

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE:**

**DARDEN-GREEN CO., INC.,  
  
DEBTOR.**

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)

**CASE NO. 16-01957  
CHAPTER 11**

**DISCLOSURE STATEMENT**

**ARTICLE I  
INTRODUCTION**

Darden-Green Co., Inc., an Alabama Chapter S corporation, (hereafter referred to as "Debtor"), filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division ("Bankruptcy Court") on the 13th day of May, 2016 (the "Filing Date"). On or about May 13, 2016, an Application to Employ Thomas E. Reynolds was filed. The Application to Employ was granted on or about May 17, 2016. The Chapter 11 case is now pending before Honorable Tamara O. Mitchell, United States Bankruptcy Judge, under Case No. 16-01957-TOM-11. The Debtor has continued to manage its business affairs as debtor-in-possession pursuant to Section 1108 of the Bankruptcy Code since the Filing Date. The attorney for the Debtor is Thomas E. Reynolds, Reynolds Legal Solutions, LLC, 300 Richard Arrington Jr. Blvd. N., Suite 503, Birmingham, Alabama, 35203.

The Debtor submits this Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016(c) to creditors and interest holders of the Debtor (the "Claimants") to disclose information to enable the Claimants to make an informed decision in exercising their rights to accept or reject the Debtor's Plan of Reorganization ("Plan"). The Bankruptcy Court, pursuant to Section 1128 of the Bankruptcy Code, has scheduled a hearing to consider the confirmation of the Plan (the "Hearing") for \_\_\_\_\_, 2016, at \_\_\_\_\_ .m. in Courtroom No. \_\_\_\_\_, United States Bankruptcy Court, 1800 5<sup>th</sup> Avenue North, Birmingham, Alabama. The Bankruptcy Court has directed that, on or before \_\_\_\_\_, Central Standard Time on \_\_\_\_\_, 2016, the ballots for the acceptance or rejection of the Plan are required to be submitted in writing by the holders of all classes of claims and interests which are impaired under the Plan. (A Claimant whose legal, contractual or equitable rights are altered, modified or changed by the proposed treatment under the Plan is considered "impaired".) Claimants within impaired classes 3, 5, 6 and 7, inclusive, may vote on the Plan by completing and mailing the enclosed ballot to:

Thomas E. Reynolds, Esquire  
Reynolds Legal Solutions, LLC  
300 Richard Arrington Jr. Blvd. N., Suite 503  
Birmingham, Alabama 35203

TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED BY \_\_\_\_\_ .m., CENTRAL STANDARD TIME ON \_\_\_\_\_, 2017.

As a Claimant, your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a consensual Plan of Reorganization that each class of claimants that is impaired under the Plan accept the Plan. The Bankruptcy Code defines "acceptance" of a Plan by a class of creditors as acceptance by holders of two-thirds in dollar amount, and more than one-half in number of the claims of that class that cast ballots for acceptance or rejection of the Plan. A class of interests has accepted a Plan if such Plan has been accepted by holders of such interests that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests that have accepted or rejected such Plan. For a description of impaired classes, if any, please see Article VI, *infra*, "Summary of Plan".

Liabilities incurred in the ordinary course of the business affairs by the Debtor since the Chapter 11 petition was filed, including amounts owed to vendors and suppliers who have sold merchandise or furnished services to the Debtor since such date, and liabilities arising under loans or advances to the Debtor since such date, whether or not incurred in the ordinary course of business, are considered Administrative Expense claims and holders of such claims will not vote on the Plan, but will continue to be paid in the ordinary course of the Debtor's business operations.

If a class of Claimants does not accept the Plan, the Debtor has the right to request confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code, the "cramdown" provision. Section 1129(b) permits the confirmation of a Plan of Reorganization notwithstanding the non-acceptance of the Plan by one or more impaired classes or interests. Under that section, a Plan of Reorganization may be confirmed by the Bankruptcy Court if it does not discriminate unfairly and is "fair and equitable" with respect to the non-accepting class. The fair and equitable rule requires absolute priority in the payment of claims and interests with respect to the dissenting class or classes. See Section entitled "Confirmation Procedure" below.

