

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

**In re:**

**MORIN BRICK COMPANY, INC.,  
  
Debtor.**

**Chapter 11**

**Case No. 08-21022**

**DISCLOSURE STATEMENT WITH RESPECT TO DEBTOR'S PLAN  
OF REORGANIZATION DATED NOVEMBER 16, 2009**

Morin Brick Company, Inc., the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Debtor” or the “Company”), presents this disclosure statement (the “Disclosure Statement”), pursuant to 11 U.S.C. § 1125(b),<sup>1</sup> to all known creditors and holders of interests of the Debtor, in connection with the Debtor’s Plan of Reorganization Dated November 16, 2009 (the “Plan”). A copy of the Plan, which has been filed with the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”), is attached hereto as **Exhibit A**.

**I. Plan Summary**

Creditors and interest holders are directed to read this entire Disclosure Statement and should not rely solely on this summary in deciding to vote for the Plan. The following is a short summary of the structure and projected outcome of the Plan. The Plan accompanying this Disclosure Statement provides for the distribution of the proceeds of certain causes of action to be brought on behalf of the Debtor. Generally, the Debtor believes that the causes of action will be claims brought to recover payments made by the Debtor during the ninety (90) day period prior to the date of the filing of the Debtor’s bankruptcy. In certain circumstances, a debtor can

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”).

avoid these transfers and recover the payments made during this ninety (90) day period and, once recovered, these amounts can be redistributed to creditors of the bankruptcy estate.

In the ninety (90) days prior to filing, the Debtor made payments equaling approximately \$1,200,000.00. After review of certain documents relating to the transfers and after considering certain defenses which may or may not be applicable, the Debtor believes that it may be able to bring potential claims seeking to recover approximately \$463,858.00 for the benefit of the estate.

Under the Plan, the Debtor would use the proceeds of these causes of action to fund its obligations under the Plan. The only remaining claims against the estate are certain administrative claims, consisting almost entirely of the fees of Debtor's counsel and certain fees owed to the Office of the United States Trustee, and certain unsecured claims against the Debtor. Assuming the Debtor can recover the amounts identified above, the Debtor estimates that general unsecured creditors will receive an amount equal to approximately 5-6% of their claim amount.<sup>2</sup>

## **II. Introduction**

The purpose of this Disclosure Statement is to provide such information as may be deemed material, important and necessary for the Debtor's creditors and holders of interests to make an informed decision in exercising their right to vote, if any, to accept or reject the Plan. This Disclosure Statement will also assist the Bankruptcy Court in its determination whether the Plan complies with all applicable provisions of the Bankruptcy Code and should therefore be confirmed. All terms defined in the Plan and not defined herein shall have the respective meanings ascribed to them in the Plan. Where applicable and unless otherwise defined in the Plan or in this Disclosure Statement, the terms used herein shall have the meaning given them in

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<sup>2</sup> These percentage estimates are based upon the amount of allowed claims not substantially exceeding the amount of claims scheduled by the Debtor and assumes that the Debtor recovers substantially the amounts set forth above in relation to the preference causes of action.

the Bankruptcy Code. All exhibits to this Disclosure Statement, including the Plan, are incorporated into and made a part of this Disclosure Statement.

**IT IS RECOMMENDED THAT EACH CREDITOR AND HOLDER OF AN INTEREST REVIEW THE ENTIRE PLAN AND DISCLOSURE STATEMENT CAREFULLY AND DETERMINE WHETHER OR NOT TO ACCEPT THE PLAN BASED ON THAT CREDITOR'S OR INTEREST HOLDER'S INDEPENDENT EVALUATION AND JUDGMENT. IT IS IMPORTANT THAT YOU VOTE IF YOU HAVE A RIGHT TO VOTE. IN DETERMINING WHETHER A PLAN OF REORGANIZATION HAS BEEN ACCEPTED BY THE REQUIRED MAJORITIES OF CREDITORS AND INTEREST HOLDERS, ONLY THOSE CREDITORS AND INTEREST HOLDERS WHO ACTUALLY VOTE ON THE PLAN ARE COUNTED, EXCEPT WHERE SPECIFICALLY STATED OTHERWISE.**

**NO REPRESENTATIONS CONCERNING THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. THE PORTIONS OF THIS DISCLOSURE STATEMENT DESCRIBING THE DEBTOR, THE PLAN, AND THE PRE- AND POST-BANKRUPTCY OPERATIONS OF THE DEBTOR, HAVE BEEN PREPARED FROM INFORMATION SUBMITTED BY REPRESENTATIVES OF THE DEBTOR. THE DEBTOR BELIEVES THIS INFORMATION TO BE ACCURATE AND COMPLETE BUT MAKES NO WARRANTIES AS TO SUCH COMPLETENESS OR ACCURACY. NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY NATURE,**

**ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES.**

By Order dated \_\_\_\_\_, 2009, the Bankruptcy Court approved this Disclosure Statement, finding that it contains “adequate information” as that term is defined in § 1125(a)(1) of the Bankruptcy Code. The Bankruptcy Court has not yet made a determination of the merits of the Plan.

### **III. Description of the Debtor**

#### **A. General History and Background**

The Company was founded in 1912. It began by making moulded, waterstruck brick primarily for the local Lewiston-Auburn, Maine market. Its rich, red firing clays and quality brick making skills helped the Company to provide bricks to some of the most architecturally significant projects in its ever expanding markets. Over time and as production expanded, the Company’s bricks were used to build countless sidewalks, hospitals, churches, banks, libraries, municipal, and other public and private buildings across the northeastern United States and eastern Canada. The Debtor’s products have been used in high profile projects such as the Harborside (Rowe’s Wharf) project in Boston, Massachusetts and renovations at the historic Fort York in Toronto, Ontario, Canada.

