

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)
)
FERRAILO CONSTRUCTION, INC.,) Chapter 11
) Case No. 13-10164
)
Debtor.)

DISCLOSURE STATEMENT WITH RESPECT TO DEBTOR’S PLAN OF REORGANIZATION DATED JUNE 7, 2013

Ferraiolo Construction, Inc. (the “Debtor” or “Ferraiolo”) presents this disclosure statement (the “Disclosure Statement”) pursuant to § 1125(b) of Title 11 of the United States Code¹ (the “Bankruptcy Code”) to all known creditors and holders of interest in and to the Debtor, in connection with the Debtor’s Plan of Reorganization Dated June 7, 2013 (the “Plan”).²

I. INTRODUCTION

The Debtor provides this Disclosure Statement to all of the Debtor’s known creditors and other parties-in-interest under § 1125 of the Bankruptcy Code. The purpose of this Disclosure Statement is to provide adequate information so that creditors entitled to vote for or against the Debtor’s Plan may make an informed decision. Your rights may be affected by the Plan, so you should read the Plan and Disclosure Statement carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult with one.

A ballot for your use in voting to accept or reject the Plan is enclosed. Instructions for completing and returning the ballot are printed on the ballot itself. **IN ORDER FOR YOUR BALLOT TO COUNT, IT MUST BE RECEIVED AT THE ADDRESS STATED ON THE BALLOT NO LATER THAN 5:00 P.M. (EASTERN TIME) ON [REDACTED], 2013. BALLOTS MAY BE SUBMITTED BY FACSIMILE TO (207) 773-3210, BUT SHALL NOT BE ACCEPTED BY ELECTRONIC MAIL.**

PLEASE BE ADVISED THAT THIS DISCLOSURE STATEMENT SUMMARIZES THE DEBTOR’S PLAN. FOR A DEFINITIVE UNDERSTANDING OF THE TERMS OF THE PLAN, IT IS RECOMMENDED THAT YOU REVIEW THE PLAN ITSELF. IF THERE IS ANY DISCREPANCY BETWEEN THE CONTENTS OF THIS DISCLOSURE

¹ Unless otherwise indicated, all statutory references are to the Bankruptcy Code.

² This Disclosure Statement shall be updated upon the completion of an auction of certain of the Debtor’s assets that is scheduled for June 11 and 12, 2013. Proceeds of the auction will be used to pay certain creditors and finalize the Debtor’s liquidation analysis. This update shall be in the form of an addendum to this Disclosure Statement, which addendum shall supplement, rather than replace, the Disclosure Statement.

STATEMENT AND THE PLAN, THEN THE PROVISIONS OF THE PLAN SHALL CONTROL.

Except where specifically stated otherwise, the portions of this Disclosure Statement that describe the Debtor's business operations, assets, and liabilities have been prepared from the Debtor's books and records. The Debtor has done its best to assure that this Disclosure Statement is correct and complete, but no representations or warranties are made in that regard. NO REPRESENTATIONS CONCERNING THE FINANCIAL CONDITION OF THE DEBTOR OR THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

II. DEFINITIONS OF KEY TERMS

For your reference, the terms set forth below shall have the following meanings when used in initially capitalized form in this Disclosure Statement. These definitions shall apply to the singular and plural forms of such terms. The Debtor has made every effort to have these Definitions of Key Terms duplicate those set forth in the Plan. Any capitalized term in this Disclosure Statement that is not defined in this section of the Disclosure Statement but that is defined in the Bankruptcy Code shall have the meaning assigned to such term in the Bankruptcy Code. Capitalized terms that are used in this Disclosure Statement but that are not otherwise defined herein shall have the meaning set forth for such terms in the Plan.

- 1.1 Administrative Claim shall mean a Claim arising and allowable under § 503(b) of the Bankruptcy Code with respect to the Debtor, including charges against the Debtor's estate under 28 U.S.C. § 1930.
- 1.2 Allowed with respect to a Claim or Interest other than a Fee Claim, shall mean any Claim or Interest (a) that is the subject of a timely filed proof of claim, or (b) any Claim or Interest that has been listed in the schedules filed with the Bankruptcy Court by the Debtor pursuant to Bankruptcy Code § 521 and is not listed therein as disputed, unliquidated, or contingent; and, in each such case as to which either (i) no objection to the allowance thereof or other similar pleading has been filed within the applicable time period set forth in the Plan, or (ii) an objection or other similar pleading has been filed and the Claim or Interest has been allowed by a Final Order but only to the extent so allowed. To the extent that all or a portion of a Claim is not Allowed, the holder of such Claim shall not receive any distribution on account of the portion of such Claim that is not Allowed.
- 1.3 Allowed Amount shall mean the amount of any Allowed Claim or Allowed Interest.
- 1.4 Assets means all property that would be property of the Debtor and the Debtor's estate under § 541 of the Bankruptcy Code, whether such property is now existing or hereafter arising or acquired and wherever located including, without limitation, all Causes of Action and all proceeds of and recoveries on Causes of

Action, all accounts, contract rights, chattel paper, general intangibles, instruments, securities, furniture, fixtures, machinery, equipment, inventory, intellectual property, domain names, and interest in real estate.

- 1.5 Auction shall mean the auction of certain assets of the Debtor's estate, as well as certain assets of various insiders of the Debtor as described in the Plan Support Agreement and authorized in the Plan Support Order.
- 1.6 BOM shall mean Bank of Maine and its affiliates, successors, agents, and assigns.
- 1.7 Bankruptcy Code shall mean 11 U.S.C. §§ 101 *et seq.*, as in effect with respect to the Case on the Petition Date. All Code references herein are to the Bankruptcy Code in effect as of the Petition Date, unless otherwise stated.
- 1.8 Bankruptcy Court shall mean the United States Bankruptcy Court for the District of Maine, or any other court with jurisdiction over the Case.
- 1.9 Bar Date shall mean the date, if any, established by the Bankruptcy Court as the deadline for filing proofs of claims or interests in the Case.
- 1.10 BSB shall mean Bangor Savings Bank and its affiliates, successors, agents, and assigns.
- 1.11 Case shall mean the Chapter 11 Case of the Debtor now pending in the Bankruptcy Court pursuant to Chapter 11 of the Bankruptcy Code.
- 1.12 Cash shall mean payment, including by check, issued by or on behalf of the Debtor with respect to any payment of collected funds required to be made pursuant to the Plan.
- 1.13 Cause of Action shall mean all claims and causes of action now owned or hereafter acquired by the Debtor and/or its estate, whether arising under the Bankruptcy Code or other federal or state law, including, without limitation, Chapter 5 Causes of Action
- 1.14 Chapter 5 Causes of Action shall mean all Causes of Action (as that term is defined *infra* at §1.11 arising under Chapter 5 of the Bankruptcy Code (including, but not limited to, causes of action arising under 11 U.S.C. §§ 544, 547, 548, 549, 550, and 553).
- 1.15 Claim shall mean a claim, as defined in § 101(5) of the Bankruptcy Code, against the Debtor.
- 1.16 Committee shall mean the Official Committee of Unsecured Creditors appointed

in this case.

- 1.17 Confirmation Date shall mean the date upon which the Confirmation Order becomes a Final Order, provided that such order is not, as of said date, stayed.
- 1.18 Confirmation Order shall mean an Order (which need not be a Final Order) confirming the Plan and/or any amendment thereto pursuant to § 1129 of the Bankruptcy Code.
- 1.19 Disbursing Agent shall mean the entity appointed pursuant to Article VII of this Plan to disburse funds to holders of Allowed Claims pursuant to the provisions of this Plan.
- 1.20 Effective Date shall mean the date determined in accordance with Article VI of the Plan.
- 1.21 Encumbrances shall mean all liens, encumbrances, mortgages, hypothecations, pledges, and security interests of any kind whatsoever.
- 1.22 Executory Contract shall mean an executory contract within the meaning of § 365 of the Bankruptcy Code.
- 1.23 Fee Claim shall mean the Administrative Claim of a professional person for compensation and/or reimbursement of expenses.
- 1.24 Final Order shall mean an Order of any court, administrative agency or other tribunal as entered on its docket as to which (a) the time to appeal or petition for rehearing or *certiorari* has expired and as to which no appeal or motion for rehearing or petition for *certiorari* has been timely filed or taken, (b) if such an appeal or motion for rehearing or petition for *certiorari* has been timely filed or taken, such order or judgment has been affirmed by the highest tribunal in which review was sought or such appeal, motion for rehearing or petition for *certiorari* was dismissed or otherwise terminated without modification of such order or judgment, and the time has expired within which any further proceeding for review may be commenced.
- 1.25 Mercedes Benz shall mean Mercedes-Benz Financial Services USA, LLC *f/k/a* DCFS USA, LLC and its affiliates, successors, agents, and assigns.
- 1.26 Order shall mean an order of the Bankruptcy Court.
- 1.27 Petition Date shall mean March 13, 2013.

