IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI

In re:	)	
	)	Case No. 10-44965-11
DAMON PURSELL CONSTRUCTION COMPANY	)	
	)	Chapter 11
Debtor.	)	

CREDITOR DISCLOSURE STATEMENT

1. INTRODUCTION

On September 15, 2010 (the "Petition Date"), Damon Pursell Construction Company ("Debtor") filed a petition for reorganization under Chapter 11 of the Bankruptcy Code to stop a foreclosure sale. On December 18, 2010, Debtor filed a Disclosure Statement (the "First Debtor Disclosure Statement") describing a plan of reorganization (the "First Debtor Plan") under which Debtor proposed to pay all creditors in full, over six years. The First Debtor Disclosure Statement identified General Unsecured Allowed Claims without Priority in the aggregate amount of $1,974,489.08, and identified all claims of all creditors in the aggregate amount of about $17.3 million. After objections were filed against the First Debtor Disclosure Statement, Debtor filed a First Amended Disclosure Statement on February 1, 2011 (the "Second Debtor Disclosure Statement"), describing a plan of reorganization (the "Second Debtor Plan") under which Debtor did not propose to pay creditors in full, over time. Instead, the Second Debtor Disclosure Statement identifies General Unsecured Claims without Priority in the aggregate amount of $5,748,287.13 and the Second Debtor Plan provides that these claims "shall be paid approximately twenty-five percent (25%) of their allowed amount in cash [over six years] without previous finance charges or interest." In addition, the Second Debtor Disclosure Statement identified all claims of all creditors in the aggregate amount of about $22.3 million.

The First Debtor Disclosure Statement and First Debtor Plan did not propose any changes in the ownership or management of Debtor, despite disclosing that Debtor had outstanding "receivables from stockholder and affiliates" of over $10.7 million to which Debtor ascribed no ability to collect in its Liquidation Analysis. The Second Debtor Disclosure Statement and Second Debtor Plan also do not propose any changes in the ownership or management of Debtor, except the theoretical possibility that the equity in Debtor will be sold to the highest bidder in an auction to be held about 2 months after the confirmation hearing based on only 2 weeks of advertising "in a local newspaper of general circulation." In addition, the Second Debtor Plan acknowledges over $10.1 million in receivables from various affiliates and states "[t]he above Affiliates do not – and likely will not in the foreseeable future or may never – have the ability to to repay any of the Affiliate Claim to Debtor."

Creditors holding aggregate claims of about $13 million have filed objections to approval of the Second Debtor Disclosure Statement and the Second Debtor Plan. Among other issues, those objections indicate (a) Debtor has still failed to disclose or treat over $658,000 in additional claims involving Debtor's assets, (b) there is a potential ownership dispute over certain equipment that Debtor claims to own, (c) there is a pending adversary action with three creditors owed approximately $3.2 million which may increase the General Unsecured Claims without Priority in that amount and decrease the percentage paid to such claims to about sixteen percent (16%), (d) the Second Debtor Plan is contingent on Debtor being able to pay off or refinance over $5 million in secured claims on or about the fifth anniversary of the effective date, (e) there are various problems with the treatment of various secured creditors that may prevent confirmation of the Second Debtor Plan, and (f) if certain valuations asserted by Debtor at

various times in this case are accepted, then a sale of Debtor as a going concern may yield enough funds to pay all creditors in full.

A hearing to consider approval of the Second Debtor Disclosure Statement and confirmation of the Second Debtor Plan has been scheduled to commence on April 26, 2011. In the meantime, Debtor's exclusive period to file and pursue confirmation of the Second Debtor Plan expired on March 14, 2011. Accordingly, Bank of the West has filed this Creditor Disclosure Statement and a related Creditor Plan as an alternative to the Second Debtor Plan. In general, and subject to the specific terms therein, the Creditor Plan contemplates a complete liquidation of Debtor to the highest bidder pursuant to a process under which (a) a Chief Restructuring Officer (the "CRO"), approved by and subject to the general supervision of the Bankrutpcy Court, will be appointed to operate Debtor's business pending a sale (if and only so long as the CRO determines that such operation is feasible and generates positive cash flow), and (b) an investment banker, approved by the Bankrutpcy Court, will be appointed to work under the supervision of the CRO to complete a sale by December 31, 2011. Distributions to secured creditors will be made as soon as possible from the net proceeds of the sale of their collateral. Distributions to priority and general unsecured creditors will be made as soon as possible thereafter in accordance with the Creditor Plan.

BOW believes that the Creditor Plan is superior to the pending Second Debtor Plan because (a) the Creditor Plan satisfies all of the requirements for confirmation of a plan of reorganization, whereas the pending objections assert that the Second Debtor Plan does not, (b) the Creditor Plan eliminates all uncertainty and risk of default and nonpayment that otherwise exists under the Second Debtor Plan, and (c) the Creditor Plan may result in a higher net present value distribution to all creditors.

