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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA

In re)	In Proceeding Under
)	Chapter Eleven
S DIAMOND STEEL, INC.,)	
)	Case No. 2-16-bk-07846 BKM
)	
)	SECOND AMENDED
)	PLAN OF REORGANIZATION
)	
Debtor.)	DATED: May <u>8</u> , 2018
)	

16 Debtor, S Diamond Steel, Inc., hereby submits its Plan of Reorganization in accordance with
17
18 11 U.S.C. §1121(a).

19 **I. DEFINITIONS**

20 As utilized in this Second Amended Plan, the following definitions apply to the following
21 terms:

22
23 1. "Adequate information" means information that would enable a hypothetical reasonable
24 investor typical of holders of claims or interest of the Debtor's estate, to make an informed judgment
25 about the Debtor's Plan of Reorganization.

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27 2. "Allowed and Approved Claim" shall mean all scheduled claims and to which no
28 objection to the claim having been filed. If an objection to a claim is filed, said claim will be

1 allowed to the extent ordered by the Court.

2 3. "Bankruptcy Code" shall mean the Bankruptcy Code as set forth in Title 11 of the United
3 States Code.

4 4. "Bankruptcy Court" shall mean the United States Bankruptcy Court for the District of
5 Arizona.

6 5. "Confirmation of the Plan" shall mean the entry of an order by the Bankruptcy Court
7 confirming the Second Amended Plan of Reorganization in accordance with §1129 of the
8 Bankruptcy Code.

9 6. "Consummation of the Plan" means the accomplishment of all things required or provided
10 for under the terms of the Plan.

11 7. "Court" shall mean the United States Bankruptcy Court for the District of Arizona.

12 8. "Creditors" shall mean all persons holding claims for secured and unsecured obligations,
13 liabilities, demands or claims of any nature whatsoever against the Debtor arising at any time prior
14 to confirmation of the Plan and administrative creditors.

15 9. "Debtor" shall mean the petitioner in the above-captioned Bankruptcy case.

16 10. "Disclosure Statement" shall mean the Second Amended Disclosure Statement
17 (hereinafter "Disclosure Statement" or "Second Amended Disclosure Statement") filed in this case
18 approved, after notice and a hearing by the Court as being in conformity with §1125 of the
19 Bankruptcy Code or conditional approval as a small business case.

20 11. "Effective date" shall be the same as the Plan distribution date as set forth herein below.

21 12. "Petition" means the original Chapter 11 Petition filed by the Debtor.

22 13. "Plan" shall mean this Second Amended Plan of Reorganization which was attached as
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1 an exhibit to the approved Second Amended Disclosure Statement as it may be amended, modified
2 and/or supplemented pursuant to which the Debtor proposes payment in whole or in part of creditors'
3 claims.
4

5 14. "Plan distribution date" shall be 30 days after the entry of an Order Confirming the
6 Second Amended Chapter 11 Plan of Reorganization and every 30 days thereafter.

7 15. All other terms not specifically defined above shall have the meaning as designated in
8 §101 of the Bankruptcy Code or, if not contained therein, their ordinary meaning.
9

10 II. CLASSES OF CLAIMS

11 Administrative Claims.

12 These claims consist of the expenses of administration of the estate including attorney fees
13 for Debtor's counsel and any unpaid fees to the U.S. Trustee.
14

15 Unsecured Claims.

16 As reflected in the schedules filed by the Debtor and supplemented by various Proof of
17 Claims that have been filed, Debtor has general unsecured claims in the amount of \$3,492,504.32.¹
18 The Debtor's Second Amended Chapter 11 Plan of Reorganization will be a base Plan with
19 minimum payments of allowed claims to be made as set forth in the attached Disbursement
20 Schedule.
21

22 Secured Claims.

23 As reflected in the schedules filed by the Debtor and supplemented by various Proof of
24 Claims that have been filed, Debtor has secured debt totaling \$2,202,660.94.
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27 ¹This amount includes \$840,500.00 of scheduled claims to creditors who are deemed "insiders" and one claim,
28 in the amount of \$1,893,324.50 listed as "disputed".

1 Tax Claims. *

2 As reflected in Proof of Claims filed by the taxing agencies, the following taxes are owed:

3

4 Tax Agency	Claim No.	Priority Unsecured	General Unsecured
5 CA Franchise Tax Board	4-1	\$ 821.92	\$ 828.28**
6 ADOR	5-2	\$ 7,100.00	\$ 11,105.61**
7 IRS	7-2	\$ 93,923.21	\$235,201.47**
AZ DES	8-1	\$ 12,397.15	\$ 200.00**

8 *The priority amounts listed are estimated as amounts currently remaining unpaid. Debtor has been
9 paying down the priority tax claims per the Court Order entered on July 27, 2017.

**The general unsecured amount is included in the unsecured calculation above.

10 **III. TREATMENT OF CLAIMS NOT IMPAIRED UNDER THE PLAN**

11 Classes 1, 1A, 3, 4, 5, 6 and 9 are not impaired or are non-voting under the Plan in that the
12 Plan does not alter the legal or contractual rights to which the holders of such claims are entitled
13 and/or the Bankruptcy Code permits payment over an extended period of time and/or the holder of
14 the claim has agreed to a different treatment.
15

16 **IV. TREATMENT OF IMPAIRED CLAIMS UNDER THE PLAN**

17 Classes 1B, 2, 7 and 8 are impaired Classes under the Plan. All allowed and approved claims
18 or judicially determined claims will receive those amounts as reflected in the payment schedule
19 under the Plan (Article V of the Plan).
20

21 **V. PAYMENT SCHEDULE UNDER THE PLAN**

22 Administrative Claims (Class 1).

23 These claims are for the expenses of administration of the estate, including attorney fees for
24 Debtor's counsel, fees paid to the Court appointed accountant and to the U.S. Trustee, if any.
25

26 *Attorney's Fees:* The total amount of attorneys fees incurred to Debtor's Bankruptcy
27 Counsel, Allan D. NewDelman, as of April 30, 2018 is \$63,868.35 subject to an offset against
28

1 retainers of \$58,119.10 leaving a balance due through April 30, 2018 of \$5,749.25. Debtor believes,
2 at the time that the Debtor's Second Amended Chapter 11 Plan is confirmed, that there will an
3 additional attorney's fees administrative expense claim in the approximate amount of \$4,000.00
4 bringing the total balance due but not paid to \$9,749.25. The additional \$4,000.00 includes
5 anticipated fees for administration of the Debtor's Chapter 11 case, for preparing and prosecuting
6 the Debtor's Second Amended Disclosure Statement and Plan of Reorganization and to cover the
7 anticipated fees through the confirmation process.
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10 This claim shall be paid in cash, or in the amounts allowed by the Court, upon the Plan
11 distribution date unless otherwise agreed to between the Debtor and the administrative creditor.

12 *Accountant's Fees:* The total amount of accountant fees incurred to Debtor's Court
13 Appointed accounting firm, Johnson Goff & Company, PLLC, as of March 20, 2018 is \$55,635.00.

14 This claim shall be paid in cash, or in the amounts allowed by the Court, upon the Plan distribution
15 date unless otherwise agreed to between the Debtor and the administrative creditor.
16

17 **This Class is not impaired.**

18 Administrative Claims (Class 1A).

19 On January 26, 2017 the Court entered an Order authorizing the appointment of Special
20 Counsel, Guy W. Bluff of Bluff & Associates to represent the Debtor in all matters described within
21 the Application to Appoint Special Counsel, specifically related to matters with alleged claimant,
22 Ironworkers Filed Pension Trust, Board of Trustees. At this time the administrative claim of this
23 Claimant is not known but any such amounts is subject to an appropriate Application and approval
24 by the Court. Any amounts so approved shall be paid in cash upon the Plan distribution date unless
25 otherwise agreed to between the Debtor and the administrative creditor. **This Class is not impaired.**
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1 Internal Revenue Service (Class 1B) - Claim 10-4

2 The Internal Revenue Service, to the extent that it has an administrative claim for post
3 petition taxes (per the Proof of Claim, in the amount of \$10,852.54), shall be paid within Class 3 as
4 provided for in the Disbursement Schedule attached as Exhibit "A". **This Class is impaired.**

6 Secured Claim - West Valley National Bank (Class 2) - Claim No. 3-1

7 West Valley National Bank is secured by a lien on all of the Debtor's assets as set forth in
8 its UCC-1 Financing Statements and its Proof of Claim in the total amount of \$2,202,660.94. In
9 addition, it holds a Deed of Trust against the real property where the Debtor conducts its business.
10 The real property is not an asset of this Chapter 11 Estate as the real property is owned by MM
11 Stevens, LLC. The Debtor shall cure its default under the terms of the loan documents within
12 twelve (12) months of the effective date. The Debtor shall thereafter abide by all of the terms and
13 conditions of the Commercial Guaranty associated with the promissory note entered into between
14 MM Stevens, LLC and West Valley National Bank. **This Class is impaired.**

17 Unsecured Priority Claim - Internal Revenue Service (Class 3) - Claim No. 7-9.

18 The Internal Revenue Service ("IRS") shall have a priority claim in the approximate amount
19 of \$93,923.21. The priority amount listed is estimated as the Debtor has been paying down the
20 priority tax claim per the Court Order entered on July 27, 2017. The IRS's priority claim and the
21 IRS's Administrative claim in the amount of \$10,852.54 for a total amount of \$104,775.75 shall be
22 paid with interest at the statutory rate set forth in I.R.C. §§6621 and 6622 that is in effect during the
23 month that the Plan is confirmed, as required by 11 U.S.C. §511. This priority and administrative
24 amount shall be paid at the rate of \$8,170.00 per month until paid in full. All payments shall be
25 made payable to the Internal Revenue Service and sent to the following address:
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1 David G. Schuetz
2 Internal Revenue Service
3 4041 North Central Avenue
4 MS 5014
5 Phoenix, AZ 85012-5000

6 The Debtor's failure to comply with the Plan provisions concerning the liability owed to the
7 IRS which includes, but not limited to, the failure to make the full and timely payments of all
8 amounts due under the Confirmation Order, except as provided for in a Court ordered moratorium,
9 as well as full and timely payments of all amounts due for post-confirmation periods, shall constitute
10 a default of the Plan. If the Debtor fails to cure the default within ten (10) days after written notice
11 of the default from the IRS or its agents is mailed to the Debtor and the Debtor's attorney, the entire
12 imposed liability together with any unpaid current liabilities, shall become due and payable
13 immediately. Further, in the event of a default, the IRS may collect unpaid liabilities through
14 administrative collection provisions or the judicial remedies as set forth in the Internal Revenue
15 Code. The IRS shall not be required to seek modification of the automatic stay to collect any tax
16 liabilities that were not discharged by the confirmation of the Plan and from property that has been
17 revested with the Debtor.
18