- 1.28 Plan shall mean this Plan of Reorganization, dated June 7, 2013, as it may be amended or modified by the Debtor from time to time (or such other interest rate as the Court may order or the Debtor may agree upon with the relevant parties-in-interest), together with all exhibits, schedules and other attachments hereto, as the same may be amended or modified by the Debtor from time to time (or such other interest rate as the Court may order or the Debtor may agree upon with the relevant parties-in-interest), all of which are incorporated herein by reference.
- 1.29 Plan Support Agreement shall mean the Agreement Between Ferraiolo Construction, Inc., Certain Insiders of Ferraiolo Construction, Inc., and BOM of Maine, for Support and Implementation of a Chapter 11 Plan of Reorganization for Ferraiolo Construction, Inc., and Related Matters dated April 19, 2013, which Bank Agreement was approved by the Court in the Plan Support Order.
- 1.30 Plan Support Order means the Order Granting Motion for Approval of Agreement Between and Among Debtor, Bank of Maine, and Certain Principals of Debtor for Plan Support and For Authority to Sell Assets of the Estate Free and Clear of Liens Pursuant to 11 U.S.C. § 363(b), (f) In Furtherance of Such Agreement and For Related Relief entered by the Bankruptcy Court on May 2, 2013.
- 1.31 Post-Petition Bar Date shall mean the date that is thirty (30) days after the Confirmation Date.
- 1.32 Prime Rate shall mean the annualized rate of interest designated as the “Prime Rate” as published in the Money Rates Section of the Wall Street Journal, Eastern Edition, as of the Effective Date. If the Prime Rate shall no longer be published in the Money Rates or any other section of The Wall Street Journal, then the holder(s) of an obligation payable with interest at the Prime Rate pursuant to this Plan shall have the right, exercising reasonable judgment, to substitute a new method for determining a comparable per annum interest rate to be charged by the holder(s) and such rate of interest determined by such method shall become the Prime Rate for the purpose of this Plan and any obligation issued pursuant to this Plan.
- 1.33 Priority Claim shall mean an Unsecured Claim arising before the Petition Date and allowable under §§ 507(a)(2) through 507(a)(9) of the Bankruptcy Code.
- 1.34 Secured Claim shall mean a claim that is secured by a perfected (or similarly binding) Encumbrance on any of the Debtor’s assets, to the extent provided in 11 U.S.C. § 506 of the Bankruptcy Code.
- 1.35 TD shall mean TD Bank, N.A. and its affiliates, successors, agents, and assigns.
- 1.36 Town shall mean the Town of Rockland, Maine.

- 1.37 Unencumbered Vehicles shall mean certain motor vehicles that are owned by the Debtor that are not subject to any liens or Encumbrances of BOM or other creditors of the Debtor. A schedule of the Unencumbered Vehicles is attached hereto as Exhibit A.
- 1.38 Unsecured Claim shall mean a Claim which arose before the Petition Date and which is not secured by any interest in any property of the Debtor's estate, and shall include a Claim which arises from the rejection of an Executory Contract or Unexpired Lease, within the meaning of § 365 of the Bankruptcy Code; provided, however, that in order to be an Unsecured Claim, such claim must be evidenced by a proof of claim which has been timely filed by the holder of the Claim (whether or not such proof of claim has been Allowed) prior to the Bar Date or the Rejection Bar Date (as that term is defined in the Plan in Article VIII, § 8.2) as may be applicable, or such Claim must be described on Schedule F filed by the Debtor and not noted as unliquidated, contingent or disputed on such Schedule (whether or not such claim is deemed Allowed).
- 1.39 VFS shall mean VFS Leasing Company and its affiliates, successors, agents, and assigns, including, but not limited to, VFS SU, LLC.
- 1.40 Windward shall mean Windward Petroleum and its affiliates, successors, agents, and assigns.

III. SUMMARY OF THE PLAN

The Debtor is a Maine corporation engaged in the businesses of road construction and commercial construction site work, sale of asphalt and concrete products, and related businesses. The Debtor owns multiple parcels of real estate as well as machinery and equipment that it currently uses, or in the past has used, to manufacture gravel, precast concrete forms and other items utilized in the construction business. Immediately prior to the Petition Date, the Debtor became the successor by merger with three affiliates, Ferraiolo Precast, Inc. ("Precast"), Ferraiolo Corp. ("Corp."), and Ferraiolo Real Estate Company, Inc. ("REC") each of which were engaged in a unified and integrated business enterprise with Debtor.

The Plan provides for the settlement and satisfaction by the Debtor of all Classes of Claims identified in the Plan in the amounts and over the timeframes set forth therein. The Plan also describes the means by which the Debtor intends to satisfy its obligations under the same. Reference is made to the provisions of Articles III, IV, V, VI, VII, and VIII of the Plan for a more detailed statement of the terms of settlement and satisfaction of all Classes of Claims, and the means for doing so.

By way of summary, the thrust of the Debtor's plan is a reorganization around a streamlined business model that sheds unprofitable business assets and retains core assets and business] lines. To achieve this goal, and to satisfy its pre-petition creditors, the Debtor will be liquidating certain assets at an auction to be held June 11 and 12, 2013 (the "Auction" defined

above), and using the proceeds of the Auction to fund payments to both secured and unsecured creditors. The Debtor will retain certain other assets that it owns in order to conduct its business, as reorganized. To the extent that retained assets are subject to liens in favor of BOM, the Debtor will pay and satisfy those liens in the manner described in the Plan and as further discussed below. The property to be sold at the Auction includes a variety of rolling stock, *i.e.* trucks, equipment, mixers, etc., all of which is identified, in detail, in **Exhibit B** attached hereto.

In addition to the satisfaction and restructuring of the Debtor's debts and obligations, the Debtor's Plan will permit the continued employment of approximately 35 employees in the greater Rockland area of Maine. While Rockland is generally a prosperous area, the Debtor believes that jobs in the construction industry are an important component of the local economy and provide not only a valuable service for the mid-coast area but also offer a career path other than in the service-sector. Further, the Debtor, as reorganized, will expend over \$3 million per year, much of it in the local economy, to purchase materials and supplies from some local vendors and to pay salaries for local employees. Pursuant to the Bankruptcy Code, the Bankruptcy Court is permitted to consider the impact of a Plan upon employees and their families, as well as the community. The Debtor believes that the Plan will have a very positive impact in terms of continued employment of local residents and continued expenditure of funds in the local economy.

The Debtor believes that the Plan provides for the fair and equitable treatment of all creditor Claims and that the Plan is in the best interest of all creditors, and other parties-in-interest.

IV. HISTORY AND BACKGROUND OF THE DEBTOR

A. General Background of the Debtor

As discussed above, the Debtor and its predecessors in interest were organized as Maine corporations engaged in the businesses of road construction, commercial construction site work, the sale of asphalt and concrete products, and related businesses. The Debtor owns multiple parcels of real estate as well as machinery and equipment that it has in the past or currently uses to manufacture gravel, precast concrete forms and other items utilized in the construction business. Immediately prior to the Petition Date, the Debtor became the successor by merger with three affiliates, Ferraiolo Precast, Inc. ("Precast"), Ferraiolo Corp. ("Corp."), and Ferraiolo Real Estate Company, Inc. ("REC") each of which were each engaged in a unified and integrated business enterprise with Debtor.