2. PURPOSE OF THIS DISCLOSURE STATEMENT

Your vote on the Creditor Plan is important. As a general rule, confirmation of the Creditor Plan requires acceptance by each of the voting classes. Pursuant to §1126 of the Bankruptcy Code, in order for the Creditor Plan to be accepted by a voting class, creditors holding at least two-thirds in dollar amount and more than one-half in number of claims allowed for voting purposes in such class and who actually vote to accept or reject the Creditor Plan must vote in favor of the Creditor Plan. Any class that fails to accept the Creditor Plan will be deemed to have rejected the Creditor Plan.

THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE CREDITOR PLAN BY EACH HOLDER OF A CLAIM OR INTEREST ENTITLED TO VOTE THEREON, BUT IS INTENDED TO AID AND SUPPLEMENT SUCH REVIEW. THE DESCRIPTION OF THE CREDITOR PLAN HEREIN IS A SUMMARY ONLY. HOLDERS OF CLAIMS ARE CAUTIONED TO REVIEW THE CREDITOR PLAN ITSELF AND ANY RELATED AGREEMENTS OR DOCUMENTS FOR A FULL UNDERSTANDING OF ITS PROVISIONS. THE DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE CREDITOR PLAN. THE TERMS OF THE CREDITOR PLAN AND ANY RELATED AGREEMENTS ARE CONTROLLING IF ANY INCONSISTENCY EXISTS BETWEEN THEM AND THIS DISCLOSURE STATEMENT.

This Disclosure Statement and the Creditor Plan remain subject to modification and amendment in their entirety. Capitalized terms used in this Disclosure Statement that are not specifically defined herein have the meanings set forth in the Creditor Plan.

YOU SHOULD READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE VOTING ON THE CREDITOR PLAN. NO STATEMENTS OR INFORMATION CONCERING BANK OF THE WEST, THE DEBTOR, OR ANY OTHER ENTITY DESCRIBED IN THE DISCLOSURE STATEMENT OR THE CREDITOR PLAN ARE AUTHORIZED BY BANK OF THE WEST OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

The financial information set forth in this Disclosure Statement has not been audited by independent certified public accountants. BOW does not represent or warrant that the information set forth in this Disclosure Statement is accurate. Most of the information in this Disclosure Statement is derived from the Second Debtor Disclosure Statement and other pleadings and exhibits used in the Debtor's bankruptcy case.

3. PROCEDURAL INFORMATION

Under §1126 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3018(a), only creditors whose claims are deemed allowed pursuant to §502 of the Bankruptcy Code or have been allowed by an Order of the Bankruptcy Court are entitled to vote on the Creditor Plan.

Except as otherwise provided in the Disclosure Order, ballots are being sent with this Disclosure Statement to the known holders of all claims against the Debtor as of the Record Date. These parties may distribute the ballots to the beneficial owners of the claims as they deem necessary. The holders of certain claims and interests may not be entitled to vote on the Creditor Plan unless otherwise ordered by the Bankruptcy Court in accordance with Federal Rule of Bankruptcy Procedure 3018(a), which provides in pertinent part, that: "Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the

claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a Creditor Plan." Additional rules governing the voting process are set forth in the Notice that accompanies this Disclosure Statement.

All pleadings and other documents referred to in this Disclosure Statement as being on file with the Bankruptcy Court are available for inspection and review during normal business hours at the Clerk of the Bankruptcy Court, 400 E. Ninth St., Kansas City, MO 64106. In addition, such pleadings and documents may be viewed online at http://www.mow.uscourts.gov/bk_cmecf.htm using PACER access. ANY CHANGES TO THESE DOCUMENTS WILL BE DESCRIBED AT THE HEARING ON THE CONFIRMATION OF THE CREDITOR PLAN.

After carefully reviewing the Creditor Plan and this Disclosure Statement, please indicate your vote(s) with respect to the Creditor Plan on the ballot sent to you and return it by the deadline noted therein to BOW's counsel. If you have a claim in more than one voting class, you are entitled to vote each claim. **PLEASE VOTE AND RETURN EVERY BALLOT THAT YOU RECEIVE. IN ORDER TO BE COUNTED, BALLOTS MUST BE RECEIVED BY APRIL [insert], 2011.**

The Court will hold a combined hearing on final approval of this Disclosure Statement and confirmation of the Creditor Plan commencing at 1:30 p.m. April 26, 2011 (the "Confirmation Hearing").

BANK OF THE WEST BELIEVES THAT ACCEPTANCE OF THE CREDITOR PLAN IS IN THE BEST INTEREST OF CREDITORS AND RECOMMENDS THAT YOU VOTE TO ACCEPT THE CREDITOR PLAN.