19
20 The IRS shall be entitled to any additional interest that accrues as a result of the Debtor's
21 failure to make payments in accordance with the schedule attached hereto. **This Class in not**
22 **impaired.**
23

24 Priority Tax Claim of the Arizona Department of Revenue (Class 4) - Claim No. 5-3

25 The Arizona Department of Revenue ("ADOR") shall have a priority claim in the estimated
26 amount of \$19,362.14. The priority amount listed is estimated as the Debtor has been paying down
27 the priority tax claim per the Court Order entered on July 27, 2017. The ADOR's priority claim
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1 shall be paid with interest at the statutory rate as set forth in ARS § 42-1123(A), that is in effect
2 during the month that the Plan is confirmed, as required by 11 U.S.C. §511. This priority amount
3 shall be paid at the rate of \$1,505.00 per month until paid in full. All payments shall be made
4 payable to the **Arizona Attorney General** and sent to the following address:
5

6 Matthew A. Silverman
7 Bankruptcy & Collection Enforcement Section
8 1275 West Washington
Phoenix, AZ 85007

9 The Debtor's failure to comply with the Plan provisions concerning the liability owed to the
10 ADOR, which includes, but not limited to, the failure to make the full and timely payments of all
11 amounts due under the Confirmation Order as well as full and timely payments of all amounts due
12 for post-confirmation periods, shall constitute a default of the Plan. If the Debtor fails to cure the
13 default within ten (10) days after written notice of the default from either the ADOR or its agents,
14 the entire balance due ADOR shall be immediately due and owing. Further, in the event of a default,
15 ADOR may enforce the entire amount of its claim, exercise any and all rights and remedies under
16 applicable non-bankruptcy law which includes, but is not limited to, state tax collection procedures,
17 and obtain any other such relief deemed appropriate by the Bankruptcy. **This Class is not impaired.**
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20 Priority Tax Claim of the Arizona Department of Economic Security (Class 5) - Claim No.

21 8-2

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23 The Arizona Department of Economic Security ("ADES") shall have a priority claim in the
24 estimated amount of \$12,397.15. The priority amount listed is estimated as the Debtor has been
25 paying down the priority tax claim per the Court Order entered on July 27, 2017. The ADES's
26 priority claim shall be paid with interest at the statutory rate of 12% per annum. This priority amount
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1 shall be paid at the rate of \$967.50 per month until paid in full. All payments shall be made payable
2 to the **Arizona Department of Economic Security** and sent to the following address:

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4 AZ Department of Economic Security
5 P.O. Box 6028
6 Phoenix, AZ 85005

7 The Debtor's failure to comply with the Plan provisions concerning the liability owed to the
8 ADOR, which includes, but not limited to, the failure to make the full and timely payments of all
9 amounts due under the Confirmation Order as well as full and timely payments of all amounts due
10 for post-confirmation periods, shall constitute a default of the Plan. If the Debtor fails to cure the
11 default within ten (10) days after written notice of the default from either the ADES or its agents,
12 the entire balance due ADES shall be immediately due and owing. Further, in the event of a default,
13 ADES may enforce the entire amount of its claim, exercise any and all rights and remedies under
14 applicable non-bankruptcy law which includes, but is not limited to, state tax collection procedures,
15 and obtain any other such relief deemed appropriate by the Bankruptcy. **This Class is not impaired.**

16
17 **Priority Tax Claim of the California Franchise Tax Board (Class 6) - Claim No. 4**

18 The California Franchise Tax Board ("CFTB") shall have a priority claim in the estimated
19 amount of \$821.92. The priority amount listed is estimated as the Debtor has been paying down the
20 priority tax claim per the Court Order entered on July 27, 2017. The CFTB's priority claim shall
21 be paid with interest at its statutory rate of 3% per annum. This priority amount shall be paid at the
22 rate of \$107.50 per month until paid in full. Payments have begun per Court Order. All payments
23 shall be made payable to the **California Franchise Tax Board** and sent to the following address:
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1 Bankruptcy Section MS A340
2 Franchise Tax Board
3 P.O. Box 2952
4 Sacramento, CA 95812-2952

5 The Debtor's failure to comply with the Plan provisions concerning the liability owed to the
6 CFTB, which includes, but not limited to, the failure to make the full and timely payments of all
7 amounts due under the Confirmation Order as well as full and timely payments of all amounts due
8 for post-confirmation periods, shall constitute a default of the Plan. If the Debtor fails to cure the
9 default within ten (10) days after written notice of the default from either the CFTB or its agents, the
10 entire balance due CFTB shall be immediately due and owing. Further, in the event of a default,
11 CFTB may enforce the entire amount of its claim, exercise any and all rights and remedies under
12 applicable non-bankruptcy law which includes, but is not limited to, state tax collection procedures,
13 and obtain any other such relief deemed appropriate by the Bankruptcy. **This Class is not impaired.**

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15
16 **General Unsecured Claims (Class 7)**

17 All allowed and approved claims under this Class shall be paid in full from all funds
18 available for distribution as set forth in the Disbursement Schedule attached hereto as Exhibit "A".
19 Interest in this Class shall not be paid unless required by law. It is anticipated that payments under
20 this Class shall begin in month 14 of the Plan and will continue on a pro rata basis through month
21 64 of the Plan. **This Class is impaired.**

22
23 Class 7 shall be made up of the following creditors :

24 Creditor	Claim	Claim as of	Claim as of*	Projected *
25 <u>Name</u>	<u>No.</u>	<u>filing date</u>	<u>date of D/S</u>	<u>Dividend</u>
26 Century Link Communications, LLC	1	\$ 2,216.23	\$ 2,216.23	\$ 2,216.23
27 Century Link Communications, LLC	2	\$ 161.33	\$ 161.33	\$ 161.33
28 California Franchise Tax Board	4	\$ 828.21	\$ 828.21	\$ 828.21
AZ Dep't of Revenue (general)	5-3	\$ 11,105.61	\$ 11,105.61	\$ 11,105.61

1	Cellco Partnership/Verizon	6	\$ 1,332.89	\$ 1,332.89	\$ 1,332.89
2	Internal Revenue Service (general)	7-9	\$235,201.47	\$235,201.47	\$235,201.47
3	Arizona DES (general)	8-1	\$ 200.00	\$ 200.00	\$ 200.00
4	ACDR Engineering Solutions	NC	\$ 3,625.00	\$ 0.00	\$ 0.00
5	AIM National Lease	NC	\$ 1,320.00	\$ 1,320.00	\$ 1,320.00
6	Allied Glass Welding & Supplies	NC	\$ 1,436.54	\$ 0.00	\$ 0.00
7	Amerigas Propane	NC	\$ 1,667.47	\$ 1,667.47	\$ 1,667.47
8	Aqua Chill Inc #4	NC	\$ 229.56	\$ 229.56	\$ 229.56
9	Arizona Business Systems	NC	\$ 1,011.72	\$ 0.00	\$ 0.00
10	Arizona Galvanizing, Inc.	NC	\$ 448.49	\$ 448.49	\$ 448.49
11	Arizona Iron Supply	NC	\$ 902.16	\$ 902.16	\$ 902.16
12	Auto Glass Direct	NC	\$ 810.80	\$ 0.00	\$ 0.00
13	AZ Fulfillment & Storage	NC	\$ 4,900.00	\$ 0.00	\$ 0.00
14	AZ Lien & Bond/Western States	NC	\$ 82.25	\$ 82.25	\$ 82.25
15	AZ Wire Rope & Rigging	NC	\$ 356.80	\$ 0.00	\$ 0.00
16	Berts Paint Inc.	NC	\$ 1,267.16	\$ 0.00	\$ 0.00
17	Blade Runner Inc.	NC	\$ 620.00	\$ 0.00	\$ 0.00
18	Bluff & Associates (listed 2x)	NC	\$ 6,767.75	\$ 6,767.75	\$ 6,767.75
19	Cintas First Aid & Safety	NC	\$ 765.34	\$ 0.00	\$ 0.00
20	Cleveland Punch & Die	NC	\$ 195.71	\$ 0.00	\$ 0.00
21	Continental Testing & Eng	NC	\$ 7,443.00	\$ 0.00	\$ 0.00
22	Coyote Courier Serv	NC	\$ 183.70	\$ 0.00	\$ 0.00
23	Desert Machine Tool & Repair	NC	\$ 5,892.81	\$ 0.00	\$ 0.00
24	Desert Power Coating	NC	\$ 7,208.07	\$ 0.00	\$ 0.00
25	Double D Equipment	NC	\$ 11,877.45	\$ 11,877.45	\$ 11,877.45
26	Duncan Bolt Company	NC	\$ 11,315.41	\$ 0.00	\$ 0.00
27	Estes Express Lines	NC	\$ 218.92	\$ 218.92	\$ 218.92
28	Fastenal Company	NC	\$ 36.59	\$ 36.59	\$ 36.59
29	Grainger Div of WW Grainger	NC	\$ 136.78	\$ 0.00	\$ 0.00
30	Grating Pacific Southwest	NC	\$ 674.00	\$ 674.00	\$ 674.00
31	Gwy Inc	NC	\$ 78.50	\$ 78.50	\$ 78.50
32	H&E Equipment Serv	NC	\$ 1,713.17	\$ 0.00	\$ 0.00
33	IAO Steel LLC	NC	\$ 9,232.00	\$ 0.00	\$ 0.00
34	Independent Electric Supply	NC	\$ 137.92	\$ 0.00	\$ 0.00
35	Ingersoll Rand Company	NC	\$ 1,691.30	\$ 1,691.30	\$ 1,691.30
36	Instel Steel West Calif LLC	NC	\$ 881.65	\$ 881.65	\$ 881.65
37	JL Lewis	NC	\$ 1,600.00	\$ 1,600.00	\$ 1,600.00
38	Joseph T Ryserson & Sons	NC	\$ 1.82	\$ 0.00	\$ 0.00
39	KMAC at South Mountain LLC	NC	\$ 559.01	\$ 559.01	\$ 559.01
40	Landa & Assoc. Inc.	NC	\$ 9,250.00	\$ 0.00	\$ 0.00
41	Matthew M. Stevens	NC	\$120,000.00	\$120,000.00	\$120,000.00
42	MBI Industrial Medicine Inc.	NC	\$ 235.00	\$ 0.00	\$ 0.00
43	McMaster Carr Supply Co	NC	\$ 930.94	\$ 0.00	\$ 0.00
44	Merger Metals LLC	NC	\$ 3,317.00	\$ 3,317.00	\$ 3,317.00
45	Metro Lock & Safe Inc.	NC	\$ 623.49	\$ 623.49	\$ 623.49
46	Milco Solutions	NC	\$315,000.00	\$315,000.00	\$315,000.00
47	MM Stevens LLC	NC	\$405,500.00	\$405,500.00	\$405,500.00
48	NAPA Auto parts	NC	\$ 1,041.63	\$ 1,041.63	\$ 1,041.63

