof of Claim specified an unliquidated amount, the amount of the Claim (i) acknowledged by the Debtor in any objection filed to such Claim or in the Debtor’s Schedules as an undisputed, non-contingent, and liquidated Claim, (ii) estimated by the Bankruptcy Court pursuant to § 502(c) of the Bankruptcy Code; or (c) if neither (a) nor (b) above are applicable, an amount estimated by the Debtor so long as such estimated amount is not less than either (i) any amount of such Claim as estimated by the Bankruptcy Court or (ii) the liquidated portion of the amount claimed by the holder of such Claim in any proof of Claim filed by the Bar Date or otherwise deemed timely filed under applicable law.

**“Final Cash Collateral Order”** means the July 31, 2015 Final Order Authorizing the Debtor to Use Cash Collateral and Granting Adequate Protection.

**“Final Decree”** means the final decree entered by the Bankruptcy Court closing the Bankruptcy Case pursuant to Bankruptcy Rule 3022.

**“Final Order”** means an order or judgment of the Bankruptcy Court, as entered on the docket in the Bankruptcy Case, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument, or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing has been denied or has resulted in no modification of such order.

**“First Citizens”** means First Citizens Bank.

**“First Citizens Collateral”** means that certain Chevrolet Silverado 1500 (unit 1220), Chevrolet Silverado 1500 (unit 1221), Blaw Knox Paver model PF-4410, and TR 31-Low-Boy 2012, each of which are the subject of the February 19, 2013 Promissory Note and Security Agreement between the Debtor and First Citizens.

**“GE Capital Lease”** means Master Lease Agreement between the Debtor and GE Capital Commercial, Inc. and General Electric Credit Corporation of Tennessee, together with Equipment Schedules Nos. 9779327-001 dated October 21, 2014, but does not include Equipment Schedule Nos. 9779327-002, and 9779327-003 dated November 14, 2014, and November 24, 2014, respectively, which have been rejected pursuant to Order dated January 13, 2016 [Docket No. 211].

**“General Unsecured Claim”** means a Claim that is not an Administrative Claim, Priority Claim, Secured Claim, or Equity Interest.

**“Impaired”** means “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

**“Indemnified Parties”** means the Debtor’s directors, officers, members, managers, trustees, consultants, agents, advisors, and Professionals, the Plan Administrator and any professionals engaged by the Plan Administrator.

**“Insider”** has the meaning set forth in section 101(31) of the Bankruptcy Code.

**“IRS”** means the Internal Revenue Service.

**“IRS Claims”** means claim numbers 16-1, 16-2, and 16-3 filed in the Bankruptcy Case.

**“Johnston”** means J. Garland Johnston.

**“Johnston Claims”** means claim numbers 42-1, 43-1, 44-1, 45-1, 46-3 (amending proof of Claim number 46-2, which amended proof of Claim number 46-1), 52-1, 53-1, 61-1, 64-1, and 65-1, filed in the Bankruptcy Case.

**“Lien”** means any lien, mortgage, charge, security interest, pledge, or other encumbrance against or interest in the Assets to secure payment or performance of a Claim, debt, or litigation.

**“Other Priority Claim”** means a Claim against the Debtor that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code (including the claims of the employees or former employees for 401k contributions) that is not an Administrative Claim or a Priority Tax Claim.

**“Person”** has the meaning set forth in section 101(41) of the Bankruptcy Code.

**“Petition Date”** means June 10, 2015.

**“Plan”** shall have the meaning set forth in the Introduction and shall also include all Exhibits attached hereto or referenced herein, as the same may be amended, modified, or supplemented, including without limitation, any “Plan Supplement.”

**“Plan Administrator”** means the person designated by the Committee as least 10 days prior to the Confirmation Hearing.

**“Priority Tax Claim”** means a Claim arising under federal, state, or local Tax laws that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

**“Professional”** means any professional employed in the Bankruptcy Case pursuant to section 327, 330, or 1103 of the Bankruptcy Code or any professional or other Entity seeking compensation or reimbursement of expenses in connection with the Bankruptcy Case pursuant to sections 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

**“Professional Fee Claims”** mean the Claims of a Professional under sections 328, 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other entity for services rendered or expenses incurred in the Bankruptcy Case.

**“Professional Fee Claims Bar Date”** means the date by which all requests for payment of Professional Fee Claims are required to be filed with the Bankruptcy Court, which shall be the **30 days after the Effective Date**.

**“Pro Rata”** means, when used with reference to a distribution to a holder of an Allowed Claim in a Class, that share of the property to be distributed on account of all Allowed Claims in such Class so that the ratio of (a)(i) the amount of such property distributed on account of the particular Allowed Claim to (ii) the amount of such Claim, is the same as the ratio of (b)(i) the aggregate amount of such property distributed on account of all Allowed Claims in such Class to (ii) the aggregate amount of all Allowed Claims in such Class.

**“Reorganized Debtor”** means the Debtor, as reorganized pursuant to this Plan, on or after the Effective Date.

**“Schedules”** means the schedules of assets and liabilities filed by the Debtor, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified, or supplemented.

**“Secured Claims”** means Claims against the Debtor that are secured by liens on property in which the Estate has an interest or that are subject to setoff under § 553 of the Bankruptcy Code, to the extent of the value of the holder of such Claim’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to § 506(a) and, if applicable, § 1129(b) of the Bankruptcy Code.

“**SunTrust**” means SunTrust Bank and any successor-in-interest to the Claims of SunTrust.

“**SunTrust Collateral**” means that certain real and personal property, accounts, inventory, furniture, fixtures, equipment, general intangibles that are the subject of the October 26, 2011 ABL Term Loan Agreement, October 26, 2011 RE Term Loan Agreement, and December 16, 2011 MM Term Loan Agreement between the Debtor and SunTrust, which, among other things, provide for cross-collateralization of the Debtor’s assets.

“**Surplus Equipment Sales**” means the proceeds from the sale of certain surplus equipment pursuant to an auction to be conducted by a professional to be retained by the Debtor.

“**Tax**” means any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental, or other tax, assessment, or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local, or foreign taxing authority.

“**TCF Lease**” means that certain equipment lease agreement between the Debtor and TCF Equipment Finance, Inc. dated December 14, 2014.

“**Unimpaired**” means not “impaired” within the meaning of section 1124 of the Bankruptcy Code, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

“**U.S. Trustee**” means the Office of the United States Trustee for the Eastern District of Virginia.

“**Valid Address**” means an address to which the Debtor’s noticing agent mailed a Plan solicitation package that is not returned by the United States Postal Service as undeliverable for any reason.

“**Voting Deadline**” means the deadline for submitting Ballots to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the Ballots, or related solicitation documents approved by the Bankruptcy Court.

## **ARTICLE II. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

### **2.01 *General Overview***

This Plan classifies Claims and Equity Interests in various Classes according to their right to priority of payments as provided in the Bankruptcy Code. This Plan states whether each Class

of Claims or Equity Interests is Impaired or Unimpaired and provides the treatment each Class will receive under this Plan.

## **2.02 *Unclassified Claims***

Certain types of Claims are not placed into voting Classes; instead, they are unclassified. These Claims are not considered Impaired, and the holders of these Claims do not vote on this Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. The treatment of these Claims is provided below.