This Disclosure Statement has been approved by order of the Bankruptcy Court dated \_\_\_\_\_, 2017, as containing information of a kind and of sufficient detail to enable a hypothetical reasonable investor typical of Claimants to make an informed judgment as to the acceptance or rejection of the Plan. This Disclosure Statement may be used in connection with the solicitation of votes on the Plan. Approval of this Disclosure Statement is not, however, a ruling by the Bankruptcy Court as to the fairness or merits of the Plan.

Confirmation by the Bankruptcy Court of the Plan in accordance with the provisions of the Bankruptcy Code will be considered at the scheduled hearing on the Plan. The hearing on the Plan may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the hearing.

Any objection to the confirmation of the Plan must be in writing and served and filed as described below under the caption "Confirmation Procedures -- Confirmation Hearing."

**DISCLAIMER**

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN. DARDEN-GREEN CO., INC. MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS AND SCHEDULES ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE TERMS OF THE PLAN SHALL CONTROL. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016 (c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT OF SUCH ADVERSARY PROCEEDING OR CONTESTED MATTER AND THE EXISTENCE PRESUMPTIONS BY THE DEBTOR AS THE OUTCOME OF SUCH PROCEEDINGS ARE JUST THAT, PRESUMPTIONS BY THE DEBTOR. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN DARDEN-GREEN CO., INC..

## **ARTICLE II** **DEBTOR**

### **A. Nature and Operation of the Debtor's Business Affairs Prior to Chapter 11 Filing and Currently**

The Debtor's name is Darden-Green Co., Inc. It operates a business where it sells and installs heating and cooling machinery and provides maintenance services on heating and cooling machinery. It specializes in new construction and residential sales and services. The Debtor's business is located at 3378 Wood Drive Circle, NE., Birmingham, Alabama. The Debtor owns the real estate and improvements located thereon. The Debtor has been in the business for approximately 40 years. Although it has not been profitable for several years, it is believed that it carries a good reputation within the industry and thus has "goodwill" value to salvage which is the reason this Chapter 11 case has been filed.

### **B. Events Leading to Chapter 11 Filing**

The Debtor's business specializes in residential sales and services. The revenue received from operations is mostly from new construction projects. During the years 2008 – 2013 residential construction was slow. Because of the small amount of work available, those subcontractors in the heating and air conditioning business competed intensely in pricing projects since there were so few projects to bid, resulting in squeezed profit margins. During those years the cycle of operational losses and poor cash flow led to major losses and overgrowing debt owed to suppliers. To stay in business and maintain good will with suppliers, the Debtor attempted to service the accrued debt with steep interest rates applied thereto which further reduced cash flow and strained efforts to become profitable. In the years leading up to the bankruptcy, the Debtor's management chased more business despite low profit margins to try and generate sufficient revenue to stay in business and to serve its' sizeable debt owed to suppliers. This created a debt spiral where profitability suffered to provide more cash flow. Debts grew and grew as profits spiraled downward. An example of the depths of the company's profitability is reflected by the Statements of Income and Expenses for the years 2014 and 2015 which are attached hereto as Exhibit 1 as evidence of how bad things had become prior to bankruptcy.

The Debtor was plagued by numerous operational problems and deficiencies including the following:

- (1) Its financial reporting was unreliable;
- (2) Profit margins were so small that any problem or issue arising on the job site caused a specific job to lose money;
- (3) The owner, James L. Green, experienced health problems which prevented him from totally engaging with the company. His absence contributed to numerous operational and management problems
- (4) The company was so overwhelmed with addressing cash flow problems;
- (5) It had no sales and marketing plan. Many opportunities were lost because the company ceased to promote itself.

(6) There were inadequate management of work crews leading to lost efficiency, misuse of company assets, ineffective communication and coordination with company management, unauthorized use of the company's trucks, gas credit cards, assts from job used by employees for professional gain;

(7) The company suffered from low profit margins;

(8) The company failed to: effectively bid jobs, plan jobs,, handle materials for jobs, provide adequate attention to quality control, manage change orders, pricing and billing;

(9) The company was too heavily focused on new construction which provided low profit margins and wasted time and expertise of employees that might have been directed to more profitable service work. This resulted in higher top line revenues but poor net profits.