1	National Ornamental & Misc Met	NC	\$ 425.00	\$ 425.00	\$ 425.00
	Oberfield Precast LLC	NC	\$ 4,590.00	\$ 0.00	\$ 0.00
2	Praxair Distribution	NC	\$ 2,049.70	\$ 2,049.70	\$ 2,049.70
	Prophet Network Integration	NC	\$ 2,190.84	\$ 2,190.84	\$ 2,190.84
3	Quicksilver Express Courier	NC	\$ 349.20	\$ 349.20	\$ 349.20
	Red-D-Arc, Inc.	NC	\$ 10,736.23	\$ 3,171.26	\$ 3,171.26
4	Reliance Metal Center (paid by Court Order)		\$168,859.57	\$ 0.00	\$ 0.00
5	Ricoh Office Solutions	NC	\$ 2,435.56	\$ 2,435.56	\$ 2,435.56
	Smith Pipe & Steel Co	NC	\$ 98,312.37	\$ 0.00	\$ 0.00
6	Snell & Wilmer, LLP	NC	\$ 46,651.53	\$ 46,651.53	\$ 6,651.53
	SOS Exterminating	NC	\$ 168.00	\$ 84.00	\$ 84.00
7	Southwest Industrial Rigging	NC	\$ 3,918.85	\$ 2,016.95	\$ 2,016.95
	Stanley Convergent Security	NC	\$ 176.36	\$ 176.36	\$ 176.36
8	State of California	NC	\$ 75.00	\$ 75.00	\$ 75.00
9	Streamline Water Solutions	NC	\$ 259.52	\$ 259.52	\$ 259.52
	Stud Welding Products	NC	\$ 5,708.54	\$ 259.10	\$ 259.10
10	Superior Metal Forming Inc	NC	\$ 14,160.00	\$ 1,218.00	\$ 1,218.00
	Tempe Abrasives, Inc.	NC	\$ 7,488.10	\$ 0.00	\$ 0.00
11	Tyco Integrated Security	NC	\$ 2,807.61	\$ 2,807.61	\$ 2,807.61
	Uline Inc.	NC	\$ 2,807.61	\$ 2,807.61	\$ 2,807.61
12	Unicoa Construction & Indust	NC	\$ 3,687.08	\$ 3,687.08	\$ 3,687.08
13	United Rentals	NC	\$ 11,631.18	\$ 0.00	\$ 0.00
	Universal Life Systems	NC	\$ 2,810.82	\$ 0.00	\$ 0.00
14	Vern Lewis Welding Supply	NC	\$ 4,873.50	\$ 0.00	\$ 0.00
15	Your Supply Depot	NC	\$ 7,775.00	\$ 7,775.00	\$ 7,775.00
16	TOTAL		\$1,599,179.82	\$1,164,002.28	\$1,164,022.28

17 * With the exception of Reliance Metal Center, the amounts listed as of the date of this Disclosure
18 Statement and for the Projected Dividend are reduced based upon payment of pre petition claims by
19 joint checks as projects progressed. Payments were not made by the Debtor but rather by general
20 contractors as draws submitted by those contractors were paid by the owner of the project to the
21 general contractor. The dividend under this Plan will provide payment in full of all claims not paid
22 by joint checks.

23 ** Amount listed on Schedule F is incorrect due to a typographical error. Actual amount owed as
24 of the petition date was only \$128.25. Creditor will be paid the higher amount and will be directed
25 to refund to the Debtor any over payment on its account.

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1
2 General Unsecured Creditor, Board of Trustees of the California Ironworkers Field Pension

3
4 Trust - (Class 8) Claim No. 9-1

5 Debtor and this Creditor have entered into a Settlement Agreement and a Motion to Approve
6 the same has been filed with the Court. The Motion and Settlement Agreement, attached hereto and
7 incorporated herein by reference as Exhibit "B", in part provides as follows:

8
9 ALLOWANCE OF PROOF OF CLAIM

10 The full amount of the Pension Fund Claim shall be deemed an "allowed" claim under 11
11 U.S.C. § 502(b).

12
13 PAYMENT OF THE CLAIM

14 a. S Diamond Steel, Inc. (as a reorganized debtor) shall pay to the Pension Fund the sum of
15 \$200,000 within 30 days of the effective date ("Effective Date") of a confirmed plan of
16 reorganization in the Bankruptcy Case (the "Initial Payment").

17 b. S Diamond Steel, Inc. (as a reorganized debtor), M.M. Stevens, LLC and Milco Solutions,
18 Inc., Matthew Miles Stevens and Dana Stevens shall execute a promissory note ("Note") in the form
19 attached as Exhibit A in favor of the Pension Fund in the principal sum of \$1,632,647.46 (One
20 Million, Six Hundred Thirty-Two Thousand, Six Hundred Forty Seven Dollars and Forty Six Cents)
21 with interest accruing at the rate of 7.5% simple interest per annum on the principal sum or on such
22 portion of the principal sum as remains unpaid until it is in paid in full. The note shall be payable
23 in forty-seven (47) monthly installments of \$39,250.00 with a final payment adjusted for any accrued
24 but unpaid principal and interest. An estimated amortization schedule is attached hereto. The first
25 monthly payment shall be made on the fifteenth day of the first full month following the Effective
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1 Date. Each payment thereafter shall be made on the fifteenth day of each consecutive month
2 thereafter, until paid in full, and on such other terms and conditions set forth in the Note. Stevens
3 and the Controlled Group will execute and deliver the Note to the Pension Fund on the Effective
4 Date. The Note may not be assigned to any third party. Additional or otherwise advance payments
5 may be made at any time to reduce the principal and accruing interest without penalty. The date and
6 amount of any final payment will be adjusted accordingly.
7

8
9 c. If the Pension Fund notifies the Controlled Group, pursuant to the notification provisions
10 of this agreement, that the Initial Payment or a monthly payment under the Note has not been
11 received and the Controlled Group fails to cure the missed payment within 60 days, the Pension
12 Fund may, without further notice or demand, lodge and request entry of the Stipulated Entry of
13 Judgment against the Stevens and the Controlled Group in the form attached as Exhibit B(attached
14 to the Settlement Agreement) in the District Court Action. Once the Judgment is entered, the Pension
15 Fund may register the Judgment in Arizona and take any other necessary enforcement actions.
16 Stevens and the Controlled Group will not object to registration of the Judgment in Arizona and
17 hereby waive any right to contest such registration.
18

19
20 d. On the date the (Second) Amended Plan becomes effective (the "Effective Date"), S.
21 Diamond Steel, Inc. (as the reorganized debtor) shall execute and deliver the Note.
22

23 MUTUAL RELEASE

24 Except for the obligations imposed by this Agreement, Pension Fund, on the one hand, and
25 the Stevens' and the Controlled Group on the other, hereby release and forever discharge each other
26 party from any and all claims, demands, liabilities, obligations, debts, attorneys' fees, costs, accounts,
27 actions, or causes of action which any of the parties have or claim to have as of the date of this
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1 Agreement, in law or equity, whether known or unknown, which pertain to or which arise out of the
2 facts, circumstances, and/or events which are asserted or could have been asserted in the District
3 Court Actions or Bankruptcy Court Actions and/or which pertain to, arise out of, or in any way
4 connect with the past relationships between the parties. The Stevens and the Controlled Group are
5 released from any and all contracts or agreements which directly or indirectly require that
6 contributions be made to Pension Fund.
7

8 **This Class is impaired.**
9

10 Debtor's Interest (Class 9).

11 Debtor shall retain all of the legal and equitable interest in assets of this estate, as all
12 reconciliation issues have been met. All estate property shall vest in the Debtor at confirmation.
13

14 **This is a non-voting class.**

15 **VI. RETENTION OF CLAIM PURSUANT TO 11 U.S.C. § 1123(b)(3)**

16 Pursuant to 11 U.S.C. § 1123(b)(3), a Debtor's Chapter 11 Plan may provide for—

17 (A) the settlement or adjustment of any claim or interest belonging to the debtor or to the
18 estate; or (B) the retention and enforcement by the debtor, by the trustee, or by a
19 representative of the estate appointed for such purpose, of any such claim or interest

20 As stated in the recently filed Amendment to Schedule B, the Debtor alleges a potential cause
21 of action in the nature of legal malpractice or other professional negligence, or other legal theories
22 in contract and/or tort against the Law Firm of Bluff & Associates or other third parties. The claim
23 stems from the representation of the Debtor in the pre petition defense of the pre petition cause of
24 action asserted by the California Ironworkers Field Pension Trust and the Board of Trustees for the
25 California Ironworkers Field Pension Trust. No determination has been made as to whether or not
26 the Debtor, Reorganized Debtor, or other related parties will pursue the claim or claims as noted
27 herein. Pursuant to 11 U.S.C. § 1123(b)(3) the Debtor expressly reserves and will retain, post
28

1 confirmation, the claim or claims against the Law Firm of Bluff & Associates or other third parties.

2 **VII. DISPUTED CLAIMS**

3
4 The Debtor reserves the right to verify and object to any proof of claim. Payment of disputed
5 claims shall be made only after agreement has been reached between the Debtor and the Creditor or
6 upon the order of the Court. Any and all objections to proofs of claim will be filed within sixty (60)
7 days of the Effective Date of this plan or will be waived.

8 **VIII. EXECUTORY CONTRACTS**

9
10 An Order Authorizing Assumption of Pre-Petition Executory Construction Contracts
11 pursuant to 11 U.S. C. §365(a) has been entered at Docket Number 63.

12 **IX. MEANS OF EXECUTION/PROJECTION**

13
14 This Plan will be a base Plan with payments of all approved and allowed claims to be made
15 as set forth in the attached Disbursement Schedule. The funds necessary for the satisfaction of all
16 approved and allowed claims will be derived from the Debtor's income from its operations and the
17 Debtor believes that it will be successful in the completion of this 100% repayment plan to creditors.

18
19 The Debtor reserves the right to accelerate payment under the Plan from financing obtained
20 either from third party financing or in the event that is revenues permit it to do so. Debtor believes
21 that by virtue of the Plan that it will have the ability to pay all allowed and approved claims pursuant
22 to the Second Amended Plan of Reorganization.