4. BRIEF EXPLANATION OF CHAPTER 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. It allows a business debtor to either liquidate or reorganize its financial affairs. Unlike a case under Chapter 7 of the Bankruptcy Code, which automatically results in the appointment of a trustee to manage the affairs of the entity filing under the Bankruptcy Code, the debtor in a Chapter 11 case remains in control of the estate as the "debtor in possession," generally with the same powers and duties as a trustee, unless and until a creditor's committee or other party obtains the appointment of a trustee to operate the business.

Upon filing a petition for Chapter 11 reorganization and during the pendency of a reorganization case, the Bankruptcy Code imposes an automatic stay against creditors' attempts to collect or enforce, through litigation or otherwise, claims against the debtor. The automatic stay provisions of §362 of the Bankruptcy Code, unless lifted by court order, generally prohibit or restrict attempts by secured or unsecured creditors or other claimants to collect or enforce any claims against the debtor that arose prior to the commencement of the Chapter 11 case.

Formulation and confirmation of a plan of reorganization is the principal purpose of a Chapter 11 case. The plan of reorganization is the vehicle for satisfying the holders of claims against, and equity interests in, a debtor. After a plan of reorganization has been filed, the holders of claims against, or interests in, a debtor are permitted to vote to accept or reject the plan. Section 1125 of the Bankruptcy Code requires the plan proponent, before soliciting acceptances of the proposed plan, to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. The disclosure statement is presented to holders of Claims in impaired classes to satisfy the requirements of § 1125 of the Bankruptcy Code.

Chapter 11 does not require that each holder of a claim against, or interest in, a debtor vote in favor of a plan of reorganization in order for the Bankruptcy Court to confirm the plan. At a minimum, however, a plan must be accepted by a majority in number and at least two-thirds in amount of those claims actually voting in at least one class of claims impaired under such plan. In the present case, holders of claims who fail to return ballots will not be counted as either accepting or rejecting the Creditor Plan for purposes of determining whether the Creditor Plan is accepted or rejected.

Classes of claims or interests that are not "impaired" under a plan of reorganization are conclusively presumed to have accepted the plan of reorganization. Consequently, holders of claims or interests in such classes are not entitled to vote. Acceptances of the Creditor Plan in this case are being solicited only from those who hold claims in an impaired class. A class of claims is impaired under a plan of reorganization unless, as set forth in § 1124 of the Bankruptcy Code, with respect to each claim or equity interest of such class, the plan: (1)(a) leaves unaltered the legal, equitable and contractual provision or applicable law that entitles the holder of a claim or interest after the occurrence of a default; (b) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code other than a default of a kind specified in § 365(b)(2) of the Bankruptcy Code; (c) reinstates the maturity of such a claim or interest as such maturity existed before such default; (d) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and (e) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entities the holder of such a claim or interest; or (2) provides that, on the effective date of the plan, the holder of such claim or interest receives, on account of such claim or interest, cash equal to: (a) with respect to a claim, the

allowed amount of such claim; or (b) with respect to an interest, if applicable, the greater of: (i) any fixed liquidation preference to which the terms of any security representing such interest entitle the holder of such interest; or (ii) any fixed price at which the debtor, under the terms of the security, may redeem such security from such holder.

Even if all classes of claims and interests accept a plan of reorganization, the bankruptcy court nevertheless might not confirm that plan. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan of reorganization and, among other things, requires that a plan of reorganization be (1) in the "best interests" of creditors and equity holders and (2) feasible. The "best interests" test generally requires that the value of the consideration be distributed under a plan to holders of claims or interests who have not voted to accept the plan may not be less than those parties would receive if the debtor were liquidated under a hypothetical liquidation occurring under Chapter 7 of the Bankruptcy Code. Under the "feasibility" requirement, the court generally must find that there is a reasonable probability that the debtor will be able to perform the obligations incurred under the plan and to continue operations without the need for further financial reorganization.

If the proponent of a plan of reorganization seeks confirmation of such a plan under the "cramdown" provisions of § 1129(b) of the Bankruptcy Code, the plan must meet all applicable requirements of § 1129(a) of the Bankruptcy Code (except § 1129(a)(8), which requires acceptance by all impaired classes). Among these requirements are that the plan must (1) comply with the applicable provisions of the Bankruptcy Code and applicable law, (2) be proposed in good faith, and (3) be accepted by at least one impaired class of creditors.

The court may confirm a plan of reorganization if it is "fair and equitable" as to a class if, among other things, the plan provides: (1) with respect to secured claims, that each holder of

such claim included in the rejecting class will receive or retain on account of such claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (2) with respect to unsecured claims and interests, that the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain on account of such junior claim or interest any property at all unless the senior class is paid in full. The bankruptcy court must further find that the economic terms of the plan of reorganization do not unfairly discriminate with respect to the particular objecting class, as provided in § 1129(b) of the Bankruptcy Code.