The Debtor dates its inception to 1969, when Vincent Ferraiolo established Ferraiolo Construction, and it has been in continuous operation since that time as a family business. In 1983, his two sons, John Ferraiolo and Frank Ferraiolo, officially joined the business after college. And in March 1985, the business incorporated as Ferraiolo Construction, Inc., which is today the surviving entity after the merger. At the present time, Vincent Ferraiolo, the founder of the Debtor, is the President, Frank Ferraiolo is the Vice President, and John Ferraiolo is the Treasurer. The owners of the Debtor are either members of the Ferraiolo family or trust entities holding ownership interests for the benefit of members of the Ferraiolo family.

In addition to the Debtor, prior to the merger of affiliates of the Debtor into the Debtor, the Ferraiolos established and/or acquired several other businesses that operated in a unified and integrated business enterprise with the Debtor:

- REC was established in 1988 as a real estate holding company for some of the Ferraiolos' various business interests, which are consolidated in the Debtor and which operated as a unified business interest;
- Precast was established in 1993 and provided all types of concrete precast services.
- Corp. was established in 2001 and provided hot top, paving, and batch plant operations.
- In 2002, the Debtor purchased the assets of Williams Construction for \$6 million.

The Debtor, and its now-merged entities, had a robust, successful business that contributed significantly to the local and state economy. The Debtor has a full complement of machinery, equipment, rolling stock, processing plants (including ready-mix concrete and asphalt) as well as stone-crushing equipment at different locations. The Debtor, and its now-merged entities, also owned seven gravel pits throughout the mid-coast region that it used not only to provide constituent parts for the ready-mix concrete plants, but also for contracting projects. The pits provided sand, crushed stone, and gravel. The Debtor also owns several pieces of real property, some with buildings on them, throughout the mid-coast area, including the Debtor's now-vacated 30,000-square-foot headquarters, located on Gordon Drive in Rockland, Maine. A detailed listing of the Debtor's personal property, including equipment and rolling stock, can be found on Schedule B of the Debtor's Schedules, filed with the Bankruptcy Court. The Debtor estimates that its personal property had an aggregate value of \$8.96mm as of the Petition Date.³ As of the Petition Date, the Debtor's real estate holdings included the following:

- Damariscotta Batch Plant, 73 Biscay Road, Damariscotta, ME;
- Farmingdale Batch & Asphalt Plant, 361 Maine Avenue, Farmingdale, ME (including 6 Williams Street and Third Street parcels);
- Property located on Windsor Road, Route 32, China, ME;
- Former Williams Construction Facility, 10 Commonwealth Avenue, Gardiner, ME;
- 10 Burrow Street, Rockland, ME (and related property on which a batch plant is located behind this parcel);
- Land on Thomas Street, Camden, ME;
- Liberty #1 Gravel Pit, Plains Road, Liberty, ME;
- Liberty #2 Pit (Quarry), Howe's Cove Road, Liberty, ME;
- Monmouth Batch Plant, 1004 U.S. Route 202, Monmouth, ME;
- Rockland Warehouse Buildings, 28-30 Gordon Drive, Rockland, ME;
- Schlosser/Dysart/Casco northern & Hanson Lots, and the Dysart Pit, Vigie Road, Whitefield, ME;

³ Please see Schedule B of the Debtor's Schedules for a more information on valuation.

- Topsham Batch Plant, 26 Meadow Street Extension, Topsham, ME;
- Waldo Pit, Route 131, Waldo ME; and
- Property on Dana Mills Road, Woolwich, ME.

The Debtor estimates that these properties had an aggregate value of \$6.61mm as of the Petition Date.⁴

By 2007, the Debtor had become a successful \$17mm plus per year business with several business lines—construction, concrete products, asphalt “hot top” work, and paving. With the national and local recession in the construction industry that began in that year, however, the Debtor’s business began to decline, a decline experienced by the construction industry in general. By 2010, the Debtor’s business had dropped approximately 35%, to about \$11.6mm per year. While there were some improvements to income in 2011, increased fuel costs and utility expenses grew too quickly for the Debtor to stay ahead of rising costs. While the Debtor engaged in a variety of remedial measures to try to return to profitability, it was unable to do so.

This led to problems with the Debtor’s primary secured creditor, BOM. The Debtor’s borrowing relationship with BOM dates back more than a decade. Over the years, much of the property mentioned above, both personal property like rolling stock and real property, were pledged as security to BOM. In 2011, the Debtor was unable to meet its loan covenants with BOM. This led the Debtor and BOM to participate in a consensual out-of-court restructuring of several then-existing loans, including by retiring certain promissory notes, consolidating others, and expanding BOM’s collateral base by adding, among other things, personal residences of some members of the Ferraiolo as collateral. The 2011 workout left the Debtor with the following new obligations to BOM, as well as a preexisting loan (Loan # 13219) that, as of April 2013, was estimated to have an outstanding balance of unpaid principal and interest totaling \$991,093.42:

<u>Instrument</u>	<u>Maker</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>	<u>Maturity</u>
Term Note A2	Ferraiolo Construction, Inc.; Ferraiolo Corp.; Ferraiolo Precast, Inc.; Vincent Ferraiolo; John Ferraiolo; and Frank (a/k/a Franco) Ferraiolo	\$5,910,578.40	4.25 % or 2 % plus Prime, whichever is greater	240 months	60 months	7/3/2016
Term Note AA	Ferraiolo Construction, Inc.; Ferraiolo Corp.; Ferraiolo Precast, Inc.; Vincent Ferraiolo; John Ferraiolo; and Frank (a/k/a Franco) Ferraiolo	\$2,621,565.08	4.25 % or 2 % plus Prime, whichever is greater	balloon payment	60 months	6/14/2016

⁴ The value of this property is based on the lesser of the tax assessed value or the Debtor’s estimate of a fair market value sale price.

Term Note B	Ferraiolo Construction, Inc.; Ferraiolo Corp.; Ferraiolo Precast, Inc.; Vincent Ferraiolo; John Ferraiolo; and Frank (a/k/a Franco) Ferraiolo	\$921,717.05	4.25 % or 2 % plus Prime, whichever is greater	300 months	60 months	6/24/2016
Revolver	Ferraiolo Construction, Inc.; Ferraiolo Corp.; Ferraiolo Precast, Inc.; Vincent Ferraiolo; John Ferraiolo; and Frank (a/k/a Franco) Ferraiolo	\$500,000	2 % plus Prime, but never below 4.25 %	n/a	n/a	6/14/2016

The following year, however, it became apparent that the Debtor would not be able to service these obligations in full notwithstanding the loan restructuring, and further efforts at an out-of-court workout were unsuccessful. In February of 2013, BOM called the loans and sent notices to the Debtor’s account-debtors directing payment of the Debtor’s accounts-receivable to BOM, which precipitated the commencement of this Bankruptcy Case.

B. The Chapter 11 Case

The Debtor commenced this case by filing a petition for relief under Chapter 11 of the Bankruptcy Code on the Petition Date, to forestall a total business collapse that would have been inevitable had BOM’s efforts to take control of the Debtor’s accounts receivable been effective. Had the Debtor’s account-debtors (*i.e.*, its trade creditors who owed it money) sent payment to BOM, the Debtor would have immediately been cash-starved, unable to make payroll, unable to meet its then-current obligations, and unable to function as a going concern.

Following the filing of the Debtor’s Chapter 11 Petition, the Debtor sought and obtained approval from the Bankruptcy Court to retain key professionals. On May 8, 2013, the Bankruptcy Court approved the retention of attorneys with the law firm Marcus, Clegg & Mistretta, P.A. (“MCM”), as bankruptcy counsel to assist in the Chapter 11 proceedings, and the retention of Windsor Associates (“Windsor”) as financial consultant to the Debtor.

On April 12, 2013, the United States Trustee for the District of Maine (the “UST”), appointed the Official Committee of Unsecured Creditors in this Bankruptcy Case (the “Committee”). On May 8, 2013, the Bankruptcy Court approved the retention of Nathaniel Hull and attorneys with the law firm of Verrill Dana LLP (“VD”) as counsel to the Committee.