23 **X. QUARTERLY FEES AND REPORTS**

24
25 Debtor shall continue to pay quarterly fees to the U.S. Trustee System until such time as a
26 Final Decree has been entered in this matter by the Court, closing this Chapter 11 proceeding.
27 Debtor shall continue to file monthly operating reports until such time as the Court enters an Order
28

1 confirming this Chapter 11 Plan of Reorganization. At such time, Debtor shall cease filing monthly
2 operating reports and shall begin filing 90 day reports. These 90 day reports shall be filed until such
3 time as a Final Decree has been entered in this matter by the Court, closing this Chapter 11
4 proceeding.
5

6 **XI. IMPLEMENTATION AND CONSUMMATION OF PLAN**

7 The terms of the Plan subsequent to confirmation shall bind the Debtor, any entity acquiring
8 property under the Plan, and creditor or claimant, whether or not such creditor or claimant has
9 accepted the Plan. All property of the estate shall vest in the Debtor and shall be free from
10 attachment, levy, garnishment or execution by creditors bound by the Plan. It shall be the obligation
11 of each creditor participating under the Plan to keep the Debtor advised of its current mailing
12 address. In the event any payments tendered to creditors are mailed, postage prepaid, addressed (1)
13 to the address specified in the Debtor's schedules and statement, (2) to the address specified in any
14 proof of claim filed by a creditor or claimant herein or (3) to the address provided by any such
15 creditor or claimant for purposes of distribution, and if subsequently the Post Office returns such
16 distribution due to a lack or insufficiency of address or forwarding address, the Debtor shall retain
17 such distribution for a period of six months. Thereafter, the distribution shall revert to the Debtor
18 without further Order of the Court and free and clear of any claim of the named distributee. The
19 Debtor shall thereafter not be required to mail subsequent distributions to any creditor for whom a
20 distribution has been returned by the Post Office. The Debtor reserve the right to modify the Plan
21 in accordance with §1127 of the Bankruptcy Code. The Plan may be modified prior to confirmation
22 provided that the Plan still complies with §1122 and §1123 of the Bankruptcy Code. The Plan may
23 be modified subsequent to confirmation and before substantial consummation of the Plan under such
24
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1 circumstances as may warrant such under §1123 of the Bankruptcy Code. Any holder of a claim or
2 interest that has been previously accepted or rejected a confirmed Plan, shall be deemed to have
3 accepted or rejected any subsequently modified Plan unless the holder of such claim or interest
4 changes its acceptance or rejection of the Plan within the time fixed by the Court.
5

6 **XII. DEFAULT**

7 The Debtors' failure to make any payment due under the Plan, except as specifically set out
8 in Class 3, 4, 5, 6, and 8 herein, within sixty (60) days after demand for payment after its due date
9 shall constitute a default unless the Debtors and the affected creditor agree to delayed payment. Any
10 event of default occurring with respect to one (1) claim shall not be an event of default with respect
11 to any other claim. If any default is cured within the sixty (60) day cure period, then the Creditor
12 shall not be entitled to enforce any remedies which would be otherwise available on account of the
13 default.
14
15

16 The Notice of Default shall be effective when served simultaneously upon the Debtors and
17 Debtors' counsel. Any Notice of Default must be sent in writing to both the Debtors and the
18 Debtors' counsel at the addresses listed below:
19

20 S Diamond Steel, Inc.
21 4205 West Lower Buckeye Road
22 Phoenix, AZ 85009

23 Allan D. NewDelman
24 Allan D. NewDelman, P.C.
25 80 East Columbus Avenue
26 Phoenix, AZ 85012

27 If the default is not timely cured, creditor(s) may pursue any remedy provided by the state
28 or federal law, including foreclosing any security interest, suing on any promissory note issued or
continued in effect under the Plan.

1 **XIII. CLOSING OF CASE**

2 The Debtor may seek a final decree and an Order closing this case upon the conclusion of
3 all administrative matters and provided that the Debtor has commenced payments required to be
4 made pursuant to the Plan of Reorganization.
5

6 **ALL CREDITORS SHALL REMAIN BOUND BY TERMS AND CONDITIONS SET**
7 **FORTH IN THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION. NO**
8 **CREDITOR SHALL BE ALLOWED TO TAKE ANY COLLECTION ACTION AGAINST**
9 **THE DEBTOR AS LONG AS THE DEBTOR REMAINS IN COMPLIANCE WITH HIS**
10 **PLAN OF REORGANIZATION.**
11

12 **XIV. RETENTION OF JURISDICTION**

13 The Bankruptcy Court will retain jurisdiction over this case for purposes of determining the
14 allowance of claims or objection to claims. The Court will also retain jurisdiction for purposes of
15 fixing allowances for compensation and/or for purposes of determining the allowability of any other
16 claimed administrative expenses. The Court will also retain jurisdiction for the purpose of
17 establishing bar dates and making a determination with respect to all disputed claims. Finally, the
18 Court shall retain jurisdiction for purposes of determining any dispute arising from the interpretation,
19 implementation or consummation of the Plan and to implement and enforce the provisions of the
20 Plan. Notwithstanding anything to the contrary contained herein, the Debtor shall not be bound by
21 estoppel, the principles of res judicata or collateral estoppel with respect to any term or provision
22 contained herein in the event the Plan is not confirmed.
23
24
25

26 ///

27 ///

1 SECOND AMENDED PLAN DATED this 8 day of May, 2018.

2 ALLAN D. NEWDELMAN, P.C.

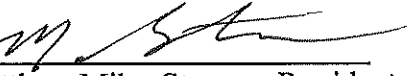
3 

4 /s/ADN 004066

5 Allan D. NewDelman, Esq.
6 Attorney for Debtor

1 The above 20 page Second Amended Chapter 11
2 Plan of Reorganization plus exhibits are
3 approved as to form and content:

4 S Diamond Steal, Inc.,

5 By 
6 Matthew Miles Stevens, President
7 Debtor

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EXHIBIT "A"
TO THE SECOND AMENDED PLAN

S Diamond Steel Inc
 USBC 2:16-bk-07846 BKM
 Second Amended Disbursement Schedule

Payment Period	IRS Priority Claim	ADOR Priority Claim	AZ DES Priority Claim	CA Franchise Tax - Priority Claim	General Unsecured Creditors	Total Monthly Payment
Month 1	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 2	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 3	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 4	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 5	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 6	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 7	8,170.00	1,505.00	967.50	107.50	0.00	10,750.00
Month 8	8,199.06	1,505.00	967.50	78.44	0.00	10,750.00
Month 9	8,277.50	1,505.00	967.50	0.00	0.00	10,750.00
Month 10	8,277.50	1,505.00	967.50	0.00	0.00	10,750.00
Month 11	8,277.50	1,505.00	967.50	0.00	0.00	10,750.00
Month 12	8,277.50	1,505.00	967.50	0.00	0.00	10,750.00
YEAR 1 TOTALS	\$98,499.06	\$18,060.00	\$11,610.00	\$830.94	\$0.00	\$129,000.00

Payment Period	IRS Priority Claim	ADOR Priority Claim	AZ DES Priority Claim	CA Franchise Tax - Priority Claim	General Unsecured Creditors	Total Monthly Payment
Month 13	8,277.50	1,505.00	967.50	0.00	0.00	10,750.00
Month 14	484.49	257.89	756.08	0.00	9,251.54	10,750.00
Month 15	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 16	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 17	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 18	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 19	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 20	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 21	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 22	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 23	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 24	0.00	0.00	0.00	0.00	10,750.00	10,750.00
YEAR 2 TOTALS	\$8,761.99	\$1,762.89	\$1,723.58	\$0.00	\$116,751.54	\$129,000.00

Payment Period	IRS Priority Claim	ADOR Priority Claim	AZ DES Priority Claim	CA Franchise Tax - Priority Claim	General Unsecured Creditors	Total Monthly Payment
Month 25	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 26	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 27	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 28	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 29	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 30	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 31	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 32	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 33	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 34	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 35	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 36	0.00	0.00	0.00	0.00	10,750.00	10,750.00
YEAR 3 TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$129,000.00	\$129,000.00

Payment Period	IRS Priority Claim	ADOR Priority Claim	AZ DES Priority Claim	CA Franchise Tax - Priority Claim	General Unsecured Creditors	Total Monthly Payment
Month 37	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 38	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 39	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 40	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 41	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 42	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 43	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 44	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 45	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 46	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 47	0.00	0.00	0.00	0.00	10,750.00	10,750.00
Month 48	0.00	0.00	0.00	0.00	10,750.00	10,750.00
YEAR 4 TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$129,000.00	\$129,000.00
Month 49	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 50	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 51	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 52	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 53	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 54	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 55	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 56	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 57	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 58	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 59	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 60	0.00	0.00	0.00	0.00	50,000.00	50,000.00
YEAR 5 TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$600,000.00	\$600,000.00
Month 61	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 62	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 63	0.00	0.00	0.00	0.00	50,000.00	50,000.00
Month 64	0.00	0.00	0.00	0.00	39,270.74	39,270.74
YEAR 6 TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$189,270.74	\$189,270.74
GRAND TOTALS	\$107,261.05	\$19,822.89	\$13,333.58	\$830.94	\$1,164,022.28	\$1,305,270.74
	107,261.05	19,822.89	13,333.58	830.94	1,164,022.28	1,305,270.74

EXHIBIT "B"
TO THE SECOND AMENDED PLAN

1 Allan D. NewDelman, Esq. (004066)
2 Roberta J. Sunkin, Esq. (011993)
3 ALLAN D. NEWDELMAN, P.C.
4 80 East Columbus Avenue
5 Phoenix, Arizona 85012
6 (602) 264-4550
7 anewdelman@adnlaw.net
8 Attorney for Debtor

9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF ARIZONA

11 In re:)
12 S DIAMOND STEEL, INC.,)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Debtor.)
In Proceedings Under
Chapter Eleven
CASE NO. 2-16-bk-07846 BKM
APPLICATION TO APPROVE
COMPROMISE SETTLEMENT

NOW COMES Debtor, S Diamond Steel, Inc., (“Debtor”), by and through its Counsel and pursuant to Fed. R. Bankr. P. 9019, and hereby moves this Court for an Order Approving this Application to Approve Compromise Settlement and states as follows:

1. Prior to the filing of this Chapter 11 proceeding, the Debtor as Defendant and California Ironworkers Field Pension Trust and the Board of Trustees for the California Ironworkers Field Pension Trust (hereinafter “Pension Fund”) as Plaintiff, were embroiled in a civil suit filed in the United States District Court for the Central District of California under Case Number 2-15-CV-01153 DDP. This suit pertained to the collection of withdrawal liability in the amount of \$1,310,439.50.

2. On July 11, 2016 the Debtor filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Arizona (“Chapter 11 Proceeding”). This prevented Pension Fund from pursuing its claim against the Debtor in the Federal District Court.

3. On October 19, 2016 Pension Fund filed its Motion for Relief From the Automatic Stay (Docket No. 64) seeking the ability proceed with the litigation against the

1 in the Federal District Court. A Response to the Motion was filed on November 1, 2016 (Docket
2 No. 70).