### C. Changes Initiated during Chapter 11

The bankruptcy case has been used by the Debtor not only as an opportunity to reorganize its debts, but also as an opportunity to reorganize its business operations and practices. Prior to filing bankruptcy, the Debtor retained Michael Weiner as a management consultant to evaluate the business, identify changes that could and should be made to steer the company back to profitability. The Debtor has been working on the plan created by Mr. Weiner which has resulted in improved performance. The Financial Statement for the current fiscal year of the Debtor, reflecting the financial improvement for the prior year, is attached hereto is Exhibit 2. However, the impact of the changes has not been fully realized and the Debtor still has much to do to achieve the profitability to implement and perform its Plan of Reorganization. However, the Debtor has a road map and significant improvement is reflected by its Profit and Loss for this fiscal year.

#### Changes implemented to date:

(1) Financial reporting has been greatly improved;

(2) Financial statements are now being used as a tool to continuously evaluate the business;

(3) Job analysis to determine minimum profitability is now the norm. A 5-15% projected net profit is required of all contractor jobs and a 20-40% profit is required of the retail market;

(4) Every job must be deemed profitable prior to acceptance of project;

(5) Expenses are now being managed. All purchases are evaluated to confirm that materials are purchased at lowest possible price. Labor costs are now planned and controlled. How labor is deployed is adjusted based upon numerous considerations including weather and economy;

(6) Hiring practices have been streamlined;

(7) Cost controls have been implemented;

(8) Accounts payable are managed so that additional fees and interest are avoided;

(9) Training programs have been added in all departments to increase accuracy and cross training has enabled consistent work flow even where employees are absent;

(10) Safety and quality meetings have been implemented and are becoming established as routine;

(11) Employee health insurance benefits have been reduced so that the company only covers one-half of employee insurance cost;

- (12) Use of company trucks is now monitored and controlled to avoid personal use by employees;
- (13) Routine for maintenance and cleaning of vehicles has been established. Extending utility of existing trucks is expected to prevent need for new vehicle purchases for foreseeable future;
- (14) Company gas cards are now monitored to restrict use for only company vehicles;
- (15) All purchase orders required approval of management;
- (16) Employee hours are monitored and controlled to avoid unnecessary overtime;
- (17) A new company policy manual has been created and distributed specifying company expectations of employees and clearly setting forth company policies.

While all of these changes have been made to help improve profitability, the ultimate test is in the continuity of implementation and enforcement. The biggest change perhaps is in the philosophy of management and employees that to endure the company must operate profitably. The company's business is cyclical. It is sensitive to the economy since much of its work is on new residential construction. So this part of its business is heavily influenced by the amount of new construction. The company also is affected by weather; hot summers and cold winters enhance demand for service work. In addition, the business historically experiences greater sales during the warmer months of the year.

D. Officers

The sole shareholder, Chief Executive Officer and Chairman of the Board of Directors is James L. Green. The President of the reorganized company will be Lucas Green who will also serve as Operations Director. The Secretary/Treasurer and General Manager will be Bobbie Green. The Service Manager will be Dennis Green.

F. Employee Staff

Darden-Green Co., Inc. employs 29 employees with a total monthly payroll of approximately \$74,000 each month.

G. Anticipated Future Operations

At this time there are no anticipated major changes to personnel. However, the Debtor's management may make such adjustments as are deemed appropriate to address either increases in workloads or decreased in workloads.

**ARTICLE III**  
**AFFILIATED COMPANIES, TRANSACTIONS WITH INSIDERS, LITIGATION**

A. Affiliated Companies – Debtor has no affiliated companies.

B. Transactions with Insiders – James L. Green, the shareholder and CEO, has personally guaranteed the Debtor's secured mortgage obligations to The Hometown Bank and on

truck financing with Ford Motor Credit. Pursuant to the Plan, James L. Green will continue as guarantor of such claimant's secured claims.

C. Litigation - The Debtor itself is not a party, upon information and belief, to any non-bankruptcy or bankruptcy litigation at this time. Any and all prepetition litigation will become permanently stayed upon Plan confirmation.