As the Debtor’s primary secured creditor, BOM has been an important influence in these Chapter 11 proceedings. After initial proceedings regarding use of cash collateral, adequate protection for BOM, and payment of pre-petition payroll owed to non-family employees, the Debtor and BOM entered into negotiations about the future of the Debtor, the Bank’s debt, and the prospects for a successful reorganization that would be palatable to the Bank. In these discussions, the Debtor and BOM reached certain agreements memorialized in that certain

Agreement Between Ferraiolo Construction, Inc., Certain Insiders Of Ferraiolo Construction, Inc., And The Bank Of Maine, For Support And Implementation Of A Chapter 11 Plan Of Reorganization For Ferraiolo Construction, Inc. And Related Matters, dated April 19, 2013 (the “Agreement”). The Agreement documents an agreement between the Debtor and BOM as to the future direction of the Case, the liquidation of a substantial portion of BOM Collateral, and the principal terms of a plan of reorganization. The Plan to which this Disclosure Statement refers is a direct outcome of that Agreement.

This was an important agreement to reach in light of the indebtedness (the “Indebtedness”) that BOM claimed to be due and owing in the context of these proceedings:

Loan #	Unpaid Principal	Accrued Interest (through 4/11/2013)	Subtotal
21648	\$821,086.89	\$83,469.06	\$904,555.95
21638	\$325,239.71	\$14,536.87	\$339,776.58
21642	\$2,621,565.08	\$249,983.44	\$2,871,548.52
21647	\$5,273,108.90	\$532,507.56	\$5,805,616.46
13219	\$985,911.43	\$5,181.88	\$991,093.42
			\$10,912,590.93

The Agreement, which was approved by the Bankruptcy Court, provides for the following:

- The Debtor will liquidate, by public auction sales at the Auction on or prior to June 11 and 12, 2013, all of the real and personal property that the Debtor considers to be surplus to its current business or its reorganized business. Such properties were described in Exhibit A to the Agreement.
- The net proceeds of the Auction, with the exceptions noted below, are to be paid to the Bank, in partial satisfaction of the Indebtedness.
- From the net proceeds of the Auction attributable to the sale of motor vehicles for which a certificate of title has been issued without notation of a security interest in favor of the Bank, the sum of \$113,000 (or if less, the actual net proceeds from the sale of such vehicles) will be set aside and placed in a “Bonding Escrow Account”. This Account will be augmented by the sum of \$187,000, which represents the amount of cash currently held as bonding security and which the Debtor expects to recover without dispute from the current holder of such funds.
- The Debtor may use funds in the Bonding Escrow Account (an expected total of \$300,000 from the sources outlined above) in order to secure bonding for its business operations, including letters of credit to be issued to bonding companies as security for bonds to be issued in favor of the Debtor. The Debtor’s transfer of funds to a bonding company or to a bank issuing a letter of credit, remains subject to approval of the Bankruptcy Court pursuant to § 364 of the Bankruptcy Code, although the Bank, by virtue of the Agreement, consents to the use of the funds in the Bonding Escrow Account for such purpose.

- To the extent that the net proceeds of the Auction of motor vehicles for which a certificate of title has been issued without notation of a security interest in favor of BOM exceeds the sum of \$113,000, such excess will be placed in a separate escrow account maintained at the Bank, to be disbursed only pursuant to an order of the Bankruptcy Court, or by agreement of the Debtor, the Bank and the Committee.
- After the conclusion of the Auction and the disbursement of the proceeds, the Indebtedness of the Debtor will be reduced and evidenced by two promissory notes to the Bank, an “A Note” and a “B Note”.
- The A Note will be in the principal amount of \$1,000,000. It will bear interest at 1.5% over the Wall Street Journal Prime Rate, will be amortized by equal monthly installments based upon a 10-year amortization schedule, and it will mature eighteen (18) months after issuance. The A Note will be secured by all remaining assets of the Debtor.
- The B Note will be in the principal amount calculated as follows: the Indebtedness, less the principal amount of the A Note, less the net proceeds of the auction sale paid to the Bank, less two million dollars (\$2,000,000). The B Note will bear interest at the same rate as the A Note, and will be secured by all remaining assets of the Debtor. It will be payable in a single payment at the same time that the A Note matures (18 months), provided, however, that (i) if the Debtor complies with its obligations under the A Note and applicable loan agreements, and that Note is timely paid by the Debtor, and (ii) if Vincent Ferraiolo timely satisfies a personal note to BOM in the principal amount of \$300,000 (defined as the “VF Note” in the Agreement), then the B Note, as to the Debtor, will be considered paid and satisfied in full, without further payment by the Debtor. If the A Note and the Vincent Ferraiolo Note are not satisfied in accordance with their terms, the B Note will remain a liability of the Debtor.
- The Debtor agreed to file a plan of reorganization in accordance with the provisions of the Agreement and to seek confirmation of the same, in accordance with a timetable set forth in the Agreement, including filing of the Plan on or before June 7, 2013.
- The Bank agreed to support, vote for and accept a Plan filed in compliance with the Agreement.

The Agreement contains other material terms and conditions and will control in the event that there is any inconsistency between the Agreement and the foregoing summary. **Parties receiving this Disclosure Statement are urged to review the Agreement in detail.** In addition, the Agreement contains certain provisions applicable to principals of the Debtor and guarantors of the Indebtedness.

The Debtor believed and continues to believe that the Agreement is in the best interests of the Debtor, the estate, and its creditors in that it provides the means for a successful reorganization of the Debtor. By virtue of the Agreement, unneeded assets are liquidated, the Indebtedness to BOM is reduced to an amount that a reorganized Debtor can service, funds are made available so that the Debtor can obtain necessary bonds for its construction business, and the advance approval of the Debtor's principal secured creditor to its proposed plan of reorganization is obtained. The Court agreed with the Debtor, and entered an order approving the Agreement on May 2, 2013, a copy of which is attached hereto as **Exhibit C**.

The Bankruptcy Court's approval of the Agreement set the stage for the Debtor to proceed with preparation and filing of the Plan and this Disclosure Statement.

V. ASSETS OF, AND CLAIMS AGAINST, THE DEBTOR

A. Assets of the Debtor

The Assets of the Debtor are as set forth herein and in the attached Schedules. Those assets can be placed into six general categories:

1. **Inventory**: The Debtor's inventory consists of aggregates, building materials, and spare parts for its rolling stock. As of April 30, 2013, the book value of the unaudited Inventory was \$1,873,500.
2. **Accounts Receivable**: The Debtor has accounts receivable from various aspects of its business, construction, paving, hot top asphalt, site work, etc. As of May 27, 2013, the book value of the Accounts Receivable was \$1,383,677.
3. **Fixed Assets (Including Equipment and Real Property)**: The Debtor has a significant amount of equipment and rolling stock, much of which is to be sold at the Auction, as well significant real estate holdings. As of April 30, 2013, the net book value (*i.e.*, book cost less depreciation and depletion) of the Fixed Assets was \$5,892,967.
4. **Cash**: For the most part, the Debtor has little in operating cash. The Debtor's cash balance as of May 27, 2013 was \$125,681.
5. **Claims against Shareholders of the Debtor**: *De minimis*.
6. **Chapter 5 Causes of Action**: *De minimis*.

In addition to these assets, the Debtor has a deposit totaling \$187,000 with a bonding company.

B. Claims Against the Debtor

The Bankruptcy Court established July 13, 2013 (the "**Bar Date**"), as the deadline for filing of proofs of claim against the Debtor's estate for the purpose of establishing the Debtor's liabilities. This Bar Date applies to all Claims and interests against the Estate, except for Administrative Claims under § 503(b) of the Bankruptcy Code and claims held by governmental units. To the extent that a proof of claim or interest was not filed on or before the Bar Date, and to the extent that the Claim is scheduled by the Debtor as disputed, unliquidated, or contingent, the holder of the Claim is deemed to have waived any and all Claims against the Debtor's Estate. No Claim will be entitled to payment until such Claim is an Allowed Claim. If an objection is

made to a Claim, no payment will be made until the court determines the lawful amount of the Claim. The Debtor has reserved the right to object to all Claims. Based on the proofs of claim filed, the Debtor's Schedules prepared by the Debtor, and the Debtor's most recent estimates of the value of its Assets, the Claims against the Debtor can be stated as follows:

In general terms, these Claims (essentially liabilities of the Debtor and its estate), can be organized into four broad categories: (1) secured claims; (2) administrative expense claims; (3) priority claims; and (4) general unsecured claims.