Other significant aspects of Chapter 11 are (1) the right and duty to seek avoidance of certain pre-petition or post-petition transfers of interests in the debtor's assets and (2) the right and duty to evaluate all pre-petition executory contracts and unexpired leases, and to assume or reject such contracts or leases.

5. OVERVIEW OF THE CREDITOR PLAN

In general, and subject to the specific terms therein, the Creditor Plan contemplates a complete liquidation of Debtor to the highest bidder pursuant to a process under which (a) a Chief Restructuring Officer (the "CRO"), approved by and subject to the general supervision of the Bankrutpcy Court, will be appointed to operate Debtor's business pending a sale (if and only so long as the CRO determines that such operation is feasible and generates positive cash flow), and (b) an investment banker, approved by the Bankrutpcy Court, will be appointed to work under the supervision of the CRO to complete a sale by December 31, 2011. Distributions to secured creditors will be made as soon as possible from the net proceeds of the sale of their collateral. Distributions to priority and general unsecured creditors will be made as soon as possible thereafter in accordance with the Creditor Plan.

The holders of Allowed Claims against the Debtor will be classified and receive the treatment specified in the Creditor Plan. The Classification of such Allowed Claims and Interests, distributions to Claimants and other aspects of the consummation of the Creditor Plan are discussed in greater detail in Article 15 of this Disclosure Statement entitled "Summary of the Creditor Plan."

6. COMPARISON BETWEEN BOW'S CREDITOR PLAN AND DEBTOR'S PLAN

In general, the Second Debtor Plan contemplates that the Debtor will continue to operate its business without material modifications, will pay its secured and priority unsecured creditors in full, over six years, and will pay unsecured creditors about 25% of their claims over the same six years. The Second Debtor Plan also does not propose any changes in the ownership or management of Debtor, except the theoretical possibility that the equity in Debtor will be sold to the highest bidder in an auction to be held about 2 months after confirmation based on only 2 weeks of advertising "in a local newspaper of general circulation." At the same time, the Second Debtor Plan acknowledges over $10.1 million in receivables from various affiliates and states "[t]he above Affiliates do not – and likely will not in the foreseeable future or may never – have the ability to to repay any of the Affiliate Claim to Debtor."

The Creditor Plan, on the other hand, contemplates marketing and selling all of the Debtor's assets as a going concern over about six months. Distributions to secured creditors will be made as soon as possible from the net proceeds of the sale of their collateral. Distributions to priority and general unsecured creditors will be made as soon as possible thereafter in accordance with the Creditor Plan.

7. REASONS WHY BOW'S CREDITOR PLAN IS MORE BENEFICIAL TO DEBTOR'S CREDITORS

BOW believes that the Creditor Plan is superior to the pending Second Debtor Plan because (a) the Creditor Plan satisfies all of the requirements for confirmation of a plan of reorganization, whereas the pending objections assert that the Second Debtor Plan does not, (b) the Creditor Plan eliminates all uncertainty and risk of default and nonpayment that otherwise exists under the Second Debtor Plan, and (c) the Creditor Plan may result in a higher net present value distribution to all creditors based on certain appraisals and other estimates of value that have been provided by Debtor to the Court at various times in the Case.

8. HISTORY AND BACKGROUND OF DEBTOR AND ITS BUSINESS

(a) Bankruptcy Case.

Debtor filed its petition under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court on September 15, 2010. Debtor has continued to operate its business throughout the course of the Chapter 11 case and has been a debtor in possession.

(b) The Debtor's Property and Business.

According to the Second Debtor Disclosure Statement:

> Debtor owns and operates the Quarry, which produces and sells many common limestone products, including crushed and screened products, rip rap and other by-products of the crushing process. The Quarry operation also allows clean fill materials and organic materials to be dumped on the site. The clean fill is used to fill the void created by the mining process. The organic materials are ground into various mulch and dirt products and resold to the public. The Quarry property consists of approximately 450 acres and is located at 9001 Hickman Mills Drive, Kansas City, Missouri 64132. The Debtor also operates a construction business that performs many contracting functions, including, but limited to the following: grading and excavation, sanitary and storm sewers, waterlines, road work, landfill work and residential subdivisions.
>
> The Debtor was incorporated in 1953 by Damon Pursell. Michael Pursell took over as President in the 1980s and still leads the Debtor at the present time. The Quarry property was purchased in 1996 and was reopened as a quarry operation in 1999. It has been operating since that time.