### **(1) *Administrative Claims***

Administrative Claims are Claims for costs or expenses of administering the Debtor's Bankruptcy Case, which are provided for in Bankruptcy Code section 507(a)(2). On or as soon as reasonably practicable after the later of (i) thirty (30) days after the Effective Date, or (ii) the date on which an Administrative Claim becomes an Allowed Administrative Claim, the holder of such Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Allowed amount of such Administrative Claim, or (b) such other less favorable treatment as to which the Plan Proponents and such holder shall have agreed upon in writing.

Any request for payment of an Administrative Claim that is not timely filed on or before the Administrative Claim Bar Date will be forever barred and Disallowed. A request for payment of Administrative Claims must include at a minimum: (i) the name of the holder of the Administrative Claim, (ii) the amount of the Administrative Claim, (iii) the basis of the Administrative Claim, and (iv) supporting documentation for the Administrative Claim.

### **(2) *Bankruptcy Court Approval of Professional Fees Required***

As a prerequisite to allowance and therefore payment, the Bankruptcy Court must, upon a timely request for payment of Professional Fee Claims, consider and approve all Professional Fees listed in this chart. For all Professional Fees Claims except Clerk's Office fees and U.S. Trustee's fees, the Professional in question must file and serve a properly noticed Professional Fee application, and the Bankruptcy Court must rule on the application. Only the amount of Professional Fee Claims approved by the Bankruptcy Court will be required to be paid under this Plan.

### **(3) *DIP Financing Agreement Administrative Claim***

Pursuant to the terms of the DIP Financing Order, Capital Solutions was granted a superpriority Allowed Administrative Claim for all of the Debtor's unpaid obligations, if any, under the terms of the DIP Financing Agreement. Upon the occurrence of the Effective Date, the



claim of Capital Solutions, if any, under the DIP Financing Agreement shall be paid or deemed paid in full.

**(4) Cash Collateral Administrative Claim**

Pursuant to the terms of the Final Cash Collateral Order, SunTrust was granted the right to file a superpriority Administrative Claim to the extent the Replacement Liens granted under the Final Cash Collateral Order were insufficient to protect SunTrust against any diminution of its interest in cash collateral. Upon the occurrence of the Effective Date, any allowed claim of SunTrust under the Final Cash Collateral Order shall be deemed paid in full.

**2.03 Payment of Administrative Claims in General**

Except as otherwise provided herein or to the extent a holder of an Allowed Administrative Claim agrees to other, lesser treatment, each holder of an Allowed Administrative Claim (including holders of Allowed Professional Fee Claims) shall receive, in full satisfaction of its Allowed Administrative Claim, Cash equal to the Allowed amount of such Administrative Claim on the Effective Date. Post-petition liabilities to the IRS, if any, shall be paid in full, with interest, if any, by the later of the Effective Date of the Plan or the due date for the applicable return. There shall be no requirement that the Internal Revenue Service file any request for payment of Administrative Claim, nor any deadline for the filing of such requests. *See* 11 U.S.C. § 503(b)(1)(D).

**2.04 Payment of Priority Tax Claims**

Pursuant to § 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its unpaid Priority Tax Claim, regular quarterly installment payments in Cash beginning no later than 90 days after the Effective Date, of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date with interest at the rate established by IRC § 6621 for the calendar month in which the plan is confirmed (as of May 13, 2016, four percent (4%) annually).

With respect to the IRS Claim, as may be amended, such Claim shall be treated as follows:

The IRS Claim shall have an allowed secured claim (which is also an Allowed Priority Tax Claim) in the amount of \$227,302, which shall be paid in regular quarterly installment payments in Cash beginning no later than 90 days after the Effective Date, of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date with interest at the rate established by IRC § 6621 for the calendar month in which the plan is confirmed (as of May 13, 2016, four percent (4%) annually). The IRS shall retain its liens upon the property of the Debtor until the secured portion of the IRS Claim is paid in full. In

addition, such liens attach to all post-petition property of the Debtor until all of the secured claims of the IRS are fully satisfied.

The IRS Claim shall have an unsecured Allowed Priority Tax Claim in the amount of \$659,510.29, which shall be paid in regular quarterly installment payments in Cash beginning no later than 90 days after the Effective Date, of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date with interest at the rate established by IRC § 6621 for the calendar month in which the plan is confirmed (as of May 13, 2016, four percent (4%) annually).

The IRS shall have no further claims against the Debtor.

If the Debtor fails to make any payment to the IRS as provided in this Plan, or fails to abide by any other term of this Plan applicable to the IRS, then the United States may declare the Debtor is in default of the Plan. The United States may declare default by mailing a notice of default to the debtor-in-possession by first class mail, postage prepaid, (and, if it desires, also by certified or registered mail) with a copy to the Debtor's counsel by first class mail, postage prepaid, or by email at the same time as the notice of default is mailed to the debtor. The notice of default will state in simple and plain language: (1) that the Debtor is in default in making at least one payment required under the Plan; (2) the date(s) and amount(s) of each payment missed; and (3) the action necessary to cure the default, including any address to which payments must be mailed; and (4) that the Debtor must cure the default within 25 days after the date of the mailing of the notice of default. Failure to declare a default does not constitute a waiver by the United States of the right to declare the Debtor is in default.

If the United States declares the Debtor to be in default of its obligation under the Plan, and the Debtor fails to cure such default within 25 days thereof, then the entire liability, together with any unpaid current liabilities shall become due and payable immediately. Upon notice of default and the failure to cure, as set forth above, the IRS may collect any unpaid liabilities through the administrative collection provisions of the Internal Revenue Code, without the need for Bankruptcy Court approval. This shall include full reinstatement of the administrative collection powers and the rights of the IRS as they existed prior to the filing of the bankruptcy petition in this case, including, but not limited to, the assessment of taxes, the filing of the Notice of Federal tax lien and the powers of levy, seizure, and sale under Subtitle F, Procedures and Administration, of the Internal Revenue Code.

*Trust Fund Recovery Penalty liability against Responsible Person(s)*

Debtor has outstanding employment taxes for the taxable periods ending September 30, 2014; December 31, 2014; March 31, 2015; and June 30, 2015, which are included in the Proof of Claim of the Internal Revenue Service. Debtor will fully pay the

outstanding employment taxes through its Chapter 11 Plan, with interest, according to 11 U.S.C. § 1129(a)(9)(C). As a result of the Debtor’s employment tax liabilities, a Trust Fund Recovery (“TFRP”) assessment was made against Stephen Hart Parham, a Proof of Claim for which has been filed in Mr. Parham’s individual Chapter 13 bankruptcy, *In re Parham*, Bankr. No. 15-34894-KRH, E.D. Va., Richmond Div. The claim of the Internal Revenue Service in Mr. Parham’s Chapter 13 case shall be allowed as filed; however, Mr. Parham’s Chapter 13 plan will not provide for the TFRP assessments and the Chapter 13 Trustee will make no payments for the TFRP assessments, without further order of the Court in the Chapter 13 case. Mr. Parham’s liability will be satisfied upon full payment of the employment tax liabilities by the Debtor under the terms of this Plan.