1. Secured Claims

A claim is secured, and therefore a "secured claim," when a creditor holds a lien on particular assets of the Debtor that serve as collateral for the Debtor's obligations—essentially to assure payment or a source of repayment if the Debtor fails to perform as promised. Generally speaking, proceeds from any sale of collateral must be applied first to the repayment of any claims secured by the collateral. If the value of a Claim exceeds the value of the collateral securing that Claim, then the Claim is only considered a secured claim up to the value of the collateral securing that claim, with the balance in excess of the value of the collateral deemed a general unsecured claim.

As of March 13, 2013, there were secured claims totaling \$10,046,421.58, as set forth on the Debtor's Schedule D filed in this case. These claims are secured by virtually all of the real estate, machinery and equipment, inventory and accounts receivable of the Debtor, although certain titled motor vehicles are not subject to any encumbrance. A copy of Schedule D of the Debtor's Schedules may be obtained from the Debtor upon request.

2. Administrative Expense Claims

The Bankruptcy Code provides that certain types of Unsecured Claims shall be paid in full prior to the payment of other Claims. These Claims generally include the fees of professionals employed by the Debtor and by the Committee, to the extent approved by the Bankruptcy Court, and ordinary and necessary expenses incurred after the commencement of a Chapter 11 case. Administrative Expense Claims also include Claims for the costs and expenses of preserving the Debtor's Estate or its Assets. Many of these expenses are paid during the case, but those remaining are given special treatment pursuant to § 507(a)(1) of the Bankruptcy Code.

The Debtor estimates that as of the Effective Date of the Plan, Administrative Claims will consist primarily of the Debtor's obligations for (a) payment of legal fees for the Debtor's bankruptcy counsel (MCM), its financial consultant (Windsor), and any other professional retained by the Debtor to perform discrete functions (collectively, the "Debtor's Professional Fees"); and (b) the payment of legal fees for the Committee's counsel (VD) (the "Committee's Professional Fees"); the "Professional Fees"). The Professional Fees are, for the most part, paid on a monthly basis (90% of fees and 100% of expenses), as they are incurred (subject, however, to final allowance by the Court). The Debtor has budgeted approximately \$339,132 for Professional Fees (including UST Fees), excluding any pre-petition retainers, from the Petition Date until the Effective Date. This includes \$214,450 budgeted for June through the end of

calendar year 2013, some portion will remain unpaid as of the confirmation of the Plan. The Professional Fees are subject to approval of the Bankruptcy Court under §§ 330 and 331 of the Bankruptcy Code and shall be paid in cash on or before the Effective Date of the Plan.

3. Priority Claims

The Bankruptcy Code also provides a priority for the payment of claims for various unpaid taxes and certain other eligible expenses. These Priority Claims are paid after Administrative Expense Claims and before General Unsecured Claims. The Debtor believes that the aggregate amount of valid Priority Claims is approximately \$192,725, set forth in Schedule E of its Schedules.

4. General Unsecured Claims

Claims that are neither fully Secured Claims, nor those entitled to Priority under the Bankruptcy Code as either Administrative Expense Claims or Priority Claims, are considered General Unsecured Claims. If a claimant supplied goods or services to the Debtor, the Claim arose prior to the Petition Date, and the claimant hold no security or collateral for payment of the Claim, then the claimant holds a general unsecured claim. In addition, a Claim for damages resulting from the Debtor's rejection of an executory contract is a general unsecured claim, as is the Claim of a secured creditor to the extent that the Claim exceeds the value of any collateral securing such claim.

In order to become an Allowed Unsecured Claim, and this receive payment under the Plan, a general Unsecured Claim must have either been (i) set forth in a proof of claim properly filed with the Bankruptcy Court on or before the Bar Date and also approved by the Bankruptcy Court, or (ii) listed by the Debtor in its Schedules as a general unsecured claim that is neither disputed, unliquidated, or contingent.

The Debtor's Schedules list General Unsecured Claims totaling \$1,098,608.29. In addition, BOM may have an unsecured claim equal to the difference between the amount of its claim as of the Petition Date and the amount realized by the sale of its collateral at the Auction. Until after the Auction is concluded, the Debtor is unable to estimate with precision what the amount of BOM's unsecured claim will be.

VI. ALTERNATIVES TO THE PLAN—ASSET LIQUIDATIONS

Before turning to the details of the Plan, the Debtor believes it is appropriate to discuss the alternative to that Plan, and that is conversion of this Chapter 11 case to a Chapter 7 case and liquidation of the assets of the estate in the context of a Chapter 7 liquidation. The distribution of the net proceeds of sale of estate assets would flow in the same order as set forth in the Bankruptcy Code—secured creditors, administrative expense creditors, priority creditors, and then general unsecured creditors.

Under a liquidation scenario, BOM would not be obligated to permit the Debtor to retain any assets, and **all of the Debtor's assets except the Unencumbered Motor Vehicles would be**

liquidated for the benefit of BOM and any other secured creditors (with the lion’s share going to BOM and a small amount going to municipalities and other secured creditors). Because the amount owed to BOM and other secured creditors is significantly higher than the liquidation (or, for that matter, the fair market) value of the collateral securing those Claims, there would be no funds left from the liquidation of that collateral, other than the proceeds of sale of the Unencumbered Motor Vehicles, with which to pay Administrative Claims, Priority Claims, and General Unsecured Claims.

As such, in a liquidation under Chapter 7, the proceeds from the liquidation of Unencumbered Motor Vehicles would be the only source of funds to pay creditors holding Claims that are not Secured by Collateral. As evidenced by the spreadsheet attached hereto as **Exhibit A**, the Debtor estimates that the liquidation value of the entire pool of Unencumbered Motor Vehicles would be: \$611,310. Costs of liquidations (*i.e.*, auctioneer’s fees, advertising, *etc.*) would then have to be deducted. The Debtor estimates that those costs would total 10% of the liquidation value above, or \$61,130. The Administrative expenses incurred by the Chapter 7 Trustee (*i.e.*, legal fees and costs, *etc.*) (estimated at \$66,505) would then be deducted, followed by unpaid Chapter 11 administrative expenses in the Chapter 11 case. These Chapter 11 expenses would include unpaid professional fees for the various Chapter 11 professionals (estimated at \$50,000); unpaid operating expenses (estimated at \$180,000); two weeks of gross payroll (\$48,000), as payroll is paid in arrears; ongoing Chapter 11 trade accounts payable that would remain unpaid upon cessation of business; and a post-petition subrogation claim of insiders who agreed to grant BOM a post-petition mortgage on previously unencumbered property to secure the Debtor’s obligations to BOM under the restructured loans. *See* Exhibit E to the Plan Support Agreement. After administrative expenses for the Chapter 7 case and the Chapter 11 case were paid, the next order of priority for payment of claims would be priority claims. This category would include unpaid vacation pay for employees terminated in June of 2013, \$31,610, plus unpaid vacation pay for all remaining employees terminated at the time of conversion to Chapter 7 (estimated to be \$20,000).