The revenues for the construction business peaked in 2005 and have steadily decreased every year since. This has been a common trend in the industry and generally can be tied to the downturn in the economy and a lack of funding for private and public projects around the country. Conversely, the revenues of the Quarry have generally increased over the past seven (7) years. This can attributed to the improved sales, marketing, and quality of the Quarry's products.

(c) General Overview of Construction Industry.

According to the Second Debtor Disclosure Statement:

Beginning in early 2008, overall construction activity has experienced a dramatic decline.[1] The volume of construction across all end-markets has declined as the global economic environment has deteriorated and credit markets have been disrupted. Despite the cascade of negative news from the construction sector over that time period, emerging data in 2010 suggests that the residential construction market may be nearing the end of its decline, the infrastructure construction market is benefiting from new investment, and the decline in the non-residential construction sector may not be as severe or prolonged as the decline in the residential market.

In addition to recent encouraging data from the residential housing sector, historical analysis reveals that residential investment, including single-family, multi-family, and remodeling activity, has already reached record low levels as a percentage of GDP. Furthermore, residential spending has historically recovered rapidly after reaching a cyclical low, having averaged a 15% compound annual growth rate ("CAGR") in the five years after reaching its last five cyclical low points.

While non-residential investment increased at a record pace through 2008, it occurred after a prolonged period of underinvestment. On a historical basis, non-residential investment is currently only slightly above its average of 3.61% of GDP. Given the current issues in the credit markets and an economic environment that remains sluggish, non-residential construction has slowed considerably from its highs of 2008. However, its peak, at 4.00% of GDP, was only 14% above its historical average, and stands in stark contrast to residential spending, which peaked at 31% above its historical average. Thus, any correction in nonresidential spending may be more modest and shorter in length than the correction in the residential market.

National investment in infrastructure is expected to increase at a 6.5% CAGR through 2012, with growth projected in every region of the United States. In the short-term, investment is expected to be driven in part by the American Recovery and Reinvestment Act ("ARRA"), and is likely to positively impact overall infrastructure construction activity in 2011. Longterm, infrastructure

[1] The source of the information in Section 7(c) is the Bureau of Economic Analysis.

building and repair is a national priority given years of underinvestment in the sector.

9. THE DEBTOR'S FINANCIAL OPTIONS

(a) Liquidation.

According to the Second Debtor Disclosure Statement:

> In order to pay its Creditor's, the Debtor has studied other options to confront the financial difficulties forced upon it by one secured creditor, as discussed below. The Debtor's first option is to liquidate all assets and dissolve. As further discussed in Article 27 [of the Second Debtor Disclosure Statement], the Debtor's estimate of cash generated by liquidation would not be sufficient to pay all of the creditors.
>
> The liquidation of assets would drastically reduce the value of the Quarry. The Quarry is a very unique property. Due to prior mining, the Quarry property was blighted and is undevelopable. Debtor has developed a process to simultaneously mine and reclaim the Quarry property. To date, the Quarry operations have reclaimed a small portion of the property, but the majority remains blighted. Without Debtor's continued operation, the Quarry property will remain blighted and unusable. Thus, the Allowed Claims will only be paid in full by allowing Debtor's continued operation.

BOW doubts Debtor's contentions regarding its liquidation value and submits that the liquidation process provided for in the Creditor Plan will be the only true measure of the Debtor's liquidation value.

(b) Sale as Going Concern.

According to the Second Debtor Disclosure Statement:

> The second option would be to sell off the Debtor's business segments as a going concern to a third party which would continue to operate the businesses. Given the current economic conditions and the lack of work in the industry, it is highly unlikely that the business segments could be sold for an amount sufficient to pay all creditors.
>
> In addition, financing the purchase of a major business is extremely difficult in this current economic market. There have been many failures of firms in the construction industry in the area and around the country. Most banks are actively working to reduce their exposure to the industry, and Debtor anticipates that will continue into the future. Any such sale would likely include seller financing, which would likely provide a payment stream to the creditors over a longer period of time than the Plan proposed by the Debtor.

The nature of the Quarry property would also make it difficult to sell. As discussed above, the property was heavily mined, and as a result is now blighted by several previous operators. The instability of the property and the costly procedures necessary to mine and reclaim the property prevent most prospective buyers from purchasing the Quarry.

The current state of the industry would make the construction side of the business very difficult to sell. It would make much more sense to start a new construction business. This division would need to be liquidated and that option has already been discussed above.

BOW doubts Debtor's contentions regarding the viability of selling the business as a going concern and submits that the liquidation process provided for in the Creditor Plan will be the only true measure of the Debtor's value.

10. REASONS FOR FILING BANKRUPTCY

According to the Second Debtor Disclosure Statement:

While the total revenues of the Debtor have declined over the past few years, the Debtor responded by selling equipment and cutting employees and expenses in order to maintain positive cash flow. ... For the reason discussed immediately below, the Debtor was forced to file for Chapter 11 bankruptcy.