Over the decades, the Debtor’s facilities expanded beyond Lewiston-Auburn to include facilities in Gorham and Brewer, Maine. With upgrades to its manufacturing facilities, the Company expanded its product line to include a variety of extruded bricks. It also began to provide distribution services for some of the country’s leading brick manufacturers, distributing a full line of face brick, thin brick, glazed brick, and paving brick. In addition to its brick

distribution services, the Company also began to distribute architectural concrete masonry units, stone veneers, cements, mortars, and a wide variety of masonry accessories.

The Debtor's expanded and renovated manufacturing and showroom facilities were funded by financing agreements with Bank of America, N.A. and its predecessors-in-interest (collectively, "Bank of America"). In the years prior to its bankruptcy filing, the Debtor entered into a number of financing agreements with Bank of America, including a line of credit note in the amount of \$2,600,000.00 and a demand promissory note in the amount of \$6,600,083.00. These obligations to Bank of America were secured by virtually all of the Debtor's assets, including the facilities located in Gorham, Auburn and Brewer, Maine.

Prior to the filing date, the building sector of the economy began to deteriorate which reduced demand for the Debtor's products. The drop in the Debtor's sales caused the Debtor to default on its obligations to Bank of America under the notes described above. Premised on these defaults, the Debtor and Bank of America entered into certain forbearance agreements relating to the loan documents while the Debtor sought replacement financing or the sale of the Debtor's assets (the "Forbearance Agreements").

In relation to exploring a potential sale of its assets, the Debtor engaged the Daymark Group, LLC ("Daymark") to serve as its financial advisor. Despite Daymark's efforts, however, the Debtor was unable to timely achieve a refinancing or sale, and, coupled with the continuing economic downturn, the Debtor was unable to continue operations and meet its obligations to Bank of America and other creditors.

## **B. The Filing of the Chapter 11 Case**

On September 3, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under the Bankruptcy Code. The Debtor continued to manage and operate its business and

property as debtor-in-possession under §§ 1107 and 1108 of the Bankruptcy Code. On the Petition Date, the Debtor filed a motion for emergency hearing in relation to a number of motions, including a motion to pay pre-petition wages and related items, a motion for authorization to use pre-petition bank accounts, an application to employ Bernstein, Shur, Sawyer & Nelson, P.A. (“BSSN”) as its bankruptcy counsel, and a motion to obtain post-petition financing and use cash collateral (collectively, the “First Day Motions”). An emergency hearing on the First Day Motions was held on September 4, 2008 and, after proper consideration, the Court entered orders granting interim and final relief in relation to the First Day Motions.

On September 9, 2009, the Office of the United States Trustee (the “US Trustee”) gave notice to the Court of the formation of a committee of unsecured creditors in relation to the Debtor’s case (the “Creditors’ Committee”). On September 15, 2009, the Creditors’ Committee filed an application to employ Perkins Thompson, P.A. as its legal counsel and the Court entered an Order granting the application the same day.

Also on September 9, 2008, the Debtor filed an application to employ Spinglass Management Group, LLC (“Spinglass”) as its financial advisor and to assist in pursuing exit financing and/or marketing and selling the Company. The Court approved the retention of Spinglass by Order dated September 10, 2008. In addition to retaining Spinglass, the Debtor also filed an application to employ Daymark on September 12, 2009 to continue its work in helping the Debtor locate potential buyers for its assets. This Court approved the retention of the Daymark by Order dated September 15, 2008.

### **C. The Sale of the Gorham Assets**

The marketing efforts of Spinglass and Daymark continued an effort to sell the Debtor’s assets (described above) which had begun prior to the Petition Date, and the efforts included

pursuing both a sale of substantially all of the Debtor's assets at a single sale and individually marketing specific assets for separate sale. As part of this effort, on October 6, 2008, the Debtor filed an application to employ NAI The Dunham Group, Inc. ("Dunham") as real estate broker to the Debtor in relation to the real property located in Gorham, Maine, and the application was approved by this Court on October 15, 2008. Dunham procured an offer on the Gorham property and the Debtor filed a motion to sell this property free and clear of all liens, claims, and encumbrances on October 7, 2008 (the "Gorham Sale Motion") to Shaw Brothers Construction, Inc. and S.B. Aggregates, LLC for a price of \$555,000.00. After an expedited hearing on October 17, 2009, this Court entered an order granting the Gorham Sale Motion and the proceeds were distributed as follows:

1. Town of Gorham (real and personal property taxes) - \$30,707.23
2. Cumberland County Registry of Deeds (transfer tax) - \$1,221.00
3. Dunham (brokerage fee) - \$27,750.00
4. Bank of America - \$495,321.77

Despite diligent efforts of the Debtor, Spinglass, and Daymark, the Debtor initially was unable to attract an acceptable offer for substantially all of its remaining assets. During October and November of 2008, the Debtor continued to operate its business at a reduced level and the Debtor and Bank of America agreed to a number of extensions of post-petition financing agreements which were ratified by the Bankruptcy Court. Based on the Debtor's continued difficulty with finding a potential buyer, the Debtor filed an application to employ TPG Advisory, LLC d/b/a the Tron Group ("Tron") to serve as its Chief Restructuring Officer ("CRO") and to assist in a second round of marketing the assets for sale. By Order dated December 9, 2008, the Bankruptcy Court

approved the retention of Tron. Tron assisted the Debtor in reorganizing its finances and operations and identifying a suitable buyer.