Nothing in this Plan shall enjoin the Internal Revenue Service (“IRS”) from assessing a liability against a responsible person under I.R.C. § 6672. The IRS has the authority to determine any person working for Debtor as a responsible person under I.R.C. § 6672. Nothing in the Plan shall enjoin the IRS from collecting a liability against a responsible person under I.R.C. § 6672.

**2.05 U.S. Trustee Fees under 28 U.S.C. § 1930**

All fees payable in the Case under 28 U.S.C. § 1930, as agreed by the Debtor or as determined by the Bankruptcy Court, will, if not previously paid in full, shall be paid in Cash on the Effective Date, and will continue to be paid by the Debtor as required under 28 U.S.C. § 1930 until such time as an order is entered by the Bankruptcy Court closing the Cases.

**2.06 Summary of Classification and Treatment of Claims and Equity Interests**

All Claims and Equity Interests, except Administrative Claims and Priority Tax Claims, are placed in the following Classes. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described herein have not been classified and thus 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 other Classes to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Classes.

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims (excluding the IRS)	Unimpaired	Not Entitled to Vote; Deemed to Accept
2	Secured Claims	Impaired	Entitled to Vote
3	Equipment Lessors	Unimpaired	Not Entitled to Vote; Deemed to Accept

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Equity Interests	Impaired	Deemed to Reject, Not Entitled to Vote

**(1) Class 1 – Other Priority Claims**

*Impairment and Voting* – Class 1 consists of the Other Priority Claims (excluding the IRS), including employee 401k contribution and salary claims, and is Unimpaired under this Plan. Each holder of a Class 1 Claim is conclusively presumed to have accepted this Plan, and therefore is not entitled to vote to accept or reject this Plan.

*Treatment* – Except to the extent that a holder of an Allowed Other Priority Claim agrees to a different treatment, in full and final satisfaction and discharge of each Allowed Other Priority Claim, each holder of such Allowed Other Priority Claim shall be paid in full in Cash on the later of 90 days after the Effective Date and the date such Other Priority Claim becomes Allowed, or as soon as practicable thereafter.

(a) The Debtor identified in its Schedules a total of \$15,362.50 in employee 401k withholding claims and \$34,024.95 in employee wage claims entitled to priority treatment. These claims will be paid in full on the later of 90 days after the Effective Date and the date such Other Priority Claim becomes Allowed, or as soon as practicable thereafter.

(b) The scheduled claim of the ESOP Trust, as amended, in the amount of \$75,582.71 will be paid in full on the later of 90 days after the Effective Date and the date such Other Priority Claim becomes Allowed, or as soon as practicable thereafter.

**(2) Class 2 – Secured Claims**

*Impairment and Voting* – Class 2 consists of all Secured Claims and is Impaired under this Plan. Each holder of a Class 2 Claim is entitled to vote to accept or reject this Plan.

*Treatment* – Except to the extent that a holder of an Allowed Secured Claim agrees to a different treatment, in full and final satisfaction and discharge of each Allowed Secured Claim, each holder of such Allowed Secured Claim shall be treated as follows:

(a) SunTrust and/or the successor-in-interest shall have one or more Allowed Secured Claims to the extent of the SunTrust Collateral. As of the Effective Date the SunTrust Allowed Claim(s) shall bear interest at a rate per annum equal to the respective interest rate for each of the three loans between the Debtor and SunTrust. The obligations of the Reorganized Debtor to SunTrust shall be represented by the existing promissory notes, deed of trust, and related security

documents, as modified by the Debtor and SunTrust. On the full payment or other satisfaction of the SunTrust Allowed Claim(s) in accordance with this Plan, the Liens securing such Allowed Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person.

(b) Ally shall have an Allowed Secured Claim in the amount then due and owing to the extent of the Ally Collateral. As of the Effective Date the Ally Allowed Claim shall bear interest at a rate per annum equal to 4.7%. The obligations of the Reorganized Debtor to Ally shall be represented by the existing promissory note and related security documents, providing generally for monthly payments based upon a five year amortization. On the full payment or other satisfaction of the Ally Allowed Claim in accordance with this Plan, the Liens securing such Allowed Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person.

(c) Equify shall have an Allowed Secured Claim in the amount then due and owing to the extent of the Equify Collateral. As of the Effective Date the Equify Allowed Claim shall bear interest at a rate per annum equal to 8%. The obligations of the Reorganized Debtor to Equify shall be represented by the existing promissory note and related security documents, providing generally for monthly payments based upon a five year amortization. On the full payment or other satisfaction of the Equify Allowed Claim in accordance with this Plan, the Liens securing such Allowed Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person.

(d) First Citizens shall have an Allowed Secured Claim in the amount then due and owing to the extent of the First Citizens Collateral. As of the Effective Date the First Citizens Allowed Claim shall bear interest at a rate per annum equal to 3.5 %. The obligations of the Reorganized Debtor to First Citizens shall be represented by the existing promissory note and related security documents, providing generally for monthly payments based upon a five year amortization. On the full payment or other satisfaction of the First Citizens Allowed Claim in accordance with this Plan, the Liens securing such Allowed Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization or approval of any Person.

**(3) *Class 3-Equipment Lessors (TCF and GE Capital)***

*Impairment and Voting* – Class 3 consists of the claims of TCF and GE Capital and are Unimpaired under this Plan. The TCF Lease and GE Capital Lease are being assumed by the Reorganized Debtor as negotiated post-petition and the holder of the claim will be paid in accordance with that agreement without any impairment. Each holder of a Class 3 Claim is

conclusively presumed to have accepted this Plan, and therefore is not entitled to vote to accept or reject this Plan.

**(4) Class 4— General Unsecured Claims**

*Impairment and Voting* – Class 4 consists of the holders of General Unsecured Creditor Claims and is Impaired under this Plan. Each holder of a Class 4 Claim is entitled to vote to accept or reject this Plan.

*Treatment* – In full and final satisfaction and discharge of each Allowed Class 4 Claim, each holder of an Allowed Class 4 Claim shall receive their Pro Rata share of the Class 4 Assets. Distributions to holders of Allowed Class 4 Claims shall be made by the Plan Administrator in his/her sole discretion in accordance with the terms of this Plan.

Based on the Debtor’s Schedules and analysis of the filed proofs of Claims, Class 4 Unsecured Creditor Claims, not including the Johnston Claims and the Atkinson Claim, total approximately \$1.0 million. The Debtor intends to object to the Johnston Claims and Atkinson Claim on the grounds that they should be recharacterized as an equity interest, as well as other possible grounds for subordination, disallowance and/or reduction.

**(5) Class 5—Equity Interests**

*Impairment and Voting* - Class 5 consists of the Equity Interest Holder in the Debtor, which is the Trustee of the ESOP Trust. The Equity Interest Holder’s interest shall be cancelled, shall be of no further force, whether surrendered for cancellation or otherwise, and any obligations of the Debtor thereunder or any way related thereto shall be discharged. Class 5 is impaired under this Plan, shall receive no property on accounts of its Equity Interest under the Plan, and thus is deemed to reject this Plan and is not entitled to vote.

**ACCEPTANCE OR REJECTION OF THIS PLAN**

**2.07 Classes and Claims Entitled to Vote**

Creditors in Classes 2 and 4 are permitted to vote on this Plan. Creditors in Classes 1 and 3 are Unimpaired and are, therefore, not entitled to vote. Holders of Interests in Class 5 are deemed to reject this Plan.