#### **ARTICLE IV** **ASSETS, CASH FLOW**

A. Assets

The assets of the Debtor as of the commencement of this case are reflected on Exhibit 3 hereto identified as Asset Analysis. Also, as a part of Exhibit 3 there is an estimated current going concern value of such assets, as well as an estimated liquidation value of the same assets. The valuations contained in these Exhibits are wholly the opinion of the Debtor's management, which opinion is predicated on long-term experience in the heating and cooling industry, and upon other valuation data such as County Tax Assessor's valuation and appraisals obtained in the past. Objections as to value shall be resolved by the Court at the Confirmation Hearing or at such other time as may be set by the Court. An objecting party shall serve a copy of the objection upon the Debtor's attorney.

B. Cash Flow

(1) The Debtor's financial statements and statements of income have been filed in the Bankruptcy Clerk's office in Birmingham, Alabama in the form of B. A. Reports since the commencement of the case. The Debtor's Business Income Statements are available to any creditor seeking to review same. However, the nature of such reports is of unique value to the Bankruptcy Administrator and is not offered here to prove anything.

(2) The Debtor has provided as Exhibit 2 the Debtor's Profit and Loss Statement for its' fiscal year from June 30, 2016 through June 30, 2017, which includes a projection of income and expenses for the fourth quarter of the Debtor's fiscal year. Finally, attached hereto as Exhibit 4 is a pro forma projection of the Debtor's Profit/Loss for the coming year 2017/2018. At a minimum, the Debtor anticipates that cash flow will improve during the performance of the Plan as follows: (i) the Debtor will have access to that cash required during the bankruptcy case paid to the Bankruptcy Administrator's office, and the professional services for attorneys and financial advisors is expected to drop considerably following confirmation of the Plan. The debt due Ford Motor Credit is scheduled to be paid off in July, 2018. The debt owed to The Hometown Bank is scheduled to be paid off in February, 2021.

**ARTICLE V**  
**CREDITOR'S CLAIMS AND OBJECTIONS**

A. A list of creditors and the amounts of their claims which were listed as not disputed or contested, or listed as disputed or contested and who filed claims, or not listed but who filed claims, is attached hereto as Exhibit 5 and incorporated herein by reference.

B. Secured Claims

The analysis of claims is attached hereto as Exhibit 5. The classification and treatment of claims is attached hereto as Exhibit 6.

C. Priority Claims

The claimed priority claim of the Internal Revenue Service and the State of Alabama Department of Revenue have been contested. Such contest is pending at the time of the filing of this Disclosure Statement. Details concerning such claims are identified on the attached Claims Analysis and Classification and Treatment of such Claims.

D. Unsecured Non-Priority Claims

These claims are identified on the attached Analysis of Claims. A number of the smaller claims were paid by the Debtor on or about the time of the filing of this bankruptcy case. The Debtor will deliver documents to withdraw certain claims to the extent such claims have been paid and no longer due such claimants.

E. NOTICE

The Debtor reserves the right to file objections to some or all of the above stated claims or other claims filed in this case. The **BAR DATE FOR FILING CLAIMS** by non-governmental units was August 9, 2016, and the deadline for filing claims by governmental units has been set by the Court was October 11, 2016 ("Bar Dates").

F. The Debtor has paid expenses of operation in the ordinary course of business. While there are always bills outstanding based upon daily operations, the Debtor intends to pay all of such bills in the ordinary course of business. Administrative expenses otherwise include the fee payable to the Bankruptcy Administrator which is current, the fees once owned allowed to the Debtor's attorney, Thomas E. Reynolds, for which said attorney holds a \$15,000 retainer, the fee payable to the Debtor's management consultant, Michael Weiner, which has been paid to date in monthly installments, some of which remain subject to Court approval, and finally fees owed to the Debtor's accountant, Pamela Dunn, for accounting services, of which Pamela Dunn received a retainer which substantially covers accrued fees and expenses.

In summary, such administrative professional fees are a significant expenditure during confirmation; in this case, the Debtor has paid allowances so that there should not be any large amount owed to any professional for services rendered.



**ARTICLE VI**  
**SUMMARY OF PLAN**

A. The Debtor believes that through the Plan creditors, as a group, will obtain a recovery from the estate of the Debtor which is greater than any recovery available if the assets of the Debtor were liquidated under the Bankruptcy Code (see "Alternatives To Confirmation Of The Plan") and that the Plan will afford the Debtor the opportunity and ability to continue the reorganization of its business and continue to provide jobs to its employees.