**D. The Sale of Substantially All of the Debtor's Remaining Assets**

After several months of unsuccessfully marketing the Debtor's assets for sale, Daymark and Tron procured an offer from Hillcrest Management, LLC ("Hillcrest") to purchase substantially all of the Debtor's remaining assets. After initial negotiations, the Debtor and Hillcrest entered into a letter of intent dated February 4, 2009 (the "Letter of Intent") and Hillcrest performed due diligence. The Debtor and Hillcrest then negotiated the terms of an asset purchase agreement (the "APA") and the Debtor filed motions on March 12, 2009 to sell substantially all of its remaining assets free and clear of all liens, claims, and encumbrances to Hillcrest (the "Sale Motion") and to approve bidding procedures and protections relating to the Sale Motion (the "Bid Procedures Motion"). Pursuant to the APA and the order granting the Sale Motion, Hillcrest and the Debtor proposed to sell substantially all of the Debtors assets, except certain "excluded assets," which included, without limitation, all of the Debtor's corporate books, records, personnel files, tax attributes, and causes of action.

After expedited hearings, the Bankruptcy Court entered Orders approving the Bid Procedures Motion on March 16, 2009 and the Sale Motion on March 25, 2009. Substantially all of the Debtor's assets were sold to Hillcrest for a net total of \$2,492,274.93 due at closing. The proceeds of this sale were distributed as follows:

- Towns of Auburn and Brewer (real and personal property taxes) - \$289,689.00
- Daymark (professional fees) - \$110,000.00
- BSSN and Spinglass (professional fees) - \$98,750.00
- US Trustee (quarterly fees) - \$10,400.00



-Northern Utilities (administrative claim for post-petition utility service) - \$97,807.00

-Other administrative claims - \$142,291.00

-Dividend to Unsecured claimants - \$30,000.00

-Tron Group (professional fees) - \$107,075.00

-Bank of America (secured claims) - \$1,993,168.93

As part of the APA, the Debtor was required to change its corporate name, which it did on March 30, 2009 by filing appropriate documentation with the Maine Secretary of State's Bureau of Corporations, Elections, and Commissions. The Debtor's new legal name is Danville Holding Company. For the purpose of administering the Case and pursuing Causes of Action, however, the Debtor retains a non-exclusive license to use the name "Morin Brick Company, Inc."

#### **IV. Assets and Liabilities as of the Plan Filing Date**

##### **A. Assets**

Following the events described above, the Debtor retains only causes of action as valuable assets, and the Debtor's corporate books and records allow the Debtor to pursue collection of the causes of action. The main causes of action retained by the Debtor are recovery of potentially avoidable preferential transfers pursuant to § 547 of the Bankruptcy Code. The total amount of such transfers is approximately \$1,200,000.00, however, after reviewing certain books and records of the Debtor, the total amount the Debtor currently believes is subject to potential recovery under the preference provisions is approximately \$463,858.00. Parties may assert defenses to any preference claims asserted by the Debtor which may lower the amount of any recoveries by the Debtor.

**B. Liabilities<sup>3</sup>**

Following the events described above, the Debtor's liabilities are as follows:

**1. Administrative Claims**

|    |                             |  |
|----|-----------------------------|--|
| a. | BSSN (professional fees)    | \$30,000.00 (as of date of the filing of the Disclosure Statement) |
| b. | US Trustee (quarterly fees) | \$650.00 (estimated)   |

**2. Priority Unsecured Claims**

|    |                          |             |
|----|--------------------------|-------------|
| a. | Internal Revenue Service | \$66,550.00 |
| b. | Portland Water District  | \$1,303.88  |

**3. Unsecured Claims totaling \$6,940,592.15, the ten largest as follows:<sup>4</sup>**

|                               |                |
|-------------------------------|----------------|
| -Bank of America              | \$5,763,595.44 |
| -Ciment Quebec                | \$106,174.07   |
| -Sprague Energy Corp.         | \$98,483.17    |
| -Diversified Ceramic Services | \$60,650.15    |
| -Watson town Brick Co.        | \$59,739.70    |
| -Baker, Newman & Noyes        | \$48,891.59    |
| -T.E. Toomey                  | \$46,717.02    |
| -Lafarge North America        | \$37,537.95    |
| -Kopp Clay Co.                | \$27,919.51    |
| -Carolina Ceramics, Inc.      | \$27,136.23    |

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<sup>3</sup> The Debtor reserves the right, under the Plan, to object to Claims.

<sup>4</sup> As indicated on Exhibit 1 to Exhibit A to the Order granting the Sale Motion, allowed unsecured claims against the Debtor totaled \$1,257,387.58. Such claimants received a pro-rata share of \$30,000.00 from the Hillcrest sale, leaving a total of \$1,227,387.58 in remaining allowed unsecured claims. Additionally, after the Hillcrest sale, Bank of America's undersecured deficiency claim amounted to \$5,713,204.57 and its total other remaining unsecured claims (as indicated on Exhibit 1 to Exhibit A to the Order granting the Sale Motion) totaled \$50,390.87.

## **V. Plan of Reorganization**

The following constitute material provisions of the Plan:

### **A. Definitions**

The following terms when used in this Plan shall, unless the context otherwise requires, have the following respective meanings:

1.1 “Administrative Expense” shall mean an expense of the kind described in § 503(b) of the Bankruptcy Code.

1.2 “Allowed Amount” of a Claim or expense shall mean, for the purposes of this Plan, (a) the amount of the Claim scheduled by the Debtor if (i) the Claim is not scheduled as disputed, contingent or unliquidated by the Debtor, (ii) no objection to that amount is filed by the Claims Objection Date, and (iii) the holder of the Claim has not timely filed a properly prepared proof of claim in an amount different than that scheduled by the Debtor; (b) the amount set forth by the holder of a Claim in a timely filed and properly prepared proof of claim if that amount differs from the amount scheduled by the Debtor and no objection to the amount stated in the proof of claim is filed by the Claims Objection Date; or (c) the amount of such Claim established by a Final Order of the Bankruptcy Court if (i) such Claim is scheduled by the Debtor as contingent or disputed, (ii) an objection to that amount is filed on or before the Claims Objection Date, or (iii) if the amount set forth by the holder of such Claim in a timely filed, properly prepared proof of claim differs from the amount scheduled by the Debtor and an objection is filed to the proof of claim on or before the Claims Objection Date.