**2.08 Nonconsensual Confirmation (cramdown)**

The Debtor hereby requests that the Bankruptcy Court confirm this Plan under section 1129(b) notwithstanding a vote of any Class to reject this Plan (or the deemed rejection of Class 5) on the basis that this Plan is fair and equitable, and does not discriminate unfairly with respect to any Class that rejects this Plan.

### **ARTICLE III. EFFECTS OF CONFIRMATION**

#### **3.01 *Effect of Confirmation***

Confirmation of this Plan, except to the extent expressly stated to the contrary in this Plan, shall generally have the effect described in section 1141 of the Bankruptcy Code.

#### **3.02 *Revesting of Estate Assets***

On the Effective Date, all Assets, shall be revested in the Reorganized Debtor as provided in section 1141 of the Bankruptcy Code free and clear of all liens, security interests, recording taxes, and other interests, choate or inchoate, resulting from all Claims and Equity Interests of all Creditors, Equity Interest Holders and Parties in Interest, except as provided for in this Plan such as the Avoidance Actions, which the Plan Administrator shall have the right to pursue post-Effective Date.

#### **3.03 *Discharge***

Claims against the Debtor will be discharged pursuant to 11 U.S.C. § 1141(d). All Entities, Persons, Creditors, parties in interest, and Equity Interest Holders will be bound by this Plan, as confirmed, and will not have Claims against the Debtor other than as specifically stated in this Plan. The sole remedy and right of collection of the Creditors, on account of any Claim, shall be pursuant to the provisions of this Plan.

#### **3.04 *Authority to Effectuate this Plan***

Except as expressly set forth in this Plan, on the Effective Date, all matters provided for under this Plan will be authorized and approved without further approval or order of the Bankruptcy Court.

#### **3.05 *Injunction against Interference with Plan***

Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests, Insiders, and other parties in interest, along with their respective present and former employees, agents, officers, directors, and principals shall be permanently enjoined from taking any actions to interfere with the implementation or consummation of this Plan or to violate the terms of this Plan. This section does not preclude the pursuit of any appeals of the order confirming this Plan.

#### **3.06 *Exculpation and Limitation of Liability***

The Exculpated Parties will neither have nor incur any liability to any Entity for any action in good faith taken or omitted to be taken after the Petition Date in connection with or related to the Chapter 11 Case or the formulation, preparation, dissemination, implementation,

Confirmation or consummation of this Plan, the Disclosure Statement, or any agreement created or entered into in connection with this Plan; provided, however, that this limitation will not affect or modify the obligations created under this Plan, or the rights of any holder of an Allowed Claim to enforce its rights under this Plan and shall not release any action (or inaction) constituting willful misconduct, fraud or gross negligence (in each case subject to determination of such by Final Order of a court of competent jurisdiction); provided that any Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to his, her or its duties and responsibilities (if any) under this Plan and such reasonable reliance shall form an absolute defense to any such claim, cause of action, or liability. Without limiting the generality of the foregoing, each Exculpated Party shall be entitled to and granted the protections of section 1125(e) of the Bankruptcy Code.

### **3.07 *Injunction***

Except as otherwise expressly provided in this Plan, all Entities and Persons who have held, hold or may hold Claims or causes of action against the Debtor shall be permanently enjoined, from and after the Effective Date, from taking any of the following actions against the Debtor, its Estate, the Committee, the Professionals, or any of their property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) enforcing, attaching, collecting or recovering by any manner or in any place or means any judgment, award, decree or order; (ii) creating, perfecting, or enforcing any lien or encumbrance of any kind; (iii) asserting any right of setoff right of subrogation or recoupment against any obligation, debt or liability due to the Debtor (except as provided for under the Bankruptcy Code), and (iv) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan with respect to such Claim. Except as expressly provided herein, the Debtor expressly reserves all rights and defenses that the Debtor may have (including, without limitation, the rights of subrogation and recoupment) with respect to any obligation, debt or liability allegedly due to any Entity. By accepting distributions pursuant to this Plan, each holder of an Allowed Claim receiving distributions pursuant to this Plan will be deemed to have specifically consented to the injunctions set forth herein. Nothing in this section shall prohibit the holder of a timely filed proof of Claim from litigating its right to seek to have such Claim declared an Allowed Claim and paid in accordance with the distribution provisions of this Plan, or enjoin or prohibit the interpretation or enforcement by the holder of any obligations of the Debtor under this Plan.

### **3.08 *Post-Confirmation Liability of Debtor***

The Debtor and the Indemnified Parties shall not be liable for any and all liabilities, losses, damages, claims, causes of action, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, to the holders of Claims for any action or inaction taken in good faith in connection with the performance or discharge of his or her duties under this Plan, except the Indemnified Parties will be liable for actions or inactions that are grossly negligent, fraudulent, or which constitute willful misconduct (in each case, liability shall be subject to determination by



Final Order of the Bankruptcy Court). However, any act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, fraud or willful misconduct.

**3.09 Indemnification**

The Debtor and the Estate shall, to the fullest extent permitted by the laws of the Commonwealth of Virginia, indemnify and hold harmless the Indemnified Parties from and against and with respect to any and all liabilities, losses, damages, claims, costs and expenses, including but not limited to attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Debtor's Bankruptcy Case and the Estate or the implementation or administration of this Plan if the Indemnified Party acted in good faith and in a manner reasonably believed to be in or not opposed to the best interest of the Debtor and the Estate. To the extent the Debtor indemnifies and holds harmless the Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Debtor in monitoring and participating in the defense of such claims giving rise to the right of indemnification shall be paid by the Reorganized Debtor. All rights of the Persons exculpated and indemnified pursuant hereto shall survive confirmation of this Plan.

**ARTICLE IV. MEANS OF IMPLEMENTATION OF THIS PLAN**

**4.01 Corporate Reorganization**

After the Effective Date, the current President, Treasurer, and Secretary of the Debtor shall continue to serve in such capacities. The Board of Directors will be amended to remove Johnston and Atkinson. The remaining Board members will continue in their current capacities. After the Effective Date, the Debtor's Bylaws and other appropriate corporate organizational documents may be amended as necessary to effectuate this Plan. The Reorganized Debtor may establish a new ESOP Trust with new Interest(s) issued and, in any event, an independent ESOP Trustee shall be appointed.

**4.02 Plan Funding and Sources of Cash**

The Cash on hand at confirmation, including cash provided by the Surplus Equipment Sales, shall provide the funding necessary to pay all Allowed Administrative Claims and Allowed Other Priority Claims limited to one hundred percent (100%) recovery on their Allowed Claims without interest. All owed Priority Tax Claims shall be paid over a period of five (5) years with interest from Cash generated by operations of the Debtor. Allowed Secured Claims shall be paid in accordance with the terms of the existing loan documents between the Secured Claimants and the Debtor.