B. Treatment of Certain unclassified Claims

Administrative Expense Claimants shall receive on account of such claims Cash in the amount of such Claimants' claims on or within 30 days from the date of the Order entered confirming the Plan, or, to the extent administrative claims remain subject to Court approval, payment will be paid within 10 days following allowance of such claim, whichever date occurs later.

C. Designation and Treatment of Unimpaired Classes

1. Class 4 (Priority Tax Claims): Class 2 consists of Claims for taxes as defined and entitled to priority under Section 507 (a) of the Bankruptcy Code. Each member of Class 1 shall be paid in full in an amount equal to the amount of each such Allowed Claim on or within 30 days from the date of confirmation of the Plan or, to the extent such claim is allowed by Order following a contest proceeding, then in such even the claim will be paid 10 days following entry of such Order or 30 days following confirmation of the Plan, whichever date occurs later.

D. Designation and Treatment of Impaired Classes

Class 3, secured claim of Hinkle Metal Supply, Class 5 Small Allowed Unsecured Claims, Class 6 Large Allowed Secured Creditors, and Class 7 Capital Contribution Claim are all classes impaired under the Plan.

2. Class 3 Secured Claim of Hinkle Metal Supply will receive a Note in the amount of their claim together with interest payable at the per annum rate of 5%, in equal monthly installments over a period of 10 years in replacement of its judgment lien.

3. Class 5 (Allowed Small Unsecured Claims): These claims are projected to be in the amount of \$16,117.04 or less. These claimants will receive 25% of their claims in cash within 30 days of confirmation of the Plan.

4. Class 6 (Allowed Large Unsecured Claims): There will be 3 claimants in this Class possessing a total of claims in the amount of \$1,234,823.95. These claimants will be

issued a promissory note, which note will provide for the payment of no less than 25% of that allowed claim over a period of 79 months.

5. Class 7 (Capital Contribution Claim). The holder of the claim for capital contribution made to the Debtor prepetition will receive nothing on account of such claim.

## **ARTICLE VII**

### **EFFECT OF CONFIRMATION OF PLAN**

To the extent a debt or claim is satisfied and discharged by the Debtor pursuant to this Plan, either by the payment of cash or the issuance of a note, such holder of each such debt or claim shall have no further claim against the Debtor, the bankruptcy estate of the Debtor or the assets of the Debtor.

Pursuant to Section 1111(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(2) and (3), any creditor holding a claim that is scheduled as disputed, contingent or unliquidated, must file a proof of claim or interest within the time set out by Bankruptcy Rule 3003(c)(3) and as fixed by the court.

**THE DEBTOR RESERVES THE RIGHT TO CONTEST ANY CLAIM IF THE DEBTOR DISPUTES THE AMOUNT OR CHARACTER OF THE CLAIM AS FILED.**

**THE CONFIRMATION OF THE PLAN WILL BIND THE DEBTOR AND THE CREDITORS OF THE DEBTOR WHETHER OR NOT THE CLAIMS OF SUCH CREDITORS ARE IMPAIRED UNDER THE PLAN AND WHETHER OR NOT SUCH CREDITORS HAVE ACCEPTED THE PLAN. IN ADDITION, THE CONFIRMATION OF THIS PLAN WILL VEST ALL PROPERTY OF THE ESTATE IN THE DEBTOR AND, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE ORDER CONFIRMING THE PLAN, AFTER CONFIRMATION OF THE PLAN THE PROPERTY DEALT WITH BY THE PLAN IS FREE AND CLEAR OF ALL CLAIMS AND INTERESTS OF CREDITORS.**

## **ARTICLE VIII**

### **ALTERNATIVES TO CONFIRMATION OF THE PLAN**

If the Plan is not confirmed and consummated, the theoretical alternatives include (a) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code or (b) an alternative Plan of Reorganization or (c) dismissal of the Case.

#### **A. Liquidation Under Chapter 7.**

If the Plan is not confirmed, the Debtor's bankruptcy case may be converted to a case under Chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed to liquidate the assets of the Debtor for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. An analysis of the likely recovery to creditors upon

liquidation under Chapter 7 has been presented in the discussion regarding "Confirmation" and in the Liquidation Analysis made part of the Asset Analysis as Exhibit 3. The Debtor believes that a Chapter 7 liquidation would result in a nominal distribution being made to creditors because of (a) additional administrative expenses involved in the appointment of a trustee and lawyers and other professionals to assist him or her, (b) additional expenses and claims arising from operation expenses the Debtor is unable to pay in the ordinary course of business which would be entitled to treatment as administrative claims, and (c) failure to realize the greater, going concern value of the Debtor's assets.