Foreclosure action by CML-MO City Development, LLC.

On August 22, 2008, The Columbian Bank and Trust Company was closed by the FDIC and all loans at the bank were retained and held by the FDIC as receiver. As of this date, the Debtor's loan (Loan No. 10500784) with Columbian Bank and Trust Company was not in default. After the takeover of Columbian Bank and Trust Company, the local FDIC representatives and Debtor negotiated and agreed upon a reduced payoff amount for Loan No. 10500784. During this negotiation period, Loan No. 10500784 matured. In early 2010, while the Debtor was awaiting final approval from the FDIC regional office in Dallas, Loan No. 10500784 was packaged with loans from other failed banks and sold at a discounted rate (estimated at 20% of the amount of the loan based upon a press release from CML's parent organization) to a predecessor in interest of CML-MO City Development, LLC ("CML"), which subsequently acquired Loan No. 10500784. In May 2010, Debtor began negotiating with, and at one point went to New York to meet with, representatives of CML regarding the renewal of the matured Loan No. 10500784. Over the following three months, Debtor and CML had many discussions, but were unable to come to an agreement on terms for that renewal. In August 2010, CML began foreclosure proceedings on the Quarry

property with a sale date of September 15, 2010. With no agreement, and the Quarry property being the location of Debtor's most profitable operation, Debtor was forced to file for Chapter 11 bankruptcy protection to stop those proceedings. If the foreclosure proceedings had been completed, Debtor's revenues would have been substantially reduced, thereby eliminating Debtor's ability to pay its creditors.

11. OWNERSHIP OF THE DEBTOR

According to the Second Debtor Disclosure Statement:

> The Debtor is a Missouri S-Corporation formed on December 23, 1953 and is in good standing with the Office of the Missouri Secretary of State. As of the date of this Disclosure Statement, the Debtor's ownership structure is as follows: Michael Pursell owns 100% of the Debtor.

12. MANAGEMENT AND EMPLOYEES OF THE DEBTOR

According to the Second Debtor Disclosure Statement:

> Currently, the Debtor has 55 employees. The number of employees varies. During the peak construction season, the Debtor will have as many as 90-100 employees, and during the winter off season, the Debtor will have about 30 employees.
>
> The Debtor is managed daily by the President, Michael Pursell. Mr. Pursell has worked for the Company in some capacity for over forty (40) years and is very knowledgeable in the industry. The Debtor also employs the following key employees: (i) officers of Debtor are William Woodside as Vice President, Gary Pauley as Secretary and Estimator and Jason Goertzen as Treasurer; and (ii) Supervisors of Debtor are Casey Kelley as Quarry Supervisor and Fred Stitt as Equipment Supervisor.

13. POST-PETITION ADMINISTRATION

Debtor's bankruptcy case has been the subject of many pending controversies, including but not limited to the following:

Cash Collateral/Adequate Protection Controversy

On September 16, 2010, Debtor filed a certain Motion for Authority to Use Cash Collateral ("Initial Cash Collateral Motion"), Docket No. 11, which states, in relevant part:

a. "Debtor has conducted negotiation [sic] with MCK Partnership, L.L.C., a secured creditor (the "MCK") for use of cash collateral"

b. "As of the Petition date, the outstanding principal balance on the secured debt from MCK is $2,458,302.24. The loan is secured by a valid and perfected *first priority* security interest and lien upon all of Debtor's inventory and accounts..." (emphasis added)

c. "In order to provide MCK with adequate protection, Debtor has agreed to pay $20,000 to MCK on the fifteenth (15th) day of each month beginning October 15, 2010..."

d. "Bank of the West may claim a second priority security interest in the Cash Collateral.... Debtor believes that Bank of the West is fully secured on its loan to M & R Land, L.L.C., and that Bank of the West is not relying upon Debtor's property to satisfy its loan."

On September 17, 2010, the Court entered an Interim Agreed Order Regarding Interim Use of Cash Collateral and Adequate Protection ("Interim Agreed Order"), Docket No. 14, which states, in relevant part:

a. "MCK asserts and Debtor acknowledges that Debtor granted to MCK a valid and perfected first priority security interest in and a lien upon all of Debtor's inventory and accounts (the "Collateral"), and any rents, revenues and proceeds therefrom (the "Cash Collateral")"

b. "To provide additional adequate protection to MCK for Debtor's post-petition use of the Collateral and the Cash Collateral, Debtor will pay an amount of $20,000 to

MCK on the fifteenth (15th) day of each month, beginning on October 15, 2010..."