**(1) Distributions to Allowed General Unsecured Claims:**

(a) **Class 4 Assets:** The Plan Administrator shall fund distributions to the holders of Allowed Class 4 Claims from (i) the funds received by the Plan Administrator from quarterly distributions from the Debtor beginning no later than ninety (90) days following the Effective Date, and continuing for a period of five (5) years, of thirty-five percent (35%) of their Allowed Claims under the Class 4 Note; (ii) net recoveries from Avoidance Actions and all other causes of actions assigned to the Plan Administrator herein; and (iii) a payment of \$50,000 by the Reorganized Debtor to the Plan Administrator within 30 days of the Effective Date. **Avoidance Actions.** On the Effective Date, the Plan Administrator shall obtain the sole right to prosecute all Avoidance Actions on behalf of the Debtor and its estate.

**(2) Plan Administrator's Post-Effective Date Role:**

(a) The Committee, in its sole discretion, and after consultation with the Debtor, and subject to approval by the Bankruptcy Court, shall select the Plan Administrator.

(b) The Plan Administrator shall have the power and authority to engage professionals, including Cole Schotz P.C., to assist it in the performance of the Plan Administrator's duties. All fees and expenses incurred by the Plan Administrator shall be paid solely from the Class 4 Assets available for distribution to Class 4 set forth in this Plan. The Plan Administrator and any professionals employed by the Plan Administrator to assist in carrying out the Plan Administrator's duties hereunder, shall be paid reasonable compensation for their services rendered and expenses incurred after the Effective Date from the funds of the Class 4 Assets. The Plan Administrator shall be entitled to set aside funds of the Class 4 Assets as a reserve to cover estimated costs and expenses of pursuing Avoidance Actions and administering the Class 4 Assets.

(c) The Debtor and Reorganized Debtor shall have no liability or obligation with respect to the actions taken by the Plan Administrator, or for the fees and expenses incurred, except as set forth in this Plan. The Reorganized Debtor shall reasonably cooperate with the Plan Administrator by providing information that may reasonably be requested, so long as the Reorganized Debtor is not obligated to incur more than nominal expenses in connection with such cooperation.

(d) As of the Effective Date, the Plan Administrator shall be the sole person authorized to represent the Debtor's Estate in prosecuting, settling, and/or otherwise resolving all Avoidance Actions of the Debtor's Estate, for the benefit of holders of Allowed Class 4 Claims, and making distributions to the holders of Allowed Class 4 Claims from the Class 4 Assets. The Plan Administrator shall be vested with all rights, powers, and authority of the Debtor's Estate with respect to all Avoidance Actions. Any such actions shall be brought on behalf of the Debtor's Estate, with all

net proceeds recovered, after payment of all expenses incurred by the Plan Administrator, to be distributed Pro Rata to the holders of Allowed Class 4 Claims, respectfully, as and when the Plan Administrator, deems appropriate, in its discretion, taking into account the amount available to distribute, the costs of distribution, and the need to retain funds reasonably anticipated to be needed for the expenses of administration.

(e) The Plan Administrator shall have the power and authority to file, prosecute and resolve objections to Disputed Claims solely in Class 4. It shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, **but in no event later than ninety (90) days after the Effective Date** (subject, however, to the right of the Plan Administrator to seek an extension of time to file such objections from the Bankruptcy Court).

(f) The Plan Administrator agrees to cooperate with the Reorganized Debtor and its accountants by timely providing information to the Reorganized Debtor with respect to all receipts, income, disbursements and expenses of the Plan Administrator, to ensure that the Reorganized Debtor is able to timely complete and file its federal and state income tax returns, with inclusion of all information relevant to such returns relating to the activities of the Plan Administrator.

(g) The Plan Administrator shall have no obligation to make any distribution to a holder of an Allowed Class 4 Claim unless the amount of the distribution to such holder is at least \$25.00.

(h) Except as expressly set forth in this Plan, the Plan Administrator shall have no other obligations under this Plan, including the filing of any required post-confirmation reports, motions to close the case and for a final decree, or other obligations not expressly set forth herein, all of which shall be the obligation of the Reorganized Debtor.

#### **4.03      *Contingent Claims***

For purposes of this Plan, each Claim identified in the Schedules as contingent, for which (i) the scheduled Claim holder failed to file a proof of claim and (ii) the Debtor has a Valid Address is deemed Allowed in the amount identified in the Schedules for voting and distribution purposes.

#### **4.04      *Equity Interests***

As of the Effective Date, the Equity Interest in the Debtor shall be canceled and extinguished without further action under any applicable law, regulation, order or rule. The

Equity Interest Holder shall not receive or retain any rights, property or distributions on account of its Equity Interest under this Plan.

Upon the Effective Date, the ESOP shall be deemed terminated. After confirmation, the Reorganized Debtor may establish a new Employee Stock Ownership Plan for all eligible employees as determined by the Reorganized Debtor in its business judgment. In any event, the ESOP Trust, which will continue to administer the funds in the Trust, shall appoint a new, independent Trustee.

#### **4.05 *Surplus Equipment Sales***

The Debtor has identified certain surplus equipment of a value not to exceed \$350,000 which is not necessary for its reorganization and which will be sold to help fund those estate expenses which shall become due on the Effective Date. Some of this equipment is SunTrust Collateral. SunTrust is presently in negotiations with a new lender regarding the purchase of the SunTrust note. Upon the closing of the transaction between SunTrust and the new lender, the new lender consents to the Surplus Equipment Sales and the use of the proceeds to fund the expenses due on the Effective Date. The new lender has recommended a professional auctioneer to be retained by the Debtor for the purposes of conducting the Surplus Equipment Sales. Further, the Debtor and the new lender have agreed to pursue, post confirmation, the sale of the real property portion of the SunTrust Collateral.

#### **4.06 *Avoidance Actions and Other Actions***

On the Effective Date, the Debtor shall transfer and assign to the Plan Administrator and its agents and/or assigns, the sole right to commence any and all Causes of Action and Avoidance Actions on behalf of the Estate. Any recovery, after payment of expenses, obtained from any such action shall be made available for distribution to Holders of Allowed Class 4 Claims.

#### **4.07 *Operations of the Debtor Between the Confirmation Date and Effective Date***

The Debtor shall continue to operate as a debtor-in-possession during the period from the Confirmation Date through the Effective Date.

#### **4.08 *Creditors' Committee***

On the Effective Date, the Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities, and obligations relating to and arising from this Bankruptcy Case. The retention and employment of Professionals retained by the Committee shall terminate as of the Effective Date, provided, however, that the Committee shall exist, and its Professionals shall be retained, after such date with respect to any disputes

concerning the occurrence of the Effective Date and with respect to requests for the payment of Professional Fee Claims.

**4.09 Plan Completion**

Upon the payment of all monies required to be paid by this Plan, all ongoing obligations of the Reorganized Debtor pursuant to this Plan shall terminate, except that any unpaid final distributions shall be made pursuant to the terms of Section 7.06.