1.3 “Allowed” shall mean, with respect to any Claim, the status of the Claim, such that (a) upon expiration of the Claims Objection Date, the Claim, whether filed or scheduled, has not been disputed or (b) with respect to disputed Claims, a Final Order allowing the Claim has been entered.

1.4 “APA” shall mean the Asset Purchase Agreement dated as of March 16, 2009 by and among the Debtor and Hillcrest.

1.5 “Asset Sale” shall mean the Hillcrest Sale.

1.6 “Asset Sale Proceeds” shall mean the proceeds of the Asset Sale.

1.7 “Bankruptcy Court” shall mean the United States Bankruptcy Court, District of Maine.

1.8 “Bar Date” shall mean the date established by the Bankruptcy Court as the deadline for creditors to file proofs of claim.

1.9 “BSSN” shall mean Bernstein, Shur, Sawyer & Nelson, P.A. as counsel for the

Debtor.

1.10 “Case” or “Chapter 11 Case” shall mean the Debtor’s Chapter 11 case.

1.11 “Causes of Action” shall mean (a) any and all causes of action belonging to the Debtor or the Estate, whether arising before or after the Filing Date and whether arising under state or federal law, including, but not limited to, causes of action under Bankruptcy Code §§ 544 – 553 (including any state fraudulent conveyance statute by virtue of § 544) and (b) any and all proceeds, whether in the form of cash or otherwise, from any recoveries on or settlements of such causes of action.

1.12 “Claim” shall have the meaning set forth in § 101(5) of the Bankruptcy Code and shall include, without limitation, all rights to payment from the Debtor.

1.13 “Claims Objection Date” shall mean the date that is ninety (90) days from the last to occur of: (a) the Bar Date, or (b) with respect to a specified Claim for which a creditor is allowed to file a proof of claim after the Bar Date, twenty (20) days after the date on which such proof of claim is filed, or (c) the Confirmation Date. The failure to object to a Claim by the Claims Objection Date shall not constitute a waiver, acceptance or release of any claim or cause of action against a creditor, including causes of action based on a creditor receiving preferential or fraudulent transfers under § 547 or § 548 of the Bankruptcy Code.

1.14 “Closing Statement” shall mean the final closing statement with respect to the Asset Sale.

1.15 “Confirmation Date” shall mean the date on which the Bankruptcy Court Order confirming this Plan, as the same may be amended, becomes a Final Order.

1.16 “Confirmation Hearing” shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan, as the same may be amended, and as contemplated by Bankruptcy Code § 1128(a).

1.17 “Confirmation Order” shall mean the Final Order entered by the Bankruptcy Court confirming this Plan pursuant to Bankruptcy Code § 1129.

1.18 “Creditors’ Committee” shall mean the Official Committee of Creditors Holding Unsecured Claims appointed in the Case.

1.19 “Disclosure Statement” shall mean that certain disclosure statement filed by the Debtor in respect of the Plan and approved as containing adequate information pursuant to a Final Order of the Bankruptcy Court.

1.20 “Effective Date” shall mean the date that is thirty (30) days after the Confirmation Date, provided that all the conditions set forth in Article XI of the Plan have been satisfied. If an Order staying confirmation of the Plan has been entered, the Effective Date shall mean the earlier of the first business day following the date upon which (a) the Order confirming

the Plan has become a Final Order or (b) any stay of confirmation of the Plan is no longer effective, provided that such business day is more than thirty (30) days after the Confirmation Date.

1.21 “Estate” shall mean the bankruptcy estate of the Debtor, created in the Case pursuant to § 541 of the Bankruptcy Code, which shall include the continuation of the Estate after confirmation of the Plan.

1.22 “Filing Date” shall mean September 3, 2008.

1.23 “Final Order” shall mean an order of a court of competent jurisdiction with respect to which all periods for taking appeal from such order or any order of an appellate court relating to such order have expired with no appeal pending and no stay of such order being then in effect.

1.24 “Holder” shall mean a creditor holding, including by assignment, a Claim against the Estate.

1.25 “Plan Cash” shall mean the amount collected from the Causes of Action.

1.26 “Priority Claim” means an Allowed Unsecured Claim granted a priority under § 507 of the Bankruptcy Code.

1.27 “Professional Fees and Expenses” shall mean Administrative Claims of the professionals hired by the Debtor and shall also include any and all fees and expenses of BSSN incurred by the Debtor after the Confirmation Date, including, but not limited to, the costs and expenses incurred in relation to pursuing the Causes of Action and shall include the costs and expenses of any Liquidating Trustee.

1.28 “Pro Rata” means proportionate, so that, for example, the ratio of the consideration distributed on account of an Allowed Claim to the amount of the Allowed Claim is the same as the ratio of the consideration distributed on account of all Allowed Claims in such class of Claims to the amount of all Allowed Claims in the class.

1.29 “Sale Order” shall mean that certain Order Pursuant to 11 U.S.C. §§ 105, 363 and 365 Granting Debtor’s Motion for Sale of Substantially All of its Assets to Hillcrest Management, LLC Free and Clear of Liens, Claims and Encumbrances and For Approval of Assumption and Assignment of Certain Leases and Executory Contracts entered by the Bankruptcy Court in the Case on or about March 25, 2009.

1.30 “Substantial Consummation” shall have the meaning assigned to such term in § 1101(2) of the Bankruptcy Code.