The Debtor is not an asset based business. It does not retain an inventory of air conditioning or heating units. Instead, its primary basis for generating income comes from the services it provides installing or maintaining cooling and heating equipment. To the extent the Debtor sells heating and cooling units such units are purchased just in time for delivery to the work site. The true value of the business lies in the goodwill it has developed over 40 years it has been in business. After taking into account the mortgage of The Hometown Bank, the security interests of Ford Motor Credit and the judgment lien of Hinkle Metal & Supply, it is unlikely any equity will be recoverable from the Debtor's tangible assets.

**B. Alternative Plan of Reorganization or Liquidation Under Chapter 11.**

If the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate a different Plan. Such a Plan might, although highly unlikely, involve either a reorganization and continuation of the Debtor's business, or an orderly liquidation of its assets. The Debtor believes that the Plan as described herein enables creditors to realize the most under the circumstances. In a liquidation under Chapter 11, the Debtor's assets would be sold in an orderly fashion over a more extended period of time than in a liquidation under Chapter 7. A trustee would not be required to be appointed, probably resulting in lower expenses for professional fees than in a Chapter 7 case. Although preferable to a Chapter 7 liquidation, the Debtor believes that a liquidation under Chapter 11 is a much less attractive alternative to creditors than the Plan, because a larger return to creditors is provided for in the Plan than would be provided under a Chapter 11 liquidation.

**C. Case Dismissal.**

If the Plan is not confirmed, the Court could enter an Order dismissing the Case. That would restore all creditors to their prepetition status relative to the Debtor. The likely result is the Debtor would close the business and secured creditors would pick over the assets remaining. The result of a dismissal would likely be worse than the organized liquidation scenario.

**ARTICLE IX  
CONFIRMATION PROCEDURE**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

**A. Solicitation of Votes**

Upon approval of the Disclosure Statement, the Debtor may solicit acceptance of all classes of Claimants which are "impaired" under the Plan.

The Bankruptcy Code defines acceptance of a Plan by a class of creditors as acceptance by holders of two-thirds in dollar amount and more than one-half in number of claims of that class who actually cast ballots for acceptance or rejection of the Plan - that is, acceptance occurs only if two-thirds in amount and one-half in number of the Claimants voting cast their ballots in favor of acceptance. A Claimant's vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that the Claimant's acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. Any creditor of an impaired class (a) whose claim has been scheduled by the Debtor in the schedules filed with the Bankruptcy Court (provided that such claim has not been scheduled as disputed, contingent or unliquidated), or (b) who has filed a proof of claim, unless such a claim has been disallowed for voting purposes by the Bankruptcy Court, is entitled to vote.

**B. Confirmation Hearing**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan at which hearing any party in interest may object to confirmation.

The hearing on the Plan has been scheduled for \_\_\_\_\_, 20\_\_\_. The hearing on the Plan may be adjourned from time to time by the Bankruptcy Court without further notice except by announcement made at the hearing. Any objection to confirmation must be made in writing and filed with the Bankruptcy Court and served upon the following on or before \_\_\_\_\_, 20\_\_.

Thomas E. Reynolds  
Reynolds Legal Solutions, LLC  
300 Richard Arrington Jr. Blvd. N., Suite 503  
Birmingham, Alabama 35203

United States Bankruptcy Court  
Northern District of Alabama  
505 20<sup>th</sup> Street North  
Birmingham, AL 35203

J. Thomas Corbett, Esq.  
U.S. Bankruptcy Administrator  
505 20<sup>th</sup> Street North  
Birmingham, AL 35203

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

C. **Confirmation**

At the hearing on the Plan, the Bankruptcy Court shall confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among those requirements are:

1. **Best Interest Test.** With respect to each impaired class of creditors, each Claimant either (a) has accepted the Plan, or (b) will receive or retain under the Plan on account of their claim property of a value, as of the effective date of the Plan, that is not less than the amount such Claimant would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

To determine what Claimants of each impaired class of unsecured claims would receive if the Debtors were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's unencumbered assets and properties in the context of Chapter 7 liquidation cases. The cash amount which would be available for satisfaction of unsecured claims would consist of the proceeds resulting from the disposition of the assets of the Debtor, augmented by the cash held by the Debtor at the time of the commencement of the liquidation case. Such cash amount would be reduced by the costs and expenses of the liquidation and by such additional administrative and priority claims as may result from the cessation of the Debtor's commercial real estate business and the use of Chapter 7 for the purpose of liquidation.