**ARTICLE V. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**5.01 Claims Based on Assumption of Executory Contracts and Unexpired Leases**

Except as otherwise stated herein and subject to section 6.02, all of the Debtor's Executory Contracts and Unexpired Leases will be assumed by the Debtor upon the Effective Date with any pre-petition defaults being paid at the end of the lease term. The executory contracts or any equipment lease with any equipment lessor that may be determined to be a party to a true lease and not a Secured Creditor in Class 2, will have their contract and lease assumed. The entry of the Confirmation Order shall constitute approval of any such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

In addition, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for claims in accordance with the terms and provisions of such Insurance Policies. The Insurance Policies that have expired as of the Confirmation Date (whether entered into prior or subsequent to the Petition Date) are not executory contracts subject to assumption or rejection. The issuers of Insurance Policies shall be responsible for continuing coverage obligations under such Insurance Policies, regardless of the payment status of any retrospective or other insurance premiums. To the extent that any Insurance Policy is determined to be an executory contract, this Plan shall constitute a motion to assume the Insurance Policy and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that assumption of the Insurance Policy is in the best interest of the Debtor and its Estate, and all parties in interest in the Bankruptcy Case, and otherwise satisfies the provisions of the Bankruptcy Code. Nothing contained in this Plan shall constitute or be deemed to be a waiver of any cause of action that the Debtor may hold against any Person, including without limitation, any issuer under any Insurance Policy of the Debtor.

**5.02 The GE Capital Leases**

The Master Lease Agreement between Debtor and GE Capital Commercial, Inc. and General Electric Credit Corporation of Tennessee, along with Equipment Schedule 001, shall be assumed.

Schedules 002 and 003 of The GE Capital Lease have been rejected pursuant to section 365(a) and Order dated January 13, 2016 [Docket No. 211].

**5.03 *Claims for Rejection Damages***

Proofs of Claim for damages allegedly arising from the rejection of any Executory Contract or Unexpired Lease pursuant to this Plan must be filed with the Bankruptcy Court not later than **30 days after the Effective Date**. All proofs of Claim for such damages not timely filed and properly served as prescribed herein shall be forever barred and the holder of such a Claim shall not be entitled to participate in any distribution under this Plan. Allowed Claims arising from the rejection of Executory Contracts and/or Unexpired Leases shall be classified and treated as Class 4 Claims.

**5.04 *Objections to Proofs of Claim Based on Rejection Damages***

Objections to any proof of Claim arising from the rejection of an Executory Contract or Unexpired Lease must be filed by the Claims Objection Bar Date.

**ARTICLE VI. RESOLUTION PROCEDURES FOR DISPUTED CLAIMS**

**6.01 *Objections to Claims***

All objections to Claims must be filed and served on the holders of such Claims by the Claims Objection Bar Date, and, if filed prior to the Effective Date, such objections will be served on the parties on the then-applicable service list in the Bankruptcy Case. If an objection has not been filed to a proof of Claim or a scheduled Claim by the Claims Objection Bar Date, the Claim to which the proof of Claim or scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been Allowed earlier.

**6.02 *Authority to Prosecute Objections***

The Debtor is entitled to object to all Claims other than claims in Class 4.

After the Effective Date, only the Plan Administrator shall have the sole authority to file, settle, compromise, withdraw, or litigate to judgment objections to Claims of Class 4 creditors, including any objection that is then pending. After the Effective Date, the Plan Administrator may settle or compromise any Disputed Claim without further order of the Bankruptcy Court. For the purpose of clarity, this grant of authority to the Plan Administrator only applies to Claims in Class 4 and does not limit the right of the U.S. Trustee or any other party in interest, to object to Professional Fee Claims as set forth in Article 2.02 herein.

**6.03 *No Distributions on Disputed or Disallowed Claims***

Except as may otherwise be ordered by the Bankruptcy Court or authorized under the terms of this Plan, the Reorganized Debtor or Plan Administrator, as appropriate, shall not make distributions to holders of Disputed Claims until the Disputed Claim becomes an Allowed Claim. The Reorganized Debtor and Plan Administrator shall make no distributions to holders of Disallowed Claims.

**6.04 *Late Claims Void***

Unless otherwise expressly Allowed by Order of the Bankruptcy Court or otherwise provided by this Plan, any Claim filed after the applicable Claims Bar Date will be void and of no force or effect, and will receive no distributions under this Plan.

**ARTICLE VII. PROVISIONS GOVERNING DISTRIBUTIONS**

**7.01 *Distributions***

In accordance with section 4.01, the Reorganized Debtor shall make quarterly distributions to the Plan Administrator to pay the Allowed Class 4 Claims beginning ninety (90) days following the Effective Date, and each successive quarter for five (5) years thereafter or as soon as practicable thereafter, all amounts available for distribution according to the terms of this Plan.

**7.02 *Estimation of Claims***

Subject to section 6.02, the Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Bankruptcy Code section 502(c) regardless of whether the Debtor or any other party in interest previously objected to such Claim, or whether the Bankruptcy Court has ruled on any such objection. If the Bankruptcy Court estimates any Claim, that estimated amount will constitute the Allowed amount of such Claim for voting on this Plan, but will not constitute a maximum limitation on such Claim for distribution purposes unless the parties agree to allow the estimation to serve as such a maximum.

**7.03 *Interest on Allowed Claims***

Unless otherwise specifically provided for or contemplated elsewhere in this Plan or Confirmation Order, or required by applicable bankruptcy law to render a Claim Unimpaired or otherwise, post-Petition Date interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

**7.04      *Setoff and Recoupment***

The Reorganized Debtor and/or Plan Administrator, as may be appropriate, may set-off against any Allowed Claim (and distributions to be made thereto), the claims, rights and causes of action of any nature (regardless of whether such claims, rights, or causes of action are reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured) that the Debtor, the Estate, or the Reorganized Debtor may hold under applicable non-bankruptcy law (and notwithstanding any limitations or restrictions placed on such rights under the Bankruptcy Code) against the holder of such Allowed Claim or any recipient of any distribution in respect of an Allowed Claim.

**7.05      *Manner of Payments; Delivery of Distributions***

The Reorganized Debtor and/or Plan Administrator shall make all distributions under this Plan in Cash made by check drawn on a domestic bank or by wire transfer from a domestic bank. Subject to the provisions of Bankruptcy Rule 2002(g) and except as otherwise provided under this Plan, the Reorganized Debtor and/or Plan Administrator will make distributions to holders of Allowed Claims at each holder's address set forth on the Schedules filed with the Bankruptcy Court unless superseded by a different address set forth in a timely filed proof of Claim filed by the holder or if the Reorganized Debtor or Plan Administrator has been notified in writing of a change of address at the following address.

The Plan Administrator will make all distributions of Cash required under this Plan to holders of Allowed Class 4 Claims from time to time. Other than distributions on account of Allowed Class 4 Claims, which shall be made by the Plan Administrator, the Debtor will make all other distributions required under this Plan.

**7.06      *Undeliverable Distributions***

If any distribution to any holder of an Allowed Claim is returned as undeliverable, no further distributions will be made to such holder unless and until the Reorganized Debtor or Plan Administrator (as appropriate) is notified, in writing, of such holder's then-current address. The Reorganized Debtor and Plan Administrator will hold undeliverable distributions until the earlier of: (a) the date the distribution becomes deliverable, and (b) the date on which the Reorganized Debtor or Plan Administrator makes a final distribution to holders of Allowed Claims. Holders ultimately receiving previously undeliverable distributions will not receive interest or other accruals of any kind based upon the delay in receipt. The Reorganized Debtor and Plan Administrator are not required to locate the holder of an Allowed Claim.