On September 30, 2010, BOW filed an Objection to the Initial Cash Collateral Motion and the Interim Agreed Order stating, in relevant part:

a. "BOW denies and disputes ... that MCK has a first priority security interest and lien upon all of the Debtor's inventory and accounts"

b. "BOW denies and disputes ... that MCK is entitled to any adequate protection payments at this time"

c. "BOW denies and disputes ... that BOW is 'fully secured' by the collateral pledged by M & R"

d. "BOW denies and disputes ... that BOW 'is not relying upon Debtor's property to satisfy its loan'"

e. "[BOW] is entitled to adequate protection of its interest in all assets of Debtor, including but not limited to cash collateral..."

f. "The Interim Agreed Order erroneously and inappropriately provides certain rights and benefits to MCK, and should be amended and replaced by an order granting adequate protection to BOW and any other party in interest entitled to adequate protection in this case"

On October 18, 2010, the Court entered a certain Second Interim Order Regarding Use of Cash Collateral and Adequate Protection ("Second Interim Cash Collateral Order") which states, in relevant part:

a. "Debtor acknowledges granting valid and perfected security interests to BOW and MCK; however, BOW disputes whether MCK has a valid and perfected first

priority security interest in and lien upon any of Debtor's accounts and inventory, and any rents, revenues and proceeds therefrom."

b. "As partial additional adequate protection for Debtor's post-petition use of the Collateral and the Cash Collateral, Debtor will deposit and hold, in escrow pending further Order of this Court, ... $40,000 ... on the fifteenth (15th) day of each month, beginning on October 15, 2010, and continuing until this Order terminates..."

c. "Nothing in this Order shall be deemed to waive, alter, impair or otherwise affect any rights, claims or defenses of Debtor or any other party in interest, all of which are hereby reserved and preserved."

d. "This order shall be deemed to amend and restate and replace [the Interim Agreed Order]"

On January 18, 2011, Debtor filed a certain Motion for Authority to Use Cash Collateral on an Interim Basis ("January Cash Collateral Motion"), Docket No. 202, which states, in relevant part:

a. "Debtor, MCK and CCG have agreed to a continuance of the Second Interim [Cash Collateral] Order. ... Despite Debtor's and the other parties' willingness to agree to an extension of the Second Interim [Cash Collateral] Order, BOW has refused to agree to an extension."

b. "BOW has undertaken no effort to prove up its lien, versus the lien held by MCK, and Debtor has assumed that MCK has a first lien on the Cash Collateral, and the MCK is entitled to the funds being held in the escrow account."

c. "Said [escrow] account currently contains $160,000, which constitutes monthly payments of $40,000.00 for September 2010 through December 2010. The ultimate distribution of that escrow account is reserved and preserved for future determination by this Court or agreement among the parties."

On January 27, 2011, BOW filed an Objection to the January Cash Collateral Motion which states, in relevant part:

a. "As discussed more fully below, BOW respectfully submits that this Court should condition any grant of the relief requested in the [January] Cash Collateral Motion on Debtor providing BOW adequate protection of its interest in all collateral, including but not limited to cash collateral proceeds of accounts and inventory, and cash collateral payments to BOW as adequate protection of BOW's interests in all assets of Debtor. BOW respectfully further submits that, at a minimum, such adequate protection should include (a) payment of the $160,000 allegedly accumulated by Debtor for the purpose of making adequate protection payments between September and December 2010... and (b) continuing monthly payments in the amount of about $69,000."

b. After reciting the language in paragraph 24. B. above, "Debtor's explanation is patently false, in that a. the Proof of Claim filed by BOW 'constitute[s] prima facie evidence of the validity and amount of the claim', b. prior to Debtor filing the [January] Cash Collateral Motion, MCK has not filed any pleading or Proof of Claim 'proving up' MCK's liens or claims in any property of Debtor, and c. [describing issues with MCK's liens, discussed further below]"

On February 10, 2011, the Court entered a certain Corrected Third Interim Order Regarding Use of Cash Collateral and Adequate Protection, Docket No. 253, which states, in relevant part:

a. "MCK Partnership, LLC; Bank of the West; Commercial Credit Group Inc.; and CML-MO City Development, LLC, all claim to be secured parties with various interests in the assets of the Debtor. However, the priorities and extent of their security interests are in dispute in almost all instances, and none of the named parties has filed an adversary action to determine the priorities and extent of the various liens. This motion is not the proper time, place, or vehicle for the Court to make a determination of those lien interests."

b. "as partial additional adequate protection for the Debtor's post-petition use of the Collateral and the Cash Collateral, the Debtor shall deposit, and hold in escrow pending further Order of the Court, ... the sum of **$60,000** per month, to be deposited on or before the fifteenth (15^{th}) day of each month, retroactive to January 15, 2011, and continuing until this Order terminates...."