The Debtor's cost of liquidation under Chapter 7 would include (a) fees payable to a trustee in bankruptcy, (b) fees that might be incurred by additional attorneys and other professionals that such a trustee may engage, (c) any unpaid expenses incurred by the Debtor during the Chapter 11 case, such as compensation for attorneys, financial advisors, accountants and costs, and (d) any expenses of an auctioneer that are allowed in the Chapter 7 case.

The foregoing types of claims and such other claims as may arise in the liquidation case or result from the pending reorganization case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-chapter 11 unsecured claims.

To determine if the Plan is in the best interest of each impaired class, the present value of the distributions from the proceeds of the liquidation of the Debtor's assets and properties (after subtracting the amount attributable to the aforesaid claims) are then compared with the present value offered to each of the classes of unsecured claims under the Plan.

In the absence of a contrary determination by the Bankruptcy Court, all pre-Chapter 11 general, unsecured creditor claims have the same rights upon liquidation and would be treated as one class for the purposes of determining the potential distribution of the liquidation proceeds resulting from a Chapter 7 case of the Debtor. The distributions from the liquidation proceeds would be calculated pro rata according to the amount of the claim held by each creditor. The Debtor believes that the most likely outcome of liquidation proceedings under Chapter 7 would be the application of the rule of absolute priority of distribution. Under that rule no junior creditor receives any distribution until all senior creditors are paid in full with interest.

Consequently, the Debtor believes that under Chapter 7 general unsecured creditors would receive no greater of a distribution than the value of distributions under the Plan after payment by the Debtor of administrative expenses and the claims of taxing authorities. In contrast, and assuming no mortgage deficiency claims in the case, general unsecured creditor claims, if allowed, will be paid in full in a lump sum payment under the Debtor's Chapter 11 Plan.

After consideration of the effect that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 case, including (a) the cost and expenses of the liquidation under Chapter 7 (b) the adverse effects of Chapter 7 on achievable sales prices for the Debtor's assets and properties and (c) the substantial increases in claims which would be satisfied on a priority basis or on a parity with creditors in the Chapter 11 case, the Debtor has determined that a Chapter 7 liquidation would potentially yield less for unsecured creditors than is proposed under the Plan. The Debtor also believes that any distribution of the liquidation proceeds to each class of Allowed Claims in Chapter 7 would be of a value less than the value of distributions under the Plan, because such distributions in Chapter 7 would not occur for a substantial period of time, and without interest. It is possible that distribution of the proceeds of the liquidation could be delayed for up to a year or more after the completion of such liquidation in order to resolve claims and prepare for distributions. In the event litigation were necessary to resolve claims asserted in the Chapter 7 case, the delay could be prolonged.

Based upon the foregoing analysis and given the elimination of the uncertainties and vagaries inherent under Chapter 7, the Debtor believes that confirmation of the Plan will provide each Claimant with no less than full recovery at the time value of money than it would receive pursuant to a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code.

2. Acceptance. Each impaired class of Claimants must accept the Plan by the majorities described under the caption "Confirmation Procedure -- Solicitation of Votes," or the "Fair and Equitable Test" described below must be met with respect to each impaired Class that does not accept the Plan by the requisite vote.

3. Fair and Equitable Test. In the event any impaired class of Claimants does not accept the Plan, the Debtor must demonstrate to the Bankruptcy Court, as to each non-accepting class, that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to that class. A Plan does not discriminate unfairly if no class receives more than it is entitled to for its claims or interest. The Bankruptcy Code establishes the "fair and equitable" test for unsecured creditors as follows:

Unsecured Creditors: Either (i) each impaired unsecured creditor receives or retains under the Plan property of a value equal to the amount of its Allowed Claim, or (ii) the holders of claims and interests that are junior to the claims of the dissenting Class will not receive any property under the Plan.