**7.07      *Uncashed Checks***

The Reorganized Debtor and/or Plan Administrator are not required to locate the holder of an Allowed Claim that does not cash any check representing a distribution payment. If a distribution check has not been cashed within 180 days after the date of mailing of such check to



the Creditor, the Reorganized Debtor and/or Plan Administrator may stop payment on the check and treat the distribution as undeliverable.

**7.08 Fractional Amounts**

Payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded up.

**7.09 Compliance with Tax Requirements**

The Reorganized Debtor will comply with Tax withholding and reporting requirements imposed by any governmental unit, if any, in making distributions under this Plan. The Reorganized Debtor may withhold distributions due to any holder of an Allowed Claim until the holder provides the Reorganized Debtor with the necessary information to comply with withholding requirements of any governmental unit. The Reorganized Debtor will pay any withheld distributions to the appropriate authority. If the holder of an Allowed Claim fails to provide the Reorganized Debtor with the information necessary to comply with withholding requirements of any governmental unit within sixty days after the date of first notification by the Reorganized Debtor to the holder of the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then the holder's distributions will be treated as undeliverable.

**ARTICLE VIII. OTHER PLAN MATTERS**

**8.01 Conditions Precedent to the Effective Date**

The following are conditions precedent to the Effective Date of this Plan: (a) the Bankruptcy Court has entered the Confirmation Order in a form reasonably acceptable to the Debtor and Committee; (b) the Confirmation Order becomes a Final Order; and (c) all of the other actions needed to be taken or documents needed to be executed or approved to implement this Plan (including but not limited to the Class 4 Note), have been taken, executed, or approved, including without limitation, the transfer of funds to the Plan Administrator. The Plan Proponents, in their sole discretion, may jointly waive any of the foregoing conditions and deem the Plan effective without their occurrence.

If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived, the Confirmation Order may be vacated by the Bankruptcy Court upon request by the Debtors or the Committee. If the Confirmation Order is vacated, the Plan shall be null and void in all respects, and nothing contained in this Plan shall constitute a waiver or release of any Claims against the Debtor.

**8.02 Retention of Jurisdiction**

From and after the Effective Date, and notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain exclusive jurisdiction over the Bankruptcy Case and all matters arising under, arising out of, or related to, the Bankruptcy Case, this Plan, and the Confirmation Order to the fullest extent permitted by law, including, but not limited to, jurisdiction to:

- (a) hear and determine motions, applications, adversary proceedings, and contested matters pending or commenced after the Effective Date;
- (b) hear and determine objections to Claims (whether filed before or after the Effective Date), or requests for estimation of any Claim, and to enter any order requiring the filing of proof of any Claim before a particular date;
- (c) estimate any Claim at any time, including, without limitation, during litigation concerning any objection to such Claim, including any pending appeal;
- (d) ensure that distributions to holders of Allowed Claims are accomplished as provided in this Plan;
- (e) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (f) issue or construe such orders or take any action as may be necessary for the implementation, execution, enforcement and consummation of this Plan and the Confirmation Order, and hear and determine disputes arising in connection with the foregoing;
- (g) hear and determine any applications to modify this Plan, to cure any defect or omission or to reconcile any inconsistency in this Plan, the Disclosure Statement, or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;
- (h) hear and determine all applications for Professional Fee Claims;
- (i) hear and determine other issues presented or arising under this Plan, including disputes among holders of Claims and arising under agreements, and the documents or instruments executed in connection with this Plan;
- (j) hear and determine any action concerning the recovery and liquidation of the Estate's Assets, wherever located, including without limitation, litigation to liquidate and recover the Estate's Assets or other actions seeking relief of any sort with respect to issues relating to or affecting Estate Assets;

- (k) hear and determine any action concerning the determination of Taxes, Tax refunds, Tax attributes, and Tax benefits and similar or related matters with respect to the Debtor or the Estate including, without limitation, matters concerning federal, state, and local Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (l) hearing and determine any disputes between the Plan Administrator and the Reorganized Debtor concerning the Class 4 Note;
- (m) hear and determine any other matters related hereto and not inconsistent with Chapter 11 of the Bankruptcy Code; and
- (n) enter the Final Decree.

#### **8.03 *Modification of this Plan***

The Plan Proponents, may alter, amend, or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and before the substantial consummation of this Plan, any party in interest in the Bankruptcy Case may, so long as the treatment of holders of Claims or Equity Interests under this Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and intentions of this Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

#### **8.04 *Revocation or Withdrawal of this Plan***

The Plan Proponents may revoke or withdraw this Plan at any time before the Confirmation Date. If the Debtor revokes or withdraws this Plan before the Confirmation Date, this Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by any Person or to prejudice in any manner the rights of any Person in any further proceeding.

The Equity Interest Holders and the Related Released Parties reserve their rights, in their sole discretion, to withhold the funding of this Plan prior to the Confirmation Hearing based on balloting results.

**ARTICLE IX. MISCELLANEOUS PROVISIONS**

**9.01 *Exemption from Transfer Taxes***

All transfers of the Estate's Assets made pursuant to the terms of this Plan, to the fullest extent permitted by law, shall be exempt from all stamp, transfer, and similar Taxes within the meaning of section 1146(c) of the Bankruptcy Code. The Confirmation Order shall direct the appropriate state or local government officials or agents to forego the collection of any such Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Tax or governmental assessment.

**9.02 *Releases of Liens***

Except as otherwise provided in this Plan or in any contract, instrument, or other document created pursuant to this Plan, on the Effective Date, all pre-Petition Date Liens against Assets of the Estate, except those Liens of holders of Class 2 Secured Creditor Claims identified in section 2.06(2), shall be fully released and discharged and all of the right, title, and Debtor's interest in such Assets shall be distributed in accordance with this Plan.

**9.03 *Closing of the Bankruptcy Case***

When all Disputed Claims have become Allowed Claims by Final Order or have been Disallowed by Final Order and all motions, contested matters, and adversary proceedings have been finally resolved, Reorganized Debtor shall seek authority from the Bankruptcy Court to close the Bankruptcy Case in accordance with the Bankruptcy Code and the Bankruptcy Rules. Upon the failure of the Reorganized Debtor to seek to close the Bankruptcy Case upon the satisfaction of the foregoing conditions, the Plan Administrator shall have authority to move to close the Bankruptcy Case.

**9.04 *No Admission***

Neither the filing of this Plan, nor any statement or provision contained herein, nor the taking by any Creditor of any action with respect to this Plan shall be or be deemed to be an admission against interest by the Debtor. In the event that this Plan is not confirmed, neither this Plan nor any statement contained herein may be used or relied upon in any manner in any suit, action, proceeding, or controversy within or outside of the reorganization case involving the Debtor.

**9.05 *Controlling Documents***

If there is an inconsistency or ambiguity between any term or provision contained in the Disclosure Statement or any other agreement between Creditors and this Plan, the terms and provisions of this Plan shall control. To the extent there is an inconsistency or ambiguity

between any term or provision contained in this Plan and the Confirmation Order, the terms and provisions of the Confirmation Order shall control.

**9.06 *Governing Law***

Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal or state laws are applicable, the laws of the Commonwealth of Virginia shall govern the construction, implementation, and enforcement of this Plan and all rights and obligations arising under this Plan, without giving effect to the principles of conflicts of law.