3 4. On October 19, 2016 Pension Fund initiated suit in the United States District
4 Court for the Central District of California against M.M. Stevens, LLC, and Milco Solutions, Inc.
5 in Case No. 2:16-cv-07791-DDP-AJW entitled Board of Trustees of the California Ironworkers
6 Field Pension Trust v. M.M. Stevens, LLC, et al (the "District Court Action") as controlled group
7 members jointly and severally liable for withdrawal liability assessed against S Diamond Steel,
8 Inc.

9 5. On November 15, 2016 Pension Fund filed its Proof of Claim in the amount of
10 \$1,893,324.50 (Claim No. 9)

11 6. On January 16, 2017, the Debtor its Chapter 11 Plan of Reorganization (Docket
12 No 86) (the "Plan") in the Bankruptcy Case. Under the Plan, the Debtor separately classified the
13 Pension Fund claim for withdrawal liability in Class 8.

14 7. On January 19, 2017 the Debtor filed its Objection to Claim No. 9 (Docket No.
15 91).

16 8. On February 2, 2017 Pension Fund filed its Response to the Objection to its claim
17 (Docket No. 98).

18 9. Between March, 2017 and October, 2017 the parties litigated the Objection to the
19 Proof of Claim holding depositions and various hearings.

20 10. On October 4, 2017, the Court in the District Court Action granted summary
21 judgment against M.M. Stevens, LLC and Milco Solutions, Inc., and in favor of the Pension
22 Fund, finding that the Controlled Group was collectively responsible for the withdrawal liability
23 incurred by S. Diamond Steel, Inc.

24 11. Based upon the above it is clear that the parties have participated in extensive
25 litigation and discovery. Legal fees on both sides have been ever increasing. Understanding the
26 economics of the situation for all sides, the parties began the process of attempting to resolve all
27 disputes between them. Those discussions have resulted in a settlement between all parties
28 involved in the District Court Action, the principals of the Debtor and the Debtor. This was no

1 small task and the fruits of their discussions have culminated in the attached Settlement
2 Agreement and Mutual Release (“Settlement Agreement”) which is incorporated herein by
3 reference and made part of this Application as Exhibit “1”. It must be noted that, while a
4 settlement has been reached, it is, as to all parties, contingent upon Bankruptcy Court approval
5 and the subsequent approval of a Chapter 11 Plan of Reorganization that incorporates all of its
6 terms and conditions.

7 12. The Settlement Agreement, in part, provides for the allowance of the Pension
8 Fund’s Proof of Claim in the amount of \$1,832,647.46. Of this amount, the Debtor (as a
9 reorganized debtor) will tender a down-payment of \$200,000.00. The balance of the claim,
10 \$1,632,647.46 plus interest of 7.5% per annum, will be paid at the rate of \$39,250.00 per month
11 for a total of 47 months. In essence, the parties have made peace with each other, have agreed to
12 specific payment terms and are now prepared to move on thus ending the ever increasing costs of
13 the administration of the bankruptcy estate.

14 13. The parties in their exercise of their best business judgment and in consideration
15 of requirements of *A&C Properties*, 784 F.2d 1377 (9th Cir. 1986), *In re Woodson*, 839 F.2d 610
16 (9th Cir. 1988), and *Lendvest*, 42 F.3d 1181 (9th Cir. 1994), believe that the proposed Settlement
17 Agreement is an appropriate resolution. The probability of success if tried, the expense of trial,
18 and the paramount interest of the parties hereto, with due deference to their reasonable views, all
19 mandate that the Settlement Agreement be approved.

20 Bankruptcy courts have broad discretion in approving compromise agreements. *In re*
21 *Woodson* 839 F.2d at 620. The Court may approve a compromise if it is fair and equitable. *Id.* In
22 determining the fairness and adequacy of a proposed compromise agreement, the Court should
23 consider the following four factors: (1) the probability of success in litigation; (2) the difficulties,
24 if any, to be encountered in collection; (3) the complexity of the litigation involved as well as the
25 expense, inconvenience and delay necessarily attendant to the litigation; and (4) the paramount
26 interest of creditors and a proper deference to their reasonable views.

27 Consideration of these factors does not require the Court to decide questions of law or
28 fact raised in the controversies sought to be settled, or determine that the compromise presented

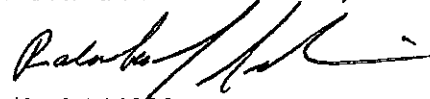
1 is the best possible outcome. Rather, the Court need only canvass the issues to determine
2 whether the settlement fails "below the lowest point in the zone of reasonableness". *Newman v.*
3 *Stein*, 464 F.2d 689, 698 (2nd Cir. 1972). cert. denied. 409 U.S. 1039 (1972); see also *In re*
4 *Pennsylvania Truck Lines, Inc.*, 150 B.R. 595, 598 (Bankr. E.D. Pa. 1992) (holding that a
5 bankruptcy court must consider these factors to see whether the settlement falls below the lowest
6 point in the range of reasonableness.) Accordingly, if the court finds the compromise does not
7 fall below the threshold of reasonableness, the compromise should be approved. *In re Planned*
8 *Protective Services, Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).

9 In this instant case, the parties believe that the proposed Settlement Agreement is fair and
10 equitable and in the best interest of all creditors and parties-in-interest. Without this settlement
11 success in a Chapter 11 would be doubtful as the costs of litigating and the delay in concluding
12 the Chapter 11 would detrimentally impact the Debtor and the creditors.

13 WHEREFORE Debtor respectfully requests that this Court enter an Order granting this
14 Motion and approve the Settlement Agreement of the parties.

15 RESPECTFULLY SUBMITTED this 25th day of April, 2018.

16
17 ALLAN D. NEWDELMAN, P.C.

18 

19 /s/ RJS 011993
20 Roberta J. Sunkin, Esq.
21 Attorney for Debtor
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EXHIBIT "1"

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("the Agreement") dated as of _____, is entered into by and between Matthew Miles Stevens and Dana Stevens (collectively the "Stevens"), S. Diamond Steel, Inc., M.M. Stevens, LLC, Milco Solutions, Inc. (the "Controlled Group"), on the one hand, and the California Ironworkers Field Pension Trust, and the Board of Trustees for the California Ironworkers Field Pension Trust ("Pension Fund"), on the other. Stevens, the Controlled Group and Pension Fund are collectively referred to as the "Parties", and each is deemed a "Party". This Agreement is entered into with reference to the following facts.

Recitals

A. The Pension Fund initiated suit in the United States District Court for the Central District of California against S Diamond Steel, Inc. for the collection of withdrawal liability in the amount of \$1,310,439.50, plus interest, liquidated damages, attorneys' fees, and costs of suit. On July 11, 2016, S. Diamond Steel, Inc. filed for bankruptcy in the U.S. Bankruptcy Court for the District of Arizona (the "Bankruptcy Court"), initiating the case styled *In re S Diamond Steel*, case o. 2:16-bk-07846-BKM (the "Bankruptcy Case").

B. The Pension Fund subsequently initiated suit in the United States District Court for the Central District of California against M.M. Stevens, LLC, and Milco Solutions, Inc. in Case No. 2:16-cv-07791-DDP-AJW entitled *Board of Trustees of the California Ironworkers Field Pension Trust v. M.M. Stevens, LLC, et al* (the "District Court Action") as controlled group members jointly and severally liable for withdrawal liability assessed against S. Diamond Steel, Inc.

C. On January 16, 2017, S. Diamond Steel, Inc. ("Debtor") as debtor-in-possession filed a "Plan of Reorganization" (DE 86) (the "Plan") in the Bankruptcy Case. Under the Plan, the Debtor has separately classified the Pension Fund claim for withdrawal liability in Class 8.

D. On October 4, 2017, the Court in the District Court Action granted summary judgment against M.M. Stevens, LLC and Milco Solutions, Inc., and in favor of the Pension Fund, finding that the Controlled Group was collectively responsible for the withdrawal liability incurred by S. Diamond Steel, Inc. (the "Summary Judgment").

E. The parties wish to settle all differences between them and provide for satisfaction consistent with the Summary Judgment without further litigation.

F. In consideration of the mutual covenants, agreements and promises set forth in this Agreement, and consistent with the Summary Judgment and for other good and valuable consideration, each party agrees as follows:

Agreement

1. Incorporation of Recitals. The foregoing Recitals shall be part of this Agreement.

2. Acknowledgment of Claim. The Pension Fund, Stevens and the Controlled Group acknowledge and agree that (a) the Pension Fund has a valid, enforceable claim against each of Stevens and the members of the Controlled Group in the amount of \$1,832,647.46 (the "**Pension Fund Claim**"); (b) the Pension Fund Claim is a joint and several obligation of each of Stevens and the members of the Controlled Group; and (c) to the extent any defenses or offsets to the Pension Fund Claim may exist, Stevens and the Controlled Group hereby waive the same.

3. Payment of Pension Fund Claim. The Pension Fund Claim shall be paid as follows:

- a. S. Diamond Steel, Inc. (as a reorganized debtor) shall pay to the Pension Fund the sum of \$200,000 within 30 days of the effective date ("**Effective Date**") of a confirmed plan of reorganization in the Bankruptcy Case (the "**Initial Payment**").
- b. S. Diamond Steel, Inc. (as a reorganized debtor), M.M. Stevens, LLC and Milco Solutions, Inc., Matthew Miles Stevens and Dana Stevens shall execute a promissory note ("**Note**") in the form attached as **Exhibit A** in favor of the Pension Fund in the principal sum of \$1,632,647.46 (One Million, Six Hundred Thirty-Two Thousand, Six Hundred Forty Seven Dollars and Forty Six Cents) with interest accruing at the rate of 7.5% simple interest per annum on the principal sum or on such portion of the principal sum as remains unpaid until it is in paid in full. The note shall be payable in forty-seven (47) monthly installments of \$39,250.00 with a final payment adjusted for any accrued but unpaid principal and interest. An estimated amortization schedule is attached hereto. The first monthly payment shall be made on the fifteenth day of the first full month following the Effective Date. Each payment thereafter shall be made on the fifteenth day of each consecutive month thereafter, until paid in full, and on such other terms and conditions set forth in the Note. Stevens and the Controlled Group will execute and deliver the Note to the Pension Fund on the Effective Date. The Note may not be assigned to any third party. Additional or otherwise advance payments may be made at any time to reduce the principal and accruing interest without penalty. The date and amount of any final payment will be adjusted accordingly.
- c. If the Pension Fund notifies the Controlled Group, pursuant to the notification provisions of this agreement, that the Initial Payment or a monthly payment under the Note has not been received and the Controlled Group fails to cure the missed payment within 60 days, the Pension Fund may, without further notice or demand, lodge and request entry of the Stipulated Entry of Judgment against the Stevens and the Controlled Group in the form attached as **Exhibit B** in the District Court Action. Once the Judgment is entered, the Pension Fund may register the Judgment in Arizona and take any other necessary enforcement actions. Stevens and the Controlled Group will not object to registration of the Judgment in Arizona and hereby waive any right to contest such registration.