With regard to a secured creditor, the Bankruptcy Code establishes the "fair and equitable" test as follows:

Secured Creditors: The Plan provides (i) that the holders of such claims retain the liens . . . and each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the Plan, of at least the value of such holder's interest in the estate's interest in such property, (ii) for the sale, subject to Section 363(k), of any property that is subject to the lien securing such claim, free and clear of such lien, with such liens to attach to the proceeds of such sale, or (iii) for the realization by such holders of the indubitable equivalent of such claims.

The Debtor may seek confirmation of the Plan even if the Plan is not accepted by a class of creditors.

4. Feasibility. Section 1129(a)(11) requires as a condition of confirmation that the Court find that confirmation of the Plan is not likely to be followed by liquidation. Basically, feasibility involves the question of whether the reorganized Debtor has a reasonable prospect of financial stability and success. It is not necessary that success be guaranteed, but only that the Plan presents a workable scheme or organization and operation from which there may be a reasonable expectation of success. Despite the fact the Debtor has yet to reach year round profitability, its prospects for profitability have been improving subject to the cyclical nature of its business. The Debtor has been able to operate in Chapter 11, pay its operating expenses, fees to the Bankruptcy Administrator and otherwise provide for the payment of professionals in the Case. Once the Debtor exits Chapter 11, it will cease to pay fees to the Bankruptcy Administrator, its costs for legal services will be significantly reduced and its need for financial consulting will be reduced. In addition, within approximately one year the Debtor will have paid off the secured claims of Ford Motor Credit and those savings will also be available to fund the Plan.

5. Consummation. The Plan will be deemed consummated once all claimants receiving cash payments under the Plan have received such cash payment and after all claimants receiving notes under the Plan have received those notes consistent with the Plan.

**D. ANY REPRESENTATIONS OR INDUCEMENTS OTHER THAN THOSE CONTAINED HEREIN OR IN THE DEBTOR'S PLAN MADE TO SECURE YOUR ACCEPTANCE OF THIS PLAN SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION AND WILL NOT BE ENFORCEABLE BY YOU.**

**E. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO AN INDEPENDENT AUDIT OR VERIFICATION. UNLESS OTHERWISE NOTED, THE FINANCIAL INFORMATION CONTAINED IN THE PLAN WAS COMPILED FROM THE DEBTOR'S RECORDS AND INFORMATION SUPPLIED BY THE DEBTOR'S REPRESENTATIVES.**

**ARTICLE X**  
**MISCELLANEOUS**

The information contained in this Disclosure Statement was provided by the Debtor and compiled with the assistance of Thomas E. Reynolds, attorney at law, Michael Weiner, management consultant, and Pamela Dunn, accountant

**ARTICLE XI**  
**RECOMMENDATION**

The Debtor believes that the confirmation and implementation of the Plan is preferable to the alternatives described above because it will provide a more certain, albeit prorata, recovery to all Claimants than any recovery available in a Chapter 7 liquidation or under alternative plans. In addition, any other alternative could involve significant delay, uncertainty and substantial additional administration. Bobbie Green, the Secretary/Treasurer and General Manager of the Debtor, states that:

“The foregoing represents what I believe to be a fair and accurate representation of the general terms of the proposed Plan and the Company’s current financial condition. **ALL CREDITORS AND INTEREST HOLDERS ARE CAUTIONED THAT THE DEBTOR’S ABILITY TO PERFORM ITS OBLIGATIONS UNDER THE PLAN OF REORGANIZATION ARE UNCERTAIN AND, ACCORDINGLY, THERE CAN BE NO ASSURANCE GIVEN THAT ALL OF THE PAYMENTS PROPOSED TO BE MADE WILL, IN FACT, BE MADE.** Nonetheless, I believe the proposed Plan offers the best chance of recovery for all classes of creditors and it urges all creditors to vote for acceptance of the Plan.”

Dated this the 28th day of April, 2017.

DARDEN-GREEN CO., INC.

By: /s/ Bobbie Green  
Bobbie Green  
Its: Secretary/Treasurer

Debtor and Debtor-in-Possession

/s/ Thomas E. Reynolds  
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