**9.07 *Severability***

Should the Bankruptcy Court determine, on or before the Confirmation Date, that any provision of this Plan is either illegal or unenforceable on its face or illegal or unenforceable as applied to any Claim or Equity Interest, the Bankruptcy Court, at the request of the Debtor after consultation with the Committee, may alter and modify such provision to make it valid and enforceable to the maximum extent practicable consistent with the original purpose of such provision. Notwithstanding any such determination, interpretation, or alteration, the remainder of the terms and provisions of this Plan shall remain in full force and effect.

**9.08 *Continuing Viability of Other Orders/Agreements***

Except to the extent expressly modified or otherwise provided by this Plan, or as otherwise ordered by the Bankruptcy Court (i) all Final Orders previously entered by the Bankruptcy Court and (ii) any agreements between Creditors or between the Debtor and its Creditors will continue in full force and effect.

**9.09 *Notices and Distributions***

On and after the Effective Date, all notices, requests and distributions to a holder of a Claim or Equity Interest shall be sent to the last known address of (i) the holder or its attorney of record as reflected in the holder's proof of Claim or Administrative Claim filed by or on behalf of such holder, or (ii) if there is no such evidence of a last known address, to the last known address of the holder according to the books and records of the Debtor. Any holder of a Claim or Equity Interest may designate another address by providing Reorganized Debtor and Plan Administrator written notice of such address, which notice will be effective upon receipt by Reorganized Debtor and Plan Administrator of the written designation.

Limitation on Notice: The Debtor, and/or Plan Administrator if applicable, shall give the following notice with regard to the following matters, which notice shall be deemed to be good and sufficient notice of such matters with no requirement for any additional or further notice:

(a) Notice of Entry of Confirmation Order. Notice of the entry of the Confirmation Order shall be sufficient if mailed to all known holders of Claims and Equity Interests (which have not

become Disallowed as of the date of mailing). Such notice shall be mailed by the Debtor within five (5) Business Days of the date that the Confirmation Order becomes a Final Order.

(b) Post-Confirmation Date Service. From and after the date the Confirmation Order becomes a Final Order, notices of appearances and demands for service of process filed with the Bankruptcy Court prior to such date shall no longer be effective. No further notices (other than notice of entry of the Confirmation Order) shall be required to be sent to any entities or persons, except for any creditor who files a renewed request for service of pleadings and whose Claim has not been fully satisfied.

(c) General Notice To Creditors. All notices and requests to creditors of any Class shall be sent to them at the addresses set forth on the proofs of Claim or, if no proof of Claim was filed, to their last known address as reflected in the records of the Debtors. Any Creditor may designate in writing any other address for purposes of this Section, which designation shall be effective upon receipt by the Debtor before the Effective Date or the Reorganized Debtor or the Plan Administrator (as the case may be) after the Effective Date.

#### **9.10 *Binding Effect***

This Plan shall be binding on and inure to the benefit of (and detriment to, as the case may be) the Debtor, the Committee, Plan Administrator and all holders of Allowed Claims or Equity Interests and their respective personal representatives, successors and assigns.

#### **9.11 *Other Documents and Actions***

The Reorganized Debtor may execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements, and take such other action as is reasonable, necessary, or appropriate to effectuate the transactions provided for in this Plan, without any further action by or approval of the Bankruptcy Court. At least seven days prior to the Confirmation Date, the Debtor shall file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

Dated: August 9, 2016  
Richmond, Virginia

Respectfully submitted,  
DOMINION PAVING & SEALING, INC.

/s/ Christopher L. Perkins  
Counsel

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*Counsel for Debtor*

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS

/s/ G. David Dean  
Counsel

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**EXHIBIT B**  
**(Liquidation Analysis)**



DOMINION PAVING & SEALING, INC.  
LIQUIDATION ANALYSIS  
ASSUMED EFFECTIVE DATE: 6/14/2016

	PROJECTED BALANCE	EST RECOVERY %		EST RECOVERY PROCEEDS	
		LOW	HIGH	LOW	HIGH
<b>I. ASSETS AVAILABLE FOR DISTRIBUTION</b>					
CASH	50,000	100.00%	100.00%	50,000	50,000
RECOVERY ACTIONS					
REAL ESTATE	1,000,000	80.00%	100.00%	800,000	1,000,000
EQUIPMENT	2,238,750	65.97%	80.00%	1,477,000	1,791,000
				<u>2,327,000</u>	<u>2,841,000</u>
LESS:					
CHAPTER 7 TRUSTEE FEES				(93,080)	(113,640)
WIND-DOWN BUDGET				(100,000)	(100,000)
				<u>(193,080)</u>	<u>(213,640)</u>
<b>PROCEEDS AVAILABLE FOR DISTRIBUTION TO CREDITORS</b>				<b>2,133,920</b>	<b>2,627,360</b>
<b>II. SECURED CLAIMS:</b>		100.00%	100.00%	1,534,797	1,534,797
SUNTRUST CREDIT CARD	162,000				
SUNTRUST REAL ESTATE	750,000				
SUNTRUST EQUIPMENT	204,000				
SUNTRUST ESOP PAYOFF	158,000				
FIRST CITIZENS	30,000				
FIRST CITIZENS	104,000				
Ally Unit 1224	5,536				
Ally Unit 1223	8,007				
Ally Unit 1222	11,332				
Ally Unit 1230	26,922				
Equify	75,000				
Internal Revenue Service	209,000	100.00%	100.00%	209,000	209,000
County taxes	61,000	100.00%	100.00%	61,000	61,000
State taxes	84,000	100.00%	100.00%	84,000	84,000
	<u>1,888,797</u>			<u>1,888,797</u>	<u>1,888,797</u>
<b>PROCEEDS AVAILABLE TO PAY ADMINISTRATIVE CLAIMS</b>				<b>390,123</b>	<b>883,563</b>
<b>III. ADMINISTRATIVE CLAIMS</b>					
AUCTION COMMISSION	118,592	100.00%	100.00%	118,592	118,592
Internal Revenue Service	649,000	100.00%	100.00%	649,000	649,000
VIRGINIA TAXES	84,000	100.00%	100.00%	84,000	84,000
COUNTY TAXES	40,000	100.00%	100.00%	40,000	40,000
CHAPTER 11 PROFESSIONAL FEES	542,664	100.00%	100.00%	542,664	542,664
	<u>1,434,256</u>			<u>1,434,256</u>	<u>1,434,256</u>
<b>PROCEEDS (SHORTAGE) AVAILABLE TO PAY PRIORITY CLAIMS</b>	<b>(1,434,256)</b>			<b>(1,044,133)</b>	<b>(550,693)</b>
<b>IV. PRIORITY CLAIMS</b>					
ESOP PRIORITY				76,000	76,000
Employee salary				34,000	34,700
Employee 401k				15,362	25,800
				<u>125,362</u>	<u>136,500</u>
<b>PROCEEDS (SHORTAGE) AVAILABLE TO PAY UNSECURED CLAIMS</b>				<b>(1,169,495)</b>	<b>(687,193)</b>
<b>V. UNSECURED CREDITORS</b>					
GENERAL UNSECURED					1,049,000