1.31 “Unclassified Claims” shall mean all Administrative Expenses, Professional Fees and Expenses, and UST Fees.

1.32 “Unsecured Claim” shall mean a Claim that is (a) not an Unclassified Claim and (b) not secured by a valid Lien on property of the Debtor which is not void or avoidable under any state or federal law, including any provision of the Bankruptcy Code.

1.33 “UST Fees” shall mean the quarterly fees paid and payable to the United States Trustee.

Terms not defined in this Article I or otherwise defined in the Plan, but defined in the Bankruptcy Code, shall have the respective meanings assigned to such terms in the Bankruptcy Code, unless the context unequivocally otherwise requires.

**B. Classification of Claims and Interests**

Each holder of (a) a Claim against the Debtor of whatever nature, whether or not scheduled and whether unliquidated, absolute or contingent, including all Claims arising from the rejection of leases and executory contracts, or (b) any interest in the Debtor shall be bound by the provisions of the Plan, and all such Claims and interests are hereby classified as follows:

2.1 Unclassified Claims shall consist of all Administrative Expenses, including, without limitation, claims for Professional Fees and Expenses and fees payable pursuant to 28 U.S.C. § 1930. Unclassified Claims shall also include any and all fees and expenses of BSSN incurred by the Debtor after the Confirmation Date, including, but not limited to, the costs and expenses incurred in relation to pursuing the Causes of Action and the costs and expenses of the Liquidating Trustee (defined below), if any.

2.2 Class 1 shall consist of all Allowed Priority Claims, other than the Unclassified Claims.

2.3 Class 2 shall consist of all Unsecured Claims not otherwise classified under this Plan, but shall not include any Unclassified Claims.

2.4 Class 3 shall consist of any and all equity interests in the Debtor.

**C. Treatment of the Claims and Interests by Class**

All Claims against the Debtor, as finally Allowed by the Bankruptcy Court, will be fully and finally satisfied in accordance with the provisions of the Plan.

3.1 Unclassified Claims against the Debtor are impaired. Unclassified Claims shall be paid as follows with the proceeds generated by the Causes of Action brought or to be brought by the Debtor or on behalf of the Debtor under the Plan: (a) any and all UST Fees due and payable on the date of the receipt of funds sufficient to satisfy such UST Fees; (b) Professional Fees and Expenses (including amounts to the Liquidating Trustee (as defined below)); and (c) any and all Allowed Administrative Claims against the Estate other than UST Fees and Professional Fees and Expenses. Unclassified Claims shall be paid prior to payment of any Claims in Class 1 or Class 2 and the payments made as provided for herein shall be made immediately upon receipt of proceeds from any Cause of Action on a pro rata basis as between the UST Fees, the Professional Fees and Expenses and the Allowed Administrative Claims, provided, however, that following the resolution of all of the Causes of Action, the Debtor shall file a final accounting (the "Final Accounting") with the Bankruptcy Court setting forth the distribution of proceeds under the Plan and serve the Final Accounting on all parties holding a Claim against the Debtor. Parties holding a Claim shall have twenty (20) days from the date of filing of the Final Accounting to file an objection to the Final Accounting. In the event an objection is timely filed, the Court shall set a hearing date in relation to the Final Accounting. In the event no objections are timely filed, the distributions set forth in the Final Accounting shall be deemed to be final distributions under the Plan.

3.2 Class 1 Claims are impaired. Allowed Claims in Class 1 shall be paid the total amount received by the Estate in relation to Causes of Action brought by or on behalf of the Estate after payment of any and all Unclassified Claims until such time as the Allowed Claims in

Class 1 have been paid in full or have been paid in an amount agreed to between the Debtor and the holder of a Claim in Class 1. The payment to claimants in Class 1 shall be made within ten (10) days of the date the Bankruptcy Court enters a Final Order approving the Final Accounting.

3.3 Class 2 Claims are impaired. Allowed Claims in Class 2 shall be paid the total amount received by the Estate, on a pro rata basis, in relation to Causes of Action brought by or on behalf of the Estate after payment of any and all Unclassified Claims and after payment of any and all Allowed Claims in Class 1 until such time as the Allowed Claims in Class 2 have been paid in full or have been paid in an amount agreed to between the Debtor and the holder of a Claim in Class 2. The payment to claimants in Class 2 shall be made within ten (10) days of the date the Bankruptcy Court enters a Final Order approving the Final Accounting.

3.4 Class 3 Claims are impaired. Any and all equity interests in the Debtor shall be cancelled as of the date the Bankruptcy Court enters a Final Order approving the Final Accounting.

**D. Interests to be Retained and Rights to be Exercised by the Debtor or on Behalf of the Debtor**

4.1 Preservation of All Causes of Action. Except as otherwise provided in the Plan or in any contract, instrument, release or agreement entered into in connection with the Plan, in accordance with § 1123(b) of the Bankruptcy Code, the Debtor and the Estate retain, preserve and may enforce and prosecute any claims that the Debtor or the Estate may have against any person or entity that constitute Causes of Action. The Debtor shall have standing on behalf of the Estate for the purposes of investigating, pursuing, prosecuting, settling, collecting, liquidating, and/or recovering any assets, claims, or Causes of Action that the Debtor or the Estate has or may pursue; provided, however, that the Debtor may assign the rights preserved pursuant to the terms of this section to a third-party, which third-party shall then be deemed to



have the rights and standing to pursue the Causes of Action on behalf of the Debtor to the extent set forth herein (the “Liquidating Trustee”). The Liquidating Trustee shall be entitled to payment from the proceeds of the Causes of Action as a Professional Fee and Expense and shall be subject to the Final Accounting procedures as set forth above. The Liquidating Trustee shall immediately turnover to BSSN any and all amounts recovered by the Liquidating Trustee for distribution by BSSN of the proceeds in accordance with the terms of the Plan. BSSN shall continue to represent the Debtor after the entry of the Confirmation Order and may represent the Liquidating Trustee in relation to pursuing the Causes of Action and in relation to other matters which may arise in relation to the rights granted to the Liquidating Trustee under the Plan.