The Debtor estimates that the total amount of Allowed Administrative and Priority Claims to be paid in a liquidation would be \$775,226, which is greater than the amount of funds available to pay these Claims in full. Consequently, holders of Allowed Unsecured Claims would receive nothing (\$0.00) on account of their Allowed Unsecured Claims. The “waterfall” of distributions from proceeds of Unencumbered Motor Vehicles would be as follows:

<i>CHAPTER 7 LIQUIDATION WATERFALL</i>	
Liquidation Value of Unencumbered Motor Vehicles	\$611,310
Minus Cost of Liquidation	(\$61,130)
<u>Subtotal</u>	<u>\$550,180</u>
Minus Chapter 7 Administrative Expenses:	
Professional Fees	(\$66,505) (\$16,505 Trustee fees and \$50,000 in Attorney and other Professional Fees)
<u>Subtotal</u>	<u>\$498,761</u>
Minus Chapter 11 Administrative Expenses:	
Payroll for Two Weeks	(\$48,000)

Unpaid Operating Expenses	(\$180,000)
Unpaid Professional Fees	(\$50,000)
Subrogated Claims of Insiders and Others***	(\$140,000)
Priority Claims:	
Vacation Pay for Employees Terminated in June 2013	(\$31,610)
Vacation Pay for Remaining Employees (Estimated)	(\$20,000)
Remaining Priority Claims (including pre-petition wages):	(\$192,725)
<u>Net Liquidation Value of Unencumbered Assets</u>	<u>(\$163,574)</u>
<u>Amount Available for Pro Rata Distribution to General Unsecured Creditors</u>	<u>\$0</u>

*** After the Petition Date, certain Insiders of the Debtor and their family members granted BOM mortgage interests in previously unencumbered property to secure the Debtor's obligations with BOM under the restructured loans, as memorialized in the Plan Support Agreement. See Exhibit E to the Plan Support Agreement. In a liquidation of the Debtor, these mortgage interests would be foreclosed upon and the proceeds of foreclosure would be used to satisfy indebtedness of the Debtor to BOM, thereby giving rise to a post-petition subordination claim. The value of these mortgage interests are estimated to be \$140,000.

In contrast, the Plan proposes that holders of Allowed Unsecured Claims (Class Seven) would receive an aggregate amount of \$200,000, which is materially greater than the amount that would be realized by holders of Allowed Unsecured Claims in a Chapter 7 liquidation. As such, the Debtor believes that acceptance of the Plan as proposed is in the best interests of holders of Class Seven claims.

VII. DESCRIPTION OF THE PLAN

A. Introduction

The following description of the Plan is only a summary. Creditors and other parties in interest are urged to carefully read the Plan in full. If the Plan is confirmed by the Bankruptcy Court, the Plan will be binding upon the Debtor, all creditors, and other affected parties.

In order for any Claim to be paid pursuant to the Plan, the Plan must be confirmed by the Bankruptcy Court and must take effect in accordance with its terms. The hearing at which the Court will consider confirmation of the Plan has been scheduled to take place on _____ at _____, 2013 at _____. If the Plan is confirmed on that date, the Plan will take effect on the Effective Date as defined in the Plan.

In order for your particular Claim against the Debtor to receive a distribution under the Plan, the Claim must be an Allowed Claim. A Claim is allowed when it is determined to be valid pursuant to procedures established by the Bankruptcy Code, the Bankruptcy Court, and the Plan. For further information in this regard, see Section X, "Allowance of Claims and Interests," below.

The Plan breaks Claims into two groups—classified and non-classified. Claims are “classified” if they are placed in a specific class of similarly situated claims, pursuant to §1123(a)(1) of the Bankruptcy Code. Whether a claim is classified impacts the order of distribution under the Plan and also how voting is calculated. Non-classified claims, however, are treated separately.

B. Treatment of Non-Classified Claims

Under the Plan, there are three types of non-classified claims: Administrative Claims, Priority Claims, and claims for Bankruptcy Fees. These unclassified Claims will be paid as follows:

Administrative Claims. Except as otherwise provided by the Plan or as otherwise agreed between the Debtor and the holder of an Allowed Administrative Claim against the Debtor, each holder of an Allowed Administrative Claim shall be paid in full upon the later of the Effective Date and the date which is thirty (30) days after the date upon which such Administrative Claim becomes an Allowed Administrative Claim.

Priority Claims. Except as otherwise agreed by the Debtor and the holder of an Allowed Priority Claim against the Debtor the holders of Allowed Priority Claims, shall, in the sole discretion of the Debtor, be paid either (a) in full upon the later of the Effective Date and the date which is thirty (30) days after the date upon which such Priority Claim becomes an Allowed Priority Claim; or (b) in the case of priority claims described in § 507(a)(8) of the Bankruptcy Code, pursuant to the terms of § 1129(a)(9)(C).

Bankruptcy Fees. Any Administrative Claim for outstanding fees incurred in the Case pursuant to 28 U.S.C. § 1930(a)(6) and due and payable as of the Effective Date shall be paid in full on the Effective Date. Thereafter, the Debtor shall pay any and all fees lawfully due and payable under 28 U.S.C. § 1930(a)(6) with respect to the Case in the ordinary course without necessity of allowance by the Court until entry of an Order closing the Case.

In addition, the Debtor shall have the continuing obligation to pay the quarterly fees required by 28 U.S.C. § 1930 until this case is closed, converted, or dismissed.

C. Classification of Claims Under the Plan

The Plan divides Claims (other than certain unclassified Claims such as Administrative Claims and Claims entitled to priority (*see* Article III of the Plan) and interests into eight (8) classes. Distributions to holders of Allowed Claims under the Plan are in full settlement and satisfaction of those Claims, including any interest accrued thereon. Following is a list of the eight classes of Claims and their proposed treatment under the terms of the Plan:

Class One shall consist of all Allowed Secured Claims of any kind or nature held by the BOM.

Class Two shall consist of the holders of all Secured Claims that are secured exclusively by virtue of rights of setoff. Those Secured Claims are set forth below:

Creditor	Setoff Available	Net Amount Due Debtor After Setoff
Bonarrigo Construction	\$450.00	\$3,585.42
Gartley & Dorsky	\$2,690.00	\$1,325.50
Steven A. McGee Construction	\$74,545.59	\$44,614.32

Class Three shall consist of all Secured Claims held by BSB and secured by a lien in a certain 2007 Volvo dump truck (vin # 4V5K99GH37N466467), which Allowed Secured Claims shall be in the aggregate amount of \$1,635.93.

Class Four shall consist of all Allowed Secured Claims held by Mercedes Benz and secured by a lien in a certain 2008 Sterling Tractor truck (vin # 2FWJAZCV07AX99841), which Allowed Secured Claims shall be in the aggregate amount of \$2,445.73.

Class Five shall consist of all Allowed Secured Claims held by TD and secured by liens in a 2010 Nissan Frontier (the "Frontier") and 2005 Toyota Tacoma (the "Tacoma") (the Frontier and the Tacoma shall be referred to collectively as the "TD Collateral"), which Allowed Secured Claims shall be in the aggregate amount of \$6,625.55 (\$3,303.03 Secured by the Frontier and \$3,322.47 Secured by the Tacoma).

Class Six shall consist of shall consist of all Allowed Secured Claims (if any) held by Windward and secured by a UCC-1 filing in certain personal property held by the Debtor (the "Windward UCC-1") and located at Maine Secretary of State File # 2080001937616-03.

Class Seven shall consist of the holders of all Allowed Unsecured Claims, including Allowed Unsecured Claims, held by BOM and any other creditor who holds an allowed claim that is not secured by collateral, and Allowed Unsecured Claims arising from the rejection, prior to or after the Confirmation Date, of an executory contract or unexpired lease.

Class Eight shall consist of the holders of all equity interests in and to the Debtor, including equity interests evidenced by any class of shares issued by the Debtor.

D. Treatment of Claims Under the Plan

As discussed below, certain classes of Claims are unimpaired under the Plan, within the meaning of § 1124 of the Bankruptcy Code, whereas others are impaired, within the meaning of §1124 of the Bankruptcy Code. The following classes of Claims are unimpaired under the Plan: Class Two, Class Three, and Class Four. The following classes of claims are impaired within the meaning of § 1124 of the Bankruptcy Code and the treatment of each of these classes of Claims

is set forth below: Class One, Class Five, Class Six and Class Seven. Class Eight may or may not be impaired, depending on whether Class Seven votes for the Plan.

The following classes of Claims are unimpaired under the Plan, within the meaning of Bankruptcy Code §1124: Class Two, Class Three and Class Four. The following classes of Claims are impaired within the meaning of § 1124 of the Bankruptcy Code and the treatment of each of these classes of Claims is set forth below: Class One, Class Five, Class Six, and Class Seven. Class Eight may or may not be impaired, depending on whether Class Seven votes for the Plan.