4. Bankruptcy Provisions. The Parties acknowledge this Agreement represents a settlement of the Pension Fund's claim for withdrawal liability against the Debtor. Accordingly, this Agreement and its terms are subject to approval by the Bankruptcy Court in the Bankruptcy Case. The terms of this Agreement are immediately binding amongst the Parties, subject to the condition subsequent of approval by the Bankruptcy Court in the Bankruptcy Case as set forth below. The Parties agree to the following in regards to the Bankruptcy Case:

- a. Within fourteen (14) days of the date this Agreement, the Debtor shall file a motion under Rule 9019 of the Federal Rules of Bankruptcy Procedure in the Bankruptcy Case requesting the Bankruptcy Court enter an order (an "Approval Order") approving the terms of this Agreement. The Debtor and Pension Funds shall exercise their best efforts to obtain entry of an Approval Order in the Bankruptcy Case. In the event the Bankruptcy Court does not enter an Approval Order within ninety (90) days of the date of this Agreement, this Agreement shall be null and void, unless extended in writing by the parties.
- b. Within fourteen (14) days of the Date of this Agreement, the Debtor shall file an amended plan of reorganization (the "Amended Plan") that will provide as follows:
 - i. The treatment of the Pension Fund Claim in Class 8 of the Amended Plan shall provide that:
 1. The full amount of the Pension Fund Claim shall be deemed an "allowed" claim under 11 U.S.C. § 502(b); and
 2. The Pension Fund Claim shall be paid as provided in Paragraph 3 above.
 - ii. On the date the Amended Plan becomes effective (the "Effective Date"), S. Diamond Steel, Inc. (as the reorganized debtor) shall execute and deliver the Note.
 - iii. Copies of this Agreement and the Note shall be added as exhibits to the Amended Plan and appropriately referenced in the Plan.
 - iv. The release of the Pension Fund set forth in Paragraph 13 below shall be incorporated into the Amended Plan.
- c. The language of the Amended Plan relating to the treatment of the Pension Fund Claim and the release of the Pension Fund is subject to the review and approval of the Pension Fund in its sole discretion.
- d. In conjunction with filing the Amended Plan, the Debtor shall file an amended disclosure statement (the "Disclosure Statement") regarding the Amended Plan

that will provide "adequate information" regarding the Amended Plan as required by 11 U.S.C. § 1125 including, but not limited to, the following:

- i. Describing the litigation of the Pension Fund's claim and the settlement of that litigation through this Agreement;
 - ii. The general terms of this Agreement; and
 - iii. Changes to the plan required under this Agreement.
- e. Upon filing the Amended Plan and Amended Disclosure Statement, the Debtor shall promptly seek a hearing on approval of the Disclosure Statement to allow the Amended Plan to be balloted.
- f. The Pension Fund shall be entitled to vote the full amount of the Pension Fund Claim on any ballot on the Amended Plan.
- g. Provided the Amended Plan is (i) consistent with the terms of this Agreement, and (ii) contains no other material modifications that are not approved by the Pension Fund, the Pension Fund agrees to vote its claim in favor of the Amended Plan and otherwise support confirmation of the Amended Plan.
- h. The provisions of any order confirming the Amended Plan (the "Confirmation Order") are subject to the Pension Fund's review and approval in its sole discretion. Without limiting the foregoing sentence, the Confirmation Order shall expressly:
- i. Authorize S. Diamond Steel, Inc., as the reorganized debtor, to
 1. Execute and deliver the Note to the Pension Fund; and
 2. Make the Initial Payment; and
 - ii. Approve the release of the Pension Fund.
5. Time Limit. This Agreement and its terms shall be null and void if the Effective Date has not occurred within 120 days of the date of this Agreement, unless extended in writing by the parties.
6. Stevens Personally Liable. The Stevens' acknowledge that they are personally jointly and severally liable for Initial Payment and the full amount due under the Note.
7. Review of the Agreement. Each of the parties acknowledges that he or it has carefully read this Agreement and knows and understands the contents and effect of this Agreement and each of the parties further acknowledges that he or it is signing this Agreement based on his or its own free act.

8. Advice of Counsel. Each of the parties acknowledges that he or it has been advised by legal counsel in connection with this matter and the provisions and execution of this Agreement.

9. Governing Law. This Agreement has been entered into in the State of California and all the terms, conditions and provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California and the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act. The parties further agree that any dispute regarding the enforceability or breach of this Agreement will be conducted in the state courts of the state of California or the United States District Court for the Central District of California except as relates to the further administration of the estate or the plan of reorganization of Debtor which jurisdiction shall remain in the United States Bankruptcy Court for the District of Arizona.

10. Binding Nature. This Agreement and all of its terms, conditions, and provisions shall be binding upon and shall inure to the benefit of each of the parties and each of the parties' respective heirs, successors, and assigns.

11. Entire Agreement. This Agreement, together with the Note and the Stipulated Entry for Judgment, contain the entire agreement and understanding concerning the settlement between the parties and replaces any prior negotiations or agreements between the parties, whether written or oral.

12. Counterparts. This Agreement may be executed in counterparts, including facsimile counterparts, and all such executed counterparts, including with facsimile signatures, together shall constitute one original agreement which shall be binding on all of the parties to this Agreement notwithstanding that all of the parties are not signatory to the original or the same counterparts.

13. Mutual Release. Except for the obligations imposed by this Agreement, Pension Fund, on the one hand, and the Stevens' and the Controlled Group on the other, hereby release and forever discharge each other party from any and all claims, demands, liabilities, obligations, debts, attorneys' fees, costs, accounts, actions, or causes of action which any of the parties have or claim to have as of the date of this Agreement, in law or equity, whether known or unknown, which pertain to or which arise out of the facts, circumstances, and/or events which are asserted or could have been asserted in the District Court Actions or Bankruptcy Court Actions and/or which pertain to, arise out of, or in any way connect with the past relationships between the parties. The Stevens and the Controlled Group are released from any and all contracts or agreements which directly or indirectly require that contributions be made to Pension Fund.

14. Section 1542 of the Civil Code of the State of California. As a condition of this Agreement and in furtherance of the release provisions set forth in this Agreement, the parties expressly waive any and all rights and benefits conferred upon them by the provisions of section

1542 of the Civil Code of the State of California with respect to any of the matters described or set forth in this Agreement. Section 1542 of the Civil Code of the State of California states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The parties acknowledge that except for matters expressly represented or recited in this Agreement, the facts and law in relation to this matter and the claims released by the terms of this Agreement may turn out to be different from the facts or law as now known to each party and/or his or its agents or counsel. Each party expressly assumes the risk of the existence of different or presently unknown facts or law and agrees that this Agreement shall in all respects be effective and binding as to each party despite the possibility of the existence of different or new facts or law.

15. Additional Acts. Each of the parties agrees to execute and deliver to each other party all necessary documents and to take such additional action as may be necessary or reasonably required to effectuate the terms, conditions, provisions and intent of this Agreement.

16. Severance. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provisions, which shall remain in full force and effect. If any portion of this Agreement is found invalid, the parties agree to enter into a full and general Release that is not invalid.

17. Attorney's Fees and Costs. In the event a dispute arises with respect to the enforceability or the breach of the terms of this Agreement, the prevailing party is entitled to recover all attorneys' fees and costs of suit.

18. Authority to Sign. Each party executing this Agreement and/or any other documents related to the settlement between the parties represents and warrants that he or it has been duly authorized to execute this Agreement and any such other related documents.

19. Notice to Controlled Group. Notices to the Controlled Group under this Agreement shall be made by U.S. Mail, certified, return receipt requested AND by e-mail to:

M. Miles Stevens
M.M Stevens, LLC
P.O. Box 18182
Phoenix, AZ 85005-8182

mstevens@sdiamondsteel.com

M. Miles Stevens
S Diamond Steel, Inc.
4205 W Lower Buckeye Rd
Phoenix, AZ 85009

mstevens@sdiamondsteel.com

Dana Stevens
Milco Solutions, Inc.
P.O. Box 18171
Phoenix, AZ 85005-8171

dstevens@sdiamondsteel.com

With a copy via U.S. Mail, certified, return receipt requested AND by e-mail to:

Guy W. Bluff, Esq.
Bluff & Associates
4205 N. 7th Ave, Ste 201
Phoenix, Arizona 85013

office@guywbluff.com

Allan D. NewDelman
Allan D. NewDelman, P.C.
80 East Columbus Avenue
Phoenix, Arizona 85012

anewdelman@adnlaw.net

20. Notice to Pension Fund. Notices to the Pension Fund under this Agreement shall be made by U.S. Mail, certified, return receipt requested, as follows:

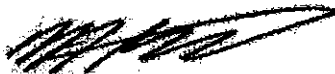
Rise Spiegel
Executive Director
California Ironworkers Field Pension Trust Fund
131 N. El Molino Avenue, Suite 330
Pasadena, California 91101


With a copy via U.S. Mail, certified, return receipt requested to:

Katherine McDonough, Esq.
Kraw Law Group, APC
605 Ellis Street, Suite 200
Mountain View, California 94043

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement and Mutual Release as of the date first above written.

STEVENS'

By: 
Matthew Miles Stevens, individually

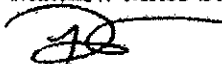
By: 
Dana Stevens, individually

S. Diamond Steel, Inc.

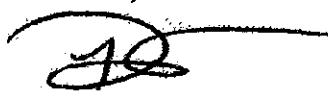
By: 
Matthew Miles Stevens - President

M.M. Stevens, LLC

By: 
Matthew Miles Stevens - Manger

By: 
Dana Stevens - Manger

Milco Solutions, Inc.

By: 
Dana Stevens - Manger

THE PENSION FUND

California Ironworkers Field Pension Trust

By: _____
Name

On Behalf of the Board of Trustees

Dated: _____

S. Diamond Steel, Inc.

By: _____
Matthew Miles Stevens - President

M.M. Stevens, LLC

By: _____
Matthew Miles Stevens - Manger

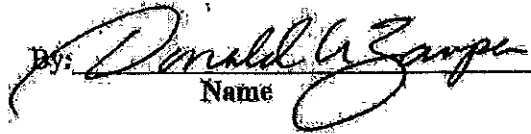
By: _____
Dana Stevens - Manger

Milco Solutions, Inc.