4.2 Pre-petition Claim and Amendments. Each Claim as to which a proof of claim was required to be filed on or before the Bar Date and as to which a proof of claim was not filed on or before the Bar Date shall not under any circumstances become an Allowed Claim. In no event shall the Allowed Amount of any Claim against the Debtor exceed the amount set forth in a proof of claim therefore filed on or before the Bar Date unless the claimant in its proof of claim expressly reserved the right to amend such proof of Claim in which case any such amended proof of claim must be filed by the Confirmation Date. No order allowing or disallowing a Claim may be reconsidered, pursuant to Bankruptcy Code Section 502(j) or otherwise, so as to increase the Allowed Amount thereof after entry of the Confirmation Order.

4.3 Objections to Pre-petition Claims and Interests. Claims and Interests that arose prior to the Filing Date, and which have not been scheduled by the Debtor as contingent, unliquidated or disputed, or as to which a valid proof of claim or interest has been filed on or before the Bar Date, shall be allowed in full, unless an objection to such Claim or Interest is filed on or before the date which is thirty (30) days after the Effective Date. Claims that have been

objected to and not allowed shall have no right to vote with respect to the acceptance or rejection of this Plan, except as otherwise ordered by the Court.

4.4 Bar Date for an Objection to Post-Petition Claims. Any Administrative Expense Claim, other than Professional Fees and Expenses, arising before the Confirmation Date shall be forever barred unless it is the subject of a proof of claim filed with the Bankruptcy Court on or before the date which is thirty (30) days after the Effective Date (the “Post-Petition Bar Date”). Any Claim that is the subject of such proof of claim shall be Allowed in full unless an objection thereto is filed within thirty (30) days after the Post-Petition Bar Date or such other date as is provided by Order upon motion of the Debtor.

**E. Means of Execution of the Plan**

5.1 The Plan shall be funded by Plan Cash, which shall be generated by the Debtor’s or the Liquidating Trustee’s investigation, prosecution, and settlement of the Causes of Action as described above.

5.2 De Minimis Distributions. If, at the time that the final distribution under the Plan is to be made after approval of the Final Accounting, a creditor is owed less than ten dollars (\$10.00), BSSN shall not distribute such amount but such amount shall vest in BSSN and be distributed to other Holders of Allowed Claims in accordance with the terms of the Plan.

5.3 Delivery of Distributions. Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be made by BSSN: (i) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holder if no motion requesting payment or Proof of Claim is filed or the Debtor has been notified in writing of a change of address); (ii) at the addresses set forth in any written notices of address changes delivered to BSSN after the date of any related proof of claim, or (iii) at the addresses reflected

in the schedules if no proof of claim has been filed and BSSN has not received a written notice of a change of address.

5.4 Undeliverable Distributions. If payment or distribution to any Holder of an Allowed Claim under the Plan is returned for lack of a current address for the Holder or otherwise, BSSN shall file with the Bankruptcy Court the name, if known, and last known address of the Holder and the reason for its inability to make payment. If, after the passage of ninety (90) days, the payment or distribution still cannot be made, the payment or distribution and any further payment or distribution to the Holder shall be distributed to the Holders in the appropriate Class or Classes, and the Allowed Claim shall be deemed satisfied to the same extent as if payment or distribution had been made to the Holder of the Allowed Claim.

5.5 Setoffs and Recoupments. The Debtor or the Liquidating Trustee may, pursuant to §§ 502(h), 553, and 558 of the Bankruptcy Code or applicable non-bankruptcy law, but shall not be required to, set off against or recoup from any Claim on which payments are to be made pursuant to the Plan, any claims or causes of action of any nature whatsoever that are proven valid that the Debtor may have against the Holder of such Claim; provided, however, that neither the failure to effect such offset or recoupment nor the allowance of any Claim shall constitute a waiver or release by the Debtor, the Estate, or the Liquidating Trustee of any right of setoff or recoupment that the Debtor, the Estate or the Liquidating Trustee may have against the Holder of such Claim, nor of any other claim or Cause of Action.

5.6 Distributions in Satisfaction; Allocation. Except for the obligations expressly imposed by this Plan and the property and rights expressly retained under the Plan, if any, the distributions and rights that are provided in this Plan shall be in complete satisfaction and release of all Claims against, liabilities in, liens on, obligations of and Interests in the Debtor and the

Estate and the assets and properties of the Debtor and the Estate, whether known or unknown, arising or existing prior to the Effective Date.

5.7 Cancellation of Notes and Instruments. As of the Effective Date, except to the extent otherwise provided in the Plan, all notes, agreements and securities evidencing Claims and Interests and the rights there under of the Holders thereof shall, with respect to the Debtor, be canceled and deemed null and void and of no further force and effect, and the Holders thereof shall have no rights against the Debtor, the Estate, or the Liquidating Trustee, and such instruments shall evidence no such rights, except the right to receive the distributions provided for in the Plan.

5.8 No Interest on Claims. Unless otherwise specifically provided for in the Plan, the Confirmation Order, or a post-petition agreement in writing between the Debtor and a Holder of a Claim and approved by an Order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on any Claim, and no Holder of a Claim shall be entitled to interest accruing on or after the Filing Date on any Claim.