Class One. In full and final satisfaction of the Allowed Secured Claims in Class One, the Debtor shall perform, pay and satisfy all of its obligations to the holder of claims in Class One, in the manner described in the Plan Support Agreement and the Plan Support Order.

Class Two. To the extent that the holders of Allowed Class Two Secured Claims are entitled to exercise rights of setoff in satisfaction of those Claims, those holders of Allowed Class Two Secured Claims shall be entitled to exercise their rights of setoff as of the Effective Date of the Plan in the amounts set forth above in Article 3, § 3.2. The holders of Allowed Claims in Class Two shall be unimpaired, and solicitation of acceptance of the Plan from the Class Two claimants is not required under § 1126(f) of the Bankruptcy Code.

Class Three. In full and final satisfaction of the Allowed Secured Claim in Class Three, which shall be deemed to be Allowed in the amount of \$1,635.93, the Debtor shall pay the full amount thereof on or before the Effective Date. The holder of Allowed Claim in Class Three shall be unimpaired, and solicitation of acceptance of the Plan from the Class Three claimant is not required under § 1126(f) of the Bankruptcy Code.

Class Four. In full and final satisfaction of the Allowed Secured Claim in Class Four, which shall be deemed to be allowed in the amount of \$2,445.73, the Debtor shall pay the full amount thereof on or before the Effective Date. The holder of Allowed Claim in Class Four shall be unimpaired, and solicitation of acceptance of the Plan from the Class Four claimant is not required under § 1126(f) of the Bankruptcy Code.

Class Five. In full and final satisfaction of the Allowed Secured Claim in Class Five:

- (a) The Frontier shall be sold at the Auction and the amount of net proceeds from the sale received by the Debtor (after payment of the Auctioneer's commission, sales taxes, and other costs of the sale) up to the amount \$3,303.03, shall be paid in full satisfaction of TD's Frontier-related Allowed Secured Claim.
- (b) The Tacoma shall be retained and the Debtor shall pay the Tacoma-related TD Allowed Secured Claim in the approximate amount of \$1,900.00 on or before the Effective Date and then make payments on the underlying note thereafter pursuant to the terms of that note. TD shall retain its lien in the Tacoma to secure the Debtor's Tacoma-related obligations.

Class Six. In full and final satisfaction of all Allowed Secured Claims in Class Six (if any) the Debtor shall, at its sole discretion, by written election made on or prior to the Effective Date, either (a) pay the value of said Allowed Secured Claim under the terms described below; or (b) surrender the personal property securing such Claims to Windward. Should the Debtor elect option (a), then the Debtor shall issue Windward a promissory note, in the total amount of such Allowed Secured Claims, such promissory note (the "Class Six Note") to be payable in consecutive, equal monthly installments of principal and interest, based upon an amortization schedule calling for the payment of the Note in full, together with all interest in sixty (60) months at an interest rate of 3.25% *per annum*. The Class Six Note shall issue on the later of (a) the Effective Date; or (b) the date upon which the Windward Class Six Claim is determined to be an Allowed Secured Claim, either by agreement of the Debtor or by Final Order of the Court. Payments on the same shall commence on the day that is thirty (30) days that date. Payments shall continue for a total of sixty (60) monthly installments. The Note shall be secured by the same collateral which secured the Class Six Claim on the Petition Date.

Class Seven. In full and final satisfaction of all Allowed Claims in Class Seven, the holders of such Allowed Claims shall receive, on a *pro rata* basis, payments from amounts contributed by the Debtor to a fund (the "Class Seven Fund") which shall equal, in total, **\$200,000**. The amounts so contributed by the Debtor to the Class Seven Fund shall be as follows:

(a) *The Class Seven Auction Payment*

The Debtor shall contribute to the Class Seven Fund an amount equal to the total amount of money realized from the sale of the Unencumbered Vehicles at the Auction (which Debtor estimates will be approximately \$194,000) *minus* the costs of auction attributable to the sale of Unencumbered Vehicles (*i.e.*, auctioneer's fees and expenses, sales taxes and other costs of sale attributable to the Unencumbered Motor Vehicles) *minus* the sums of \$112,500 (which amount shall be retained by the Debtor to obtain bonding for future projects) and the sum of \$30,000 (which amount shall be retained by the Debtor for its working capital needs). The remaining amount shall be known as the "Class Seven Auction Payment" and the Debtor estimates that this amount will be \$50,000, although the Debtor cannot guarantee that amount because auction results are unpredictable (reference is made to the Debtor's Disclosure Statement for a discussion of expected outcomes of the auction sale). The Class Seven Auction Payment shall be placed in a segregated non-interest bearing bank account – the Class Seven Fund – which shall be held in the name of the Debtor. The Class Seven Fund shall be held, administered and distributed *pro rata* to the holders of Allowed Class Seven Claims by the Disbursing Agent appointed pursuant to the Plan, and in the manner set forth in Article VII below.

(b) *The Additional Earnout*

In addition, the Debtor shall contribute a sum to the Class Seven Fun equal to \$200,000 *minus* the Class Seven Auction Payment, which amount shall be referred to as the "Additional Earnout". The Additional Earnout shall be generated from operations of the Debtor over time and shall be deposited in the Class Seven Fund, where it shall be held, administered and distributed *pro rata* to holders of Allowed Class Seven Claims by the Disbursing Agent in

accordance with Article VII of the Plan. Payments by the Debtor of the Additional Earnout shall be made in six (5) equal *pro rata* deposits to the Class Seven Fund, with each such deposit to be in an amount equal to 1/5 of the Additional Earnout (the “Earnout Deposits”). The first Earnout Deposit shall be made on the date which is six months from the Effective Date (*i.e.*, six months after the Class Seven Auction Payment is made), and the additional four Earnout Deposits shall be made at six month intervals thereafter.

Class Eight. If the holders of Allowed Claims in Class Seven vote in favor of the Plan, then all equity interests in Class Eight shall remain unimpaired. In this scenario, the Class Eight Claims are not impaired under the Plan and the holders of the same are not entitled to vote for the Plan.

However, if the holders of Allowed Claims in Class Seven vote to reject the Plan, then all equity interests in Class Eight shall be cancelled and terminated on the Effective Date. On the same date, the Debtor shall issue new shares in the Debtor for 100% ownership of the Debtor to one or more persons, in exchange for new value. In this case, the Class Eight Claims are impaired under the Plan and the holders of such Claims are entitled to vote as a class to accept or reject the Plan.

VIII. MEANS FOR EXECUTION OF THE PLAN

A. Financing of Plan Obligations

The Debtor shall implement the Plan, and shall make Plan Distributions and other payments as set forth therein from the following sources:

- (a) Sale of various Assets in the Auction, as set forth above and in Article IV, §§ 4.1 and 4. of the Plan, the Plan Support Agreement, and the Plan Support Order;
- (b) Revenues from continued operations of the Debtor;
- (c) Assumption or rejection of certain contract and lease obligations; and
- (d) If necessary, an infusion of new value into the Debtor.

Attached hereto as **Exhibit D** are the Debtor’s projections of profit and loss through the end of calendar year 2015, and cash flow through the end of calendar year 2014. These provide the Debtor’s current best estimate of its expected revenues, expenses, net income and borrowing availability through this one-year period. As can be seen from reviewing the same, these projections demonstrate that the Debtor will be able to finance operations, pay its administrative expenses, and make the required and anticipated Plan Revenue Disbursements and other payments as set forth herein and in the Plan.

B. The Effective Date

Under Article VI of the Plan, the Effective Date occurs upon the sixtieth (60th) day following the date upon which the Court enters the order confirming the Plan, unless such date is stayed by virtue of an appeal of the Confirmation Order and the entry of a stay by the Court.

IX. EXECUTORY CONTRACTS

Under the Bankruptcy Code, the Debtor has the right to either reject or assume any contract that was “executory” on the Petition Date. While definitions of “executory” vary, the most widely accepted definition is that an executory contract is one where there is material performance remaining on the part of both the debtor and the other party to the contract as of the date of the Petition Date. The right of the Debtor to “assume” or “reject” means that the Debtor has three options: (i) to reject the contract, which dates such rejection to the moment before the Petition Date, with the consequence that the other party to the contract has the right to present an unsecured claim for the damages it incurs by reason of such rejection; (ii) to assume the contract, with the consequence that the contract continues in accordance with its terms with the debtor, all defaults are cured, and no damage claims are presented; or (iii) to assume the contract upon negotiated amended terms and provisions.