Kraus-Anderson Equipment Sale Controversy

Debtor filed a certain Joint Motion to Approve the Sale of Property ("the "Original Sale Motion") on January 7, 2011 under Docket No. 181. In relevant part, the Original Sale Motion proposed to sell certain Equipment and stated: "The Equipment is subject to a first priority purchase money security interest held by NBKC which has agreed to the sale of the Equipment under the terms described herein and the release of its lien in exchange for the receipt of $218,759.68 (NBKC pay off amount as of 1/31/11)."

On the same date as the Original Sale Motion, BOW filed an Objection to the Original Sale Motion, Docket No. 182, stating: " Regarding the $218,759.68 that is proposed to be paid to NBKC, the Sale Motion fails to allege, must less prove, adequate facts to establish that NBKC has a "first priority purchase money security interest" in the Equipment. Among other things, a proper purchase money security interest must be perfected within twenty days after delivery of the equipment to the Debtor. R.S.Mo. 400.9-324(a). There is no proof of such perfection in the Sale Motion. Moreover, the UCC-1 financing statement filed by NBKC on February 23,2007 identifies the collateral with a different serial number, 1008." Accordingly, BOW requested that the Court deposit the funds proposed to be paid to NBKC in escrow pending a determination of whether NBKC had a first priority purchase money security interest.

On January 14, 2011, Debtor withdrew the Original Sale Motion without explanation, Docket No. 198. On February 11, 2011, Debtor filed a new sale motion (the "Second Sale Motion") which, among other things, included electronic signatures for BOW and others, requested approval of the sale of the same equipment as in the Original Sale Motion, explained an alleged "mutual mistake" involving different loans involving Kraus-Anderson and NBKC, and requested approval of a proposed Agreement among Debtor, Kraus-Anderson and NBKC under which Kraus-Anderson will accept an aggregate payment of about $268,000, subject to transferring about $218,000 to NBKC and keeping $50,000.

The Second Sale Motion also recited that BOW "agreed to the to the sale of the Equipment under the terms described herein and in the Agreement and the release of their liens in exchange for the receipt of the payments provided for herein." BOW promptly advised Debtor that BOW did not agree to the Agreement or any payments to Kraus-Anderson or NBKC,

although it supported the sale of the Equipment and payment of all undisputed proceeds to BOW. Debtor withdrew the Second Sale Motion on February 15, 2011, Docket No. 262.

On February 18, 2011, Debtor filed a certain Joint Motion to Approve the Sale of Property ("Third Sale Motion"), Docket No. 269. It was essentially identical to the Second Sale Motion, except it deleted the electronic signature block for BOW and added language requesting that the Court escrow all proceeds (except the $27,500 commission) if any party objects to the Motion. Later on February 18, 2011, BOW filed an Objection to the Third Sale Motion, Docket No. 274, which states, in relevant part:

a. "However, as suggested in the Second and Third Sale Motions and confirmed by a subsequent payment history obtained by BOW after the Second Sale Motion was filed, the alleged purchase money security interest of Kraus-Anderson was paid in full in 2008. Accordingly, BOW became the holder of a first priority lien on the Equipment in 2008. The fact that an alleged mistake was made may entitle NBKC to other remedies, but does not give NBKC a senior lien to BOW on the Equipment proposed to be sold in the Sale Motion."

b. "BOW currently intends to file a declaratory judgment action to allow this Court to determine BOW's rights in the Equipment, as well as BOW's rights against various other lenders in this bankruptcy case. Pending this Court's determination of that adversary action, BOW respectfully suggests that this Court enter an order approving the Sale Motion, approving the payment of sale commissions and expenses ($27,500), approving the proposed payment to BOW ($253,740.32 less a daily per diem of $46.38 after January 31, 2011 until closing of the sale), and

providing for escrow of the remaining sale proceeds ($268,759.68 plus a daily per diem of $46.38 after January 31, 2011)."

On March 4, 2011, the Bankruptcy Court entered a text order approving the sale of the Equipment, payment of $250,000 to BOW, and escrowing of the balance of the sale proceeds "pending a resolution of the dispute over who holds the first priority lien." Thereafter, BOW has received the $250,000 and assumes that Debtor is holding the balance of the sale proceeds in escrow per the order.

Plan Controversy

On February 1, 2011, Debtor filed the Second Debtor Plan, Docket No. 236, which states, in relevant part:

a. "Class 6 – Secured Allowed Claim of MCK Partnership, LLC. Allowed Claim by MCK Partnership, LLC ("MCK") in the amount of $2,458,302.24, which MCK claims is secured by a first position security interest in the accounts receivable and inventory of the Debtor. Beginning thirty (30) days following the confirmation of the Plan, Debtor will make monthly payments of interest and principal of $20,350.00...."

b. "Class 9 – Secured Allowed Claim of Kraus-Anderson Capital. Allowed Claim by Kraus-