5.9 Disputed Claims Reserve.

a. Establishment. BSSN shall maintain a reserve (the “Disputed Claims Reserve”) equal to 100% of the distributions to which holders of a claim which is the subject of a dispute between the Holder of the claim and the Debtor or the Liquidating Trustee (a “Disputed Claim”) would be entitled under the Plan if such Disputed Claims were Allowed Claims or such lesser amount as required by a Final Order.

b. Distributions Upon Allowance of Disputed Claims. The Holder of a Disputed Claim that becomes an Allowed Claim shall receive distributions of Plan Cash from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes

an Allowed Claim pursuant to a Final Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to such holder under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date. No Holder of a Disputed Claim shall have any claim against the Disputed Claims Reserve until such Disputed Claim shall become an Allowed Claim.

5.10 Cram Down. In the event that any class allowed to vote is deemed impaired under this Plan and refuses to accept the terms of the Plan, the Debtor shall and hereby does move the Bankruptcy Court to confirm the Plan pursuant to § 1129(b) of the Bankruptcy Code. All Claims of creditors and the rights of all holders of equity interests in the Debtor shall be satisfied solely in accordance with the Plan.

**F. Executory Contracts**

The Plan hereby provides for the rejection of all unexpired leases and executory contracts not assumed and assigned pursuant to the APA and the Sale Order and to the extent not already rejected, with such rejection being effective as of the Confirmation Date. Any Claim for damages arising out of the rejection of an executory contract or unexpired lease must be filed on or before thirty days (30) after the effective date of such rejection, or such later date as may be specified by a Final Order of the Bankruptcy Court. All such Allowed Claims for rejection damages shall be classified as Unsecured Claims against the Debtor.

**VI. Governance and Maintenance**

After confirmation, and as detailed in the Plan summary above and in the Plan, the Debtor or the Liquidating Trustee will investigate, prosecute, and settle any and all Causes of Action. During this period, the Debtor will continue to be managed as a debtor-in-possession under the Bankruptcy Code. After the completion of such prosecution, and after all Allowed Claims are

paid in accordance with the Plan, the Debtor will file any and all necessary papers with the State of Maine to dissolve and wind up the Debtor's corporate affairs.

## **VII. Feasibility of the Plan**

Due to the events of the Debtor's Chapter 11 case described above, most of the Debtor's secured and priority unsecured liabilities have previously been paid in full. Similarly, substantially all of the Debtor's assets have been sold. The only remaining liabilities are Unclassified Claims and Unsecured Claims (both priority and non-priority), and these claims will be funded to the greatest extent possible by Plan Cash, which in turn will be funded by recovery of the Causes of Action. The Plan is feasible because the Debtor will continue to be represented by BSSN, which is well informed about the Debtor and its pre-petition affairs by virtue of its ongoing representation of the Debtor as debtor-in-possession. Because of this, Professional Fees and Expenses, and thus Administrative Claims, will be held to a minimum, meaning that creditors with Unsecured Claims will have a very high probability of recovering a portion of their Allowed Claims. For these reasons, the Plan is feasible.

## **VIII. Risk Factors**

The primary risk factors affecting the amount of the distribution to Holders of Claims are as follows:

- (a) The Court could allow Unsecured Claims at higher amounts than asserted by the Debtor; or allow Claims that the Debtor believes should be disallowed; and/or
- (b) Administrative claims could exceed estimated amounts; and/or
- (c) Recoveries from Causes of Action could be lower than projected.

One or all of these factors could lower the dividend payable on Unsecured Claims, but no single factor or combination of factors is likely to eliminate the dividend in total.

## **IX. Plan Alternatives**

The Debtor believes that the only currently available alternative to the Plan is the conversion of the Case to a case under Chapter 7 of the Bankruptcy Code. The Debtor believes that this alternative would significantly increase administrative costs, reduce distributions to unsecured creditors, and significantly delay such distributions.

The conversion of this Case to a case under Chapter 7 would require the appointment of a Chapter 7 trustee who would have to familiarize himself or herself with the Debtor's background and history, its business operations, and the Claims against the Debtor prior to any distribution to parties holding Claims against the Debtor. The Chapter 7 trustee may also have to engage professionals, such as attorneys, to assist in the Chapter 7 case, and such professionals would also have to familiarize themselves with the Debtor. The time spent by the Chapter 7 trustee and its professionals familiarizing themselves with the Case would increase the administrative costs to the Estate while likely recovering the same amounts from the prosecution of the Causes of Action, resulting in smaller distributions to creditors of the Estate. It is important to note that the administrative costs of the Chapter 7 estate would be paid in advance of the payment of any amounts owed to claimants holding Unclassified Claims which, in turn, would be paid in advance of any distributions to holders of claims in Class 1 and Class 2. Appointment of a Chapter 7 trustee may also significantly delay distributions to creditors, as described above. Accordingly, conversion of the Case would not be as beneficial to the Debtor's Estate as the confirmation of the Plan would be.

#### **X. Liquidation Analysis**

Substantially all of the Debtor's assets have already been liquidated and the only remaining tasks are to prosecute and collect in relation to the Causes of Action and to determine which and to what extent claims are allowable and to distribute the Plan Cash. The Debtor, as

debtor-in-possession, has the greatest familiarity with the circumstances giving rise to the claims against the estate and, therefore, is best able pursue the Causes of Action and to object to claims in an efficient and economical manner. If the Case were converted at this stage, it would, as noted, require the appointment of a Chapter 7 trustee, with another set of professionals. Such trustee and professionals would have a steep learning curve in obtaining even a general understanding of the Case, the Causes of Action and others matters which may arise in the context of the liquidation of the remaining assets of the estate. Accordingly, the estate would suffer significantly greater administrative costs as the Chapter 7 trustee and its professionals familiarized themselves with the claims at issue and determined the allocation. Therefore, while liquidation would proceed in the a similar manner whether under the Plan or under Chapter 7, the distribution under the latter would be diminished due to increased administrative costs and delayed as described above.