Under the Plan, unless an executory contract is the subject of a motion to assume it pending as of the Effective Date or is otherwise dealt with by an order of this Court entered on or prior to the Effective Date, any and all executory contracts and unexpired leases of the Debtor shall be deemed rejected as of the Effective Date, if not earlier rejected by other orders of the Bankruptcy Court.

The Debtor shall assume the following contracts and/or unexpired leases and make all cure payments on the same on before the Effective Date:

- (a) Transco Business Technologies copier lease; and
- (b) A-Copi copier lease.

Following the making of the cure payments, the Debtor shall comply with the terms of these executory contracts and/or unexpired leases on a going-forward basis.

The non-Debtor party to any such rejected contract or lease shall be required to assert a claim for damages from such rejection in accordance with Article VIII, Section 8.1(b) of the Plan.

X. ALLOWANCE OF CLAIMS AND INTERESTS

The Bankruptcy Code provides for pre-petition claims to be asserted in two ways. First, a creditor may file a proof of claim with the bankruptcy court on the appropriate official form. Notice was mailed to all known creditors of the Debtor stating that, except for certain types of claims specified in the notice, a deadline of July 13, 2013, the Bar Date, was established for filing proofs of claim. Second, a creditor is excused from the requirement of filing a proof of claim if the creditor’s claim is listed in the schedule of liabilities filed by the Debtor with the Bankruptcy Court, if it is not listed therein as an obligation that is disputed, unliquidated or contingent, and the creditor agrees with the scheduled amount and nature of the Claim.

Holders of Administrative Claims entitled to priority under the Bankruptcy Code arising before the Confirmation Date and still outstanding 45 days thereafter will be required to file

proof of claim or an application for compensation with the Bankruptcy Court on or before such the Post-Petition Bar Date. Administrative Claims by a professional person for compensation and/or reimbursement of expenses, a Fee Claim, must submit to the Bankruptcy Court an application for compensation on or before the Post-Petition Bar Date.

Once a Claim (other than a Fee Claim) has been properly asserted, it will automatically be Allowed unless an objection is timely filed by an interested party, usually the Debtor himself, who has a fiduciary duty to all creditors to challenge improper Claims. If an objection is filed against your Claim, you will be sent a copy of the objection. You will have an opportunity to submit a reply and, if appropriate, to be heard by the Bankruptcy Court. Fee Claims will be allowed only by a Bankruptcy Court order. The Plan provides that no distribution will be made on account of any Claim as to which an objection is filed until the objection is resolved.

In general, bankruptcy courts strictly enforce deadlines for the assertion of Claims. Therefore, if you are required to file a proof of claim by the Bar Date or an application for compensation or proof of claim with regard to an Administrative Claim before the Post-Petition Bar Date, but fail to do so, your Claim may be disallowed and may not be paid even if the claim would otherwise have been entitled to payment.

XI. INJUNCTION AND STAY

Under the Plan, the entry of the Confirmation Order will constitute an injunction applicable to all persons, staying and enjoining the enforcement or attempted enforcement by any means of all liens, Claims and debts discharged pursuant to the Plan. In the event of default under the Plan, which default is not cured in accordance with any applicable grace period, and unless the Bankruptcy Court orders otherwise, such injunction shall be deemed dissolved without further Order of the Bankruptcy Court.

XII. DISCHARGE

Pursuant to 11 U.S.C. §1141(d), Confirmation of the Plan will discharge the Debtor from all of its Pre-Petition debts, except to the extent that the Plan provides for payment of such debts.

XIII. ACCEPTANCE AND CONFIRMATION OF THE PLAN

A. Acceptance by Impaired Classes

The Bankruptcy Code provides that any class of creditors or stockholders whose rights are “impaired” (in general terms, not fully honored) under a proposed Plan of reorganization has the right to vote, as a class, to accept or reject the Plan. Under the Plan, Claims that have been objected to and not allowed shall have no right to vote with respect to the acceptance or rejection of the Plan, except as otherwise ordered by the Bankruptcy Court. A class of creditors accepts the Plan if more than one-half of the ballots that are timely received from members of the class, representing at least two-thirds of the dollar amount of claims for which ballots are timely received, are cast in favor of the Plan. If a Plan impairs any class of claims, then, among other

requirements, at least one class of claims must vote to accept the Plan in order for it to be confirmed.

If any impaired class of claims does not accept the Plan, the Court may still confirm the Plan at the request of the Debtor if the Plan “does not discriminate unfairly” and is “fair and equitable” as to the non-accepting class.

Under the Plan, the following classes are impaired: One, Two, Five, Six, and Seven. The following classes are unimpaired: Three and Four. Class Eight may be impaired depending on whether Class Seven votes for the Plan.

B. Best Interest of Creditors Test

To obtain confirmation of the Plan, the Debtor must also satisfy the so-called “best interest of creditors” test embodied in Section 1129(a)(7) of the Bankruptcy Code. This test requires that the Plan provide each non-accepting creditor or shareholder with at least as much value as would a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan satisfies this test because, for the reasons described above, the Plan would provide to any non-accepting creditor a dividend significantly greater than the dividend (if any) such creditor would receive through liquidation of the Debtor’s Assets.

C. Analysis of Risks

There are, of course, certain risks that could potentially prevent the Debtor from fulfilling this Plan. For example, the Debtor’s going-forward business model may not be as successful as the Debtor anticipates or the economy as a whole could continue to deteriorate to the detriment of the Debtor. Further, the Auction may not yield proceeds as high as anticipated. These risks are essentially unquantifiable at this time and are not, in the Debtor’s opinion, grounds for any creditor to vote against this Plan, especially since the alternative is a significantly smaller—or no recovery for holders of Allowed Unsecured Claims.

As things currently stand, the Debtor does not believe that these risk factors will undermine its ability to satisfy its obligations under the Plan. The Debtor has an established construction business around which it will reorganize. The Debtor believes that the divestiture of unneeded assets, both personal and real property, will provide the Debtor with income sufficient to fund key payments under the Plan to the Bank.

XIV. VOTING

Enclosed with this Disclosure Statement is a ballot for your use in voting to accept or reject the Plan. In order for your vote to count, and if you are a creditor of the Debtor, your properly completed and executed ballot must be received *not later than 5:00 p.m. (Eastern Time) on _____, 2013* at the office of the Debtor’s counsel:

c/o Holly C. Pelkey.
Bankruptcy Paralegal
Marcus, Clegg & Mistretta, P.A.
One Canal Plaza – Suite 600.
Portland, ME 04101

Submission of ballots by facsimile (fax) is permitted; submission of ballots by e-mail is not permitted.

XV. MODIFICATION OF PLAN

The Debtor may propose amendments or modifications to the Plan as provided in § 1127 of the Code. If all parties adversely affected by any modifications consent to such modification, this Disclosure Statement shall be deemed adequate without modification and no further notice shall be required or given. In other cases, the Bankruptcy Court may require a new disclosure statement and/or re-voting under the Plan as amended or modified.

In addition, the Debtor may, with the approval of the Bankruptcy Court, modify or amend the Plan through the Bankruptcy Court's Order confirming the Plan. Notwithstanding anything to the contrary set forth herein, no amendment or modification which affects the treatment of Claims against the Debtor may be allowed or approved without the express written consent of the Debtor.

XVI. FEDERAL AND OTHER TAX CONSEQUENCES

Each holder of a Claim is strongly urged to consult a tax advisor for information regarding any federal, state, or local tax consequences of the treatment of such holder's Claim under the Plan.

XVII. CONCLUSION AND RECOMMENDATION

The Debtor believes that the Plan represents the best possible means of satisfaction of all creditor claims, and is fair and equitable to all parties. The Debtor hopes that all impaired creditors will vote to accept the Plan.

Dated: June 7, 2013

FERRAILOLO CONSTRUCTION, INC.

By: /s/David C. Johnson

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