By: _____
Dana Stevens - Manger

THE PENSION FUND

California Ironworkers Field Pension Trust

By:  _____
Name

On Behalf of the Board of Trustees

Dated: _____

California Ironworkers Field Pension Trust

By: _____
Name

On Behalf of the Board of Trustees

Dated: _____

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**BOARD OF TRUSTEES OF THE CALIFORNIA
IRONWORKERS FIELD PENSION TRUST, and
CALIFORNIA IRONWORKERS FIELD PENSION
TRUST,**

Plaintiffs

v.

**M.M. STEVENS, LLC, MILCO SOLUTIONS, INC.,
MATTHEW MILES STEVENS and DANA
STEVENS,**

Defendants.

Case No.:
2:16-cv-07719-DDP-AJW

**STIPULATION FOR ENTRY OF
JUDGMENT; PROPOSED ORDER**

This Stipulation for Entry of Judgment is agreed to by and between Plaintiffs BOARD OF TRUSTEES OF THE CALIFORNIA IRONWORKERS FIELD PENSION TRUST and THE CALIFORNIA IRONWORKERS FIELD PENSION TRUST (hereinafter "Plaintiffs" or "Pension Fund") and Defendants M.M. STEVENS, LLC, MILCO SOLUTIONS, INC. (hereinafter "Defendants") and individuals MATTHEW MILES STEVENS and DANA STEVENS (collectively with Plaintiffs referred to as "Parties") as follows:

WHEREAS, on or about February 11, 2014, the Pension Fund assessed withdrawal liability against S Diamond Steel (hereinafter "S Diamond") and all of its controlled group members, including Defendants, in the amount of \$1,310,439.50; and

WHEREAS, Plaintiffs brought an action against S Diamond in the United States District Court for the Central District of California (Case No. 2:15-cv-01153) ("First Lawsuit") seeking to collect delinquent withdrawal liability payments; and

1 WHEREAS, S Diamond subsequently declared bankruptcy in the District of Arizona
2 (Case No. 2:16-bk-07846-BKM), and the First Lawsuit was stayed indefinitely; and

3 WHEREAS, Plaintiffs subsequently brought an action against Defendants in the
4 Central District of California (Case No. 2:16-cv-07791-AJW) (the "Action") as alleged
5 controlled group members of S Diamond to collect the assessed withdrawal liability; and

6 WHEREAS, on October 4, 2017, the District Court issued its Order Granting Plaintiffs'
7 Motion for Summary Judgment, in which it found that Defendants M.M. Stevens, LLC and
8 Milco Solutions, Inc. were controlled group members with S Diamond, and consequently were
9 jointly and severally liable for the assessed withdrawal liability; and

10 WHEREAS, the Parties have agreed to settle the Action and any potential claims, and
11 as part of the settlement, Defendants agreed to stipulate to entry of judgment, with the
12 stipulated judgment to be filed only in the event Defendants fail to make a payment called for
13 in the settlement agreement and do not cure the nonpayment within sixty (60) days; and

14 WHEREAS, Matthew Miles Stevens and Dana Stevens agreed to personally guarantee
15 the settlement and therefore have also agreed to stipulate to entry of judgment to be filed only
16 in the event Defendants fail to make a payment called for in the settlement agreement and do
17 not cure the nonpayment within sixty (60) days; and

18 WHEREAS, the settlement agreement between the Parties provides that the stipulated
19 judgment shall be for \$1,632,647.46 (One Million, Six Hundred Thirty Two Thousand, Six
20 Hundred Forty Seven Dollars and Forty Six Cents), less the amount of all payments made; plus
21 interest at the rate specified in the Pension Fund's Trust Agreement; and plus liquidated
22 damages in the amount of \$431,901.40 ;

23 NOW THEREFORE,

24 IT IS HEREBY STIPULATED AND AGREED by the Parties that, upon the Pension
25 Fund's filing of this Stipulation for Entry of Judgment along with a request for entry of
26 judgment and a declaration of one of its Trustees attesting that the Pension Fund's records
27 show that Defendants have failed to make a payment called for in the settlement agreement and
28 did not cure the nonpayment within sixty (60) days, detailing all payments made by Defendants
pursuant to the settlement agreement and detailing all interest accrued to date, this Court shall,
no earlier than 21 days after the filing of this Stipulation for Entry of Judgment, enter judgment
in favor of the Pension Fund and against Defendants and Matthew Miles Stevens and Dana

1 Stevens in the amount of \$1,632,647.46 (One Million, Six Hundred Thirty Two Thousand, Six
2 Hundred Forty Seven Dollars and Forty Six Cents), less the amount of all payments made and
3 received under the settlement agreement; plus interest at the rate specified in the Pension
4 Fund's Trust Agreement as detailed in the Trustee's declaration; and plus the additional
5 amount of \$431,901.40 as liquidated damages; and

6 IT IS FURTHER STIPULATED THAT Defendants and/or Dana and Matthew Miles
7 Stevens may, within 14 days after the filing of this Stipulation for Entry of Judgment, file a
8 response to the Trustee's declaration if they believe there has been an error. The Pension Fund
9 may file a reply within 7 days thereafter.

10 IT IS FURTHER STIPULATED and AGREED THAT the terms of this Stipulation and
11 any Judgment thereon shall apply to any legal successor of the Defendants, including any
12 successor under the Employee Retirement and Income Security Act of 1974 and/or its common
13 law.

14 IT IS SO STIPULATED.

15 Dated: 04/25/2018 By: 
16 MATTHEW MILES STEVENS for
17 M.M. STEVENS, LLC;
18 Dated: 04/25/2018 By: 
19 DANA STEVENS for
20 MILCO SOLUTIONS, INC.
21 Dated: 04/25/2018 
22 DANA STEVENS, an Individual
23 Dated: 04/25/2018 
24 MATTHEW MILES STEVENS, an Individual
25 Dated: _____ By: _____
26 CHAIRMAN, CALIFORNIA
27 IRONWORKERS FIELD PENSION
28 FUND

1 Stevens in the amount of \$1,632,647.46 (One Million, Six Hundred Thirty Two Thousand, Six
2 Hundred Forty Seven Dollars and Forty Six Cents), less the amount of all payments made and
3 received under the settlement agreement; plus interest at the rate specified in the Pension
4 Fund's Trust Agreement as detailed in the Trustee's declaration; and plus the additional
5 amount of \$431,901.40 as liquidated damages; and

6 IT IS FURTHER STIPULATED THAT Defendants and/or Dana and Matthew Miles
7 Stevens may, within 14 days after the filing of this Stipulation for Entry of Judgment, file a
8 response to the Trustee's declaration if they believe there has been an error. The Pension Fund
9 may file a reply within 7 days thereafter.

10 IT IS FURTHER STIPULATED and AGREED THAT the terms of this Stipulation and
11 any Judgment thereon shall apply to any legal successor of the Defendants, including any
12 successor under the Employee Retirement and Income Security Act of 1974 and/or its common
13 law.

14 IT IS SO STIPULATED.

15 Dated: _____

16 By: _____
17 MATTHEW MILES STEVENS for
18 M.M. STEVENS, LLC;

19 Dated: _____

20 By: _____
21 DANA STEVENS for
22 MILCO SOLUTIONS, INC.

23 Dated: _____

24 _____
25 DANA STEVENS, an Individual

26 Dated: _____

27 _____
28 MATTHEW MILES STEVENS, an Individual

29 Dated: 4/18/18

30 By: *Donald J. [Signature]*
31 CHAIRMAN, CALIFORNIA
32 IRONWORKERS FIELD PENSION
33 FUND

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Dated: _____

By: _____
CO-CHAIRMAN, CALIFORNIA
IRONWORKERS FIELD PENSION
FUND

[PROPOSED] ORDER

IT IS SO ORDERED that Judgment is entered against Defendants, as set forth in the
Stipulation of Entry of Judgment.

DATED: _____

UNITED STATES DISTRICT JUDGE

PROMISSORY NOTE

\$1,632,647.46

"Effective Date"

FOR VALUE RECEIVED, Matthew Miles Stevens, Dana Stevens, S. Diamond Steel, Inc., M.M. Stevens L.L.C. and Milco Solutions, Inc. (the "Makers") promise to pay to the order of the California Ironworkers Field Pension Trust Fund (the "Holder") the principal sum of One Million, Six Hundred Thirty Two Thousand, Six Hundred Forty Seven Dollars and Forty Six Cents (\$1,632,647.46), together with interest on that amount accruing at the rate of seven and one-half percent (7.5%) simple interest per annum and, upon the agreements, terms and conditions provided in this Promissory Note (the "Note"):

1. *Settlement Agreement*: Shall mean the settlement agreement among the parties to settle the pending claims in *In re. S Diamond Steel*, (Case No. 2:16-bk-07846-BKM in the Bankruptcy Court for the District of Arizona) (the "Bankruptcy Case") and *Board of Trustees of the California Ironworkers Field Pension Trust v. M.M. Stevens, LLC, et al.*, (Case No. 2:16-cv-07791-DDP-AJW) pending in the District Court for the Central District of California (and the appeal thereon) as approved by the Court in the Bankruptcy Case.
2. *Interest*: All sums owing on this Note shall bear interest from the Effective Date of this Note until paid, at the interest rate of seven and one-half percent (7.5%) simple interest per annum on the principal sum or on such portion of the principal sum as remains until paid in full.
3. *Payment*: Payments shall be applied in accordance with the attached amortization schedule which is incorporated herein by reference. All payments shall be made in the lawful currency of the United States of America. All Payments shall be made to the Holder at California Field Ironworkers Pension Trust, c/o Sherri Cuthbertson, 131 N. El Molino Avenue #330 Pasadena, CA 91101 or at such other place as the Holder may specify in writing.

The first monthly payment shall be made on the fifteenth day of the first full month following the Effective Date of the Settlement Agreement. Each monthly installment payment will be due on or before the 15th day of each month, until paid in full.
4. *Prepayment*: The Maker may prepay any amount owing on this Note without incurring any additional charge. Notwithstanding any prepayment, the Maker shall make all other payments as they become due, until this Note is completely paid.
5. *Default*: Should the Makers at any time fail to pay, when due, any sum owing on this Note, the Holder shall notify them at the addresses of the failure. The Makers shall have sixty (60) calendar days to cure such failure by making the missed payment. If the Makers do not cure the missed payment within sixty (60) calendar days as specified herein, then the Holder may take any action as authorized under the Settlement Agreement.