#### **XI. Voting to Accept or Reject the Plan**

The Debtor has enclosed herewith a ballot for accepting or rejecting the Plan. The Debtor encourages you to vote to accept the Plan. Please complete this ballot and return it to: Morin Brick Company, c/o D. Sam Anderson, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME 04104-5029 on or before \_\_\_\_\_, 2009 at 5:00 p.m. Ballots may be submitted by facsimile transmission to the attention of D. Sam Anderson, Esq. at (207) 774-1127. Ballots may not be submitted by electronic mail.

**EACH CREDITOR SHOULD NOTE THAT IF ANY CLASS OF CLAIMS SHOULD FAIL TO ACCEPT THE PLAN BY THE REQUISITE MAJORITY, THE BANKRUPTCY COURT MAY NONETHELESS ENTER AN ORDER CONFIRMING THE PLAN. THE REQUIREMENTS FOR OBTAINING SUCH AN ORDER ALLOW**



**THE BANKRUPTCY COURT TO ENTER SUCH AN ORDER IF, AFTER NOTICE AND A HEARING, THE BANKRUPTCY COURT FINDS THAT THE PLAN DOES NOT DISCRIMINATE UNFAIRLY AND IS FAIR AND EQUITABLE WITH RESPECT TO ANY IMPAIRED CLASS OF CLAIMS OR INTERESTS WHICH HAS NOT ACCEPTED THE PLAN. IF ANY CLASS OF CLAIMS FAILS TO ACCEPT THE PLAN BY THE REQUISITE MAJORITY, THE DEBTOR SHALL SEEK THIS TREATMENT.**

**XII. Confirmation**

The Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan. The Bankruptcy Code also allows any party in interest to object to confirmation.

By Order of the Bankruptcy Court, the confirmation hearing in this case will be held on \_\_\_\_\_, 2009, at \_\_\_\_\_.m. at the United States Bankruptcy Court, 537 Congress Street, 2<sup>nd</sup> Floor, Portland, Maine. Any objection to confirmation must be made in writing, filed with the Clerk of the Bankruptcy Court, and served upon all parties who have filed a demand for receipt of papers under Fed. R. Bankr. P. 2002 and on Debtor's counsel on or before \_\_\_\_\_, 2009. Any party that objects to confirmation must also attend the confirmation hearing, either in person or through counsel.

**XIII. Effect of Confirmation**

Confirmation of the Plan shall discharge the Debtor from all Claims arising before the date of Confirmation, except as expressly provided in the Plan. The Confirmation Order shall permanently enjoin all holders of Claims from taking action contrary to the Plan or to collect upon any Claim other than pursuant to the Plan.

**XIV. Income Tax Consequences**

The Debtor is a subchapter S corporation organized under Maine law. As such, in

general, the Debtor is treated as a “pass-through” entity for federal income tax purposes. The federal, state, and local tax consequences of the Plan may be complex and, in some cases, uncertain. Such consequences may also vary based upon the individual circumstances of each holder of a claim or interest. **ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, AND LOCAL TAX CONSEQUENCES OF THE PLAN. THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR, AND SHALL NOT BE DEEMED TO CONSTITUTE, ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN.** Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any distributions under the Plan.

#### **XV. Retention of Jurisdiction**

To the maximum extent permitted by 28 U.S.C. § 1334 and the Bankruptcy Code, the Bankruptcy Court shall retain exclusive jurisdiction with respect to the following matters:

- (a) To adjudicate all controversies concerning the classification, allowance, or determination of any claim or interest, including, without limitation, any administrative claim or claim arising from any environmental liability;
- (b) To hear and determine all Claims arising from rejection of any executory contract, including leases, and to consummate the rejection and termination thereof;
- (c) To liquidate damages in connection with any disputed contingent or unliquidated Claims;
- (d) To adjudicate all Claims to, or ownership of any property of, the Debtor or in any proceeds thereof arising prior to and after the Effective Date;

(e) To adjudicate all Claims and controversies arising out of any purchases, sales or contracts made or undertaken by the Debtor prior to the Effective Date;

(f) To make such orders as are necessary and appropriate to construe or effectuate the provisions of the Plan;

(g) To hear and determine any and all Causes of Action, including, without limitation, any and all preference actions, fraudulent conveyance actions or other matters brought pursuant to the Debtor's avoidance or subordination powers;

(h) To hear and determine any and all applications of professional persons for allowance of compensation and/or reimbursement of expenses and all other Administrative Expenses which may be pending on, or made after, the Confirmation Date, including hearing and determining issues relating to the Final Accounting;

(i) To adjudicate any and all motions, adversary proceedings and litigated matters pending on the Confirmation Date or filed thereafter within any applicable statutory period;

(j) To adjudicate any and all controversies and disputes arising under, or in connection with, the Plan or any order or document entered or approved by the Bankruptcy Court in connection with the Debtor, the Case, or any controversy or dispute which may affect the Debtor's ability to implement or fund the Plan; and

(k) To hear and determine such other matters as the Bankruptcy Court in its reasonable discretion shall deem appropriate.

## **XVI. Conclusion**

The Debtor submits that the Plan complies in all respects with Chapter 11 of the Bankruptcy Code, and recommends to holders of Claims who are entitled to vote on the Plan that they vote to accept the Plan. The Debtor reminds such holders that each ballot, signed and

marked to indicate the holder's vote, must be received by the Debtor's counsel no later than \_\_\_\_\_, 2009, at 5:00 p.m. (prevailing time in Portland, Maine).

Dated: November 16, 2009

**MORIN BRICK COMPANY, INC.**

By its attorneys:

/s/ D. Sam Anderson  
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