6. *Transfer; Obligations Binding on Successors:* Maker may not transfer any of its rights, duties, or obligations under this Note without the prior written consent of the Holder. This Note, and the duties set forth in the Note, shall bind the Maker and its successors and assigns. All rights and powers established in this Note shall benefit the Holder and its successors and assigns.
7. *Notices:* Any notice, consent, or other communication required or permitted under this Note shall be in writing and shall be deemed to have been duly given or made either (1) when delivered personally to the party to whom it is directed (or any officer or agent of such party), or (2) five (5) days after being deposited in the United States' certified or registered mail, postage prepaid, return receipt requested, and properly addressed to the party. A communication shall be deemed to be properly addressed if sent to:
- a. Makers:

i. **MM Stevens, LLC** mstevens@sdiamondsteel.com
ATTN: M. Miles Stevens
P.O. Box 18182
Phoenix, AZ 85005-8182

ii. **S Diamond Steel, Inc.** mstevens@sdiamondsteel.com
ATTN: M. Miles Stevens
4205 W Lower Buckeye Rd,
Phoenix, AZ 85009;

iii. **Milco Solutions, Inc.** dstevens@sdiamondsteel.com
ATTN: Dana Stevens
P.O. Box 18171
Phoenix, AZ 85005-8182

iv. **Matthew & Dana Stevens**
1619 W Frier Dr,
Phoenix, AZ 85021

With a copy via U.S. Mail, certified, return receipt requested AND by email to:

v. **Bluff & Associates** office@guywbluff.com
ATTN: Guy W. Bluff, Esq.
4205 N. 7th Ave, Ste 201
Phoenix, AZ 85013

vi. **Allan D. NewDelman, P.C.** anewdelman@adnlaw.net
ATTN: Allan D. NewDelman
80 E Columbus Ave
Phoenix, AZ 85012

b. Holder:

i. **California Ironworkers Field Pension Trust Fund**

ATTN: Rise Spiegel, Executive Director
131 N. El Molino Ave, Ste 330
Pasadena, CA 91101

With a copy via U.S. Mail, certified, return receipt requested to:

ii. **Kraw Law Group, APC**

ATTN: Katherine McDonough
605 Ellis St, Ste 200
Mountain View, CA 94043

The Makers or the Holder may at any time during the term of this Note change the address to which notices and other communications must be sent by providing written notice of a new address within the United States to the other party. Any change of address will be effective ten (10) days after notice is given.

8. *Governing Law:* This Note shall be construed and the rights, duties, and obligations of the Parties shall be determined in accordance with the laws of the State of California.
9. *Headings:* Headings used in this Note have been included for convenience and ease of reference only, and shall not in any manner influence the construction or interpretation of any provision of this Note.
10. *Severability:* The Parties intend that this Note be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Note, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Note and the application of that provision to other persons, circumstances, or extent, will not be impaired.
11. *References:* Except as otherwise specifically indicated, all references in this Note to numbered or lettered sections or subsections refer to sections or subsections of this Note. All references to this Note include any subsequent amendments to the Note.
12. *Maximum Interest:* Notwithstanding any other provisions of this Note, any interest, fees, or charges payable by reason of the indebtedness evidenced by this Note shall not exceed the maximum permitted by law.

IN WITNESS WHEREOF, the Parties have duly executed this Promissory Note as of the date first written above:

By: _____
Matthew Miles Stevens, individually

By: _____
Dana Stevens, individually

S. Diamond Steel, Inc.

By: _____
Matthew Miles Stevens - President

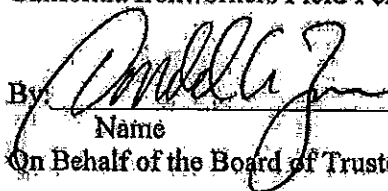
M.M. Stevens, LLC

By: _____
Matthew Miles Stevens - Manger

Mileo Solutions, Inc.

By: _____
Dana Stevens - Manger

California Ironworkers Field Pension Trust

By:  _____
Name
On Behalf of the Board of Trustees

California Ironworkers Field Pension Trust

By: _____
Name
On Behalf of the Board of Trustees

S Diamond Steel - Amortization Schedule (Pursuant to the Settlement Agreement and Promissory Note of 03.2018)

Interest Rate **7.50%**
 Monthly Payment \$ **39,250.00**

Payment #	Date Paid (Est)	Principal	Payment	Interest Accrued	Allocated to Principal	Running Balance
1	06/15/18	1,632,647.48	39,250.00	-	39,250.00	1,593,397.48
2	07/15/18	1,593,397.48	39,250.00	10,149.72	29,100.28	1,564,297.20
3	08/15/18	1,564,297.20	39,250.00	9,642.89	29,607.07	1,534,690.13
4	09/15/18	1,534,690.13	39,250.00	9,775.77	29,474.23	1,505,215.90
5	10/15/18	1,505,215.90	39,250.00	9,278.73	29,971.27	1,475,244.63
6	11/15/18	1,475,244.63	39,250.00	9,397.11	29,852.89	1,445,391.73
7	12/15/18	1,445,391.73	39,250.00	9,206.95	30,043.05	1,415,348.68
8	01/15/19	1,415,348.68	39,250.00	8,724.75	30,525.25	1,384,823.43
9	02/15/19	1,384,823.43	39,250.00	8,821.14	30,428.86	1,354,394.57
10	03/15/19	1,354,394.57	39,250.00	8,349.01	30,900.99	1,323,493.57
11	04/15/19	1,323,493.57	39,250.00	8,430.47	30,819.53	1,292,674.05
12	05/15/19	1,292,674.05	39,250.00	8,234.16	31,015.84	1,261,659.20
13	06/15/19	1,261,659.20	39,250.00	7,258.86	31,991.14	1,229,667.06
14	07/15/19	1,229,667.06	39,250.00	7,832.81	31,417.19	1,198,249.87
15	08/15/19	1,198,249.87	39,250.00	7,386.47	31,863.53	1,166,386.34
16	09/15/19	1,166,386.34	39,250.00	7,429.72	31,820.28	1,134,566.06
17	10/15/19	1,134,566.06	39,250.00	6,993.90	32,256.10	1,102,309.96
18	11/15/19	1,102,309.96	39,250.00	7,021.56	32,228.44	1,070,081.53
19	12/15/19	1,070,081.53	39,250.00	6,816.27	32,433.73	1,037,647.80
20	01/15/20	1,037,647.80	39,250.00	6,396.46	32,853.54	1,004,794.26
21	02/15/20	1,004,794.26	39,250.00	6,400.40	32,849.60	971,944.66
22	03/15/20	971,944.66	39,250.00	5,991.44	33,258.56	938,686.10
23	04/15/20	938,686.10	39,250.00	5,979.30	33,270.70	905,415.40
24	05/15/20	905,415.40	39,250.00	5,767.37	33,482.63	871,932.77
25	06/15/20	871,932.77	39,250.00	5,195.76	34,054.24	837,878.54
26	07/15/20	837,878.54	39,250.00	5,337.17	33,912.83	803,965.71
27	08/15/20	803,965.71	39,250.00	4,955.95	34,294.05	769,671.66
28	09/15/20	769,671.66	39,250.00	4,902.70	34,347.30	735,324.37
29	10/15/20	735,324.37	39,250.00	4,532.82	34,717.18	700,607.19
30	11/15/20	700,607.19	39,250.00	4,482.77	34,767.23	665,819.96
31	12/15/20	665,819.96	39,250.00	4,241.18	35,008.82	630,811.14
32	01/15/21	630,811.14	39,250.00	3,885.56	35,361.44	595,449.70
33	02/15/21	595,449.70	39,250.00	3,792.93	35,457.07	559,992.64
34	03/15/21	559,992.64	39,250.00	3,452.01	35,797.99	524,194.64
35	04/15/21	524,194.64	39,250.00	3,339.05	35,910.95	488,283.69
36	05/15/21	488,283.69	39,250.00	3,110.30	36,139.70	452,143.99
37	06/15/21	452,143.99	39,250.00	2,601.38	36,648.62	415,495.37
38	07/15/21	415,495.37	39,250.00	2,846.65	36,603.35	378,892.02
39	08/15/21	378,892.02	39,250.00	2,395.64	36,914.36	341,977.65
40	09/15/21	341,977.65	39,250.00	2,178.35	37,071.65	304,906.00
41	10/15/21	304,906.00	39,250.00	1,879.56	37,370.44	267,535.56
42	11/15/21	267,535.56	39,250.00	1,704.16	37,645.84	229,889.73
43	12/15/21	229,889.73	39,250.00	1,465.00	37,765.00	192,204.73
44	01/15/22	192,204.73	39,250.00	1,184.82	38,065.18	154,139.55
45	02/15/22	154,139.55	39,250.00	981.85	38,268.15	115,871.40
46	03/15/22	115,871.40	39,250.00	714.28	38,535.72	77,335.68
47	04/15/22	77,335.68	39,250.00	492.62	38,757.38	38,578.30
48	05/15/22	38,578.30	39,824.03	245.74	38,578.29	0.00

Total Payments **1,883,574.03** **250,926.55** **1,632,647.48** **0.00**

*Initial [Signature] acknowledging you have reviewed and understand the above schedule:

Pension Trust Fund M.M. Stevens LLC Milbo Solutions, Inc. Matthew Stevens Dana Stevens S Diamond Steel, Inc.

Re: Approval of S. Diamond Steel Settlement Documents By Email

Dan Welsh <DWelsh@washingtoniron.com>

Fri 4/20/2018 11:32 AM

To: Katherine McDonough <kmcdonough@kraw.com>;
Cc: Raphael Shannon Kraw <rshannonkraw@kraw.com>;

Katherine,

I have read through the Settlement Agreement, Stipulated Judgement, Promissory Note, and Amortization Schedule for the S. Diamond case. I approve of the proposed settlement of this case per the noted documents and will formally execute these documents upon my return to California. Let me know if you need anything else from me to close this case out.

Thanks,
Dan Welsh

Sent from Dan's iPhone in Tiberias, Israel

On Apr 20, 2018, at 8:04 PM, Katherine McDonough <kmcdonough@kraw.com> wrote:

Dan:

Since you are out of the country, we have agreed with opposing counsel that you can approve these documents by email for now. Please send an email confirming that you approve of the attached settlement agreement, stipulated judgment, revised promissory note, and amortization schedule. That will allow bankruptcy counsel to make the necessary motions for approval of the settlement. Upon your return to the office, please sign hard copies of the same that we sent to your office.

Regards,

Katherine McDonough

From: Elena Ortiz
Sent: Friday, April 20, 2018 9:56 AM
To: Katherine McDonough <kmcdonough@kraw.com>
Subject: RE: Please email me the settlement documents (with revised promissory note) that were sent to Dan Welsh and Don Zampa

Can you access your materials for the teleconference today?

Thank you,

From: Katherine McDonough
Sent: Friday, April 20, 2018 9:22 AM
To: Elena Ortiz
Subject: Please email me the settlement documents (with revised promissory note) that were sent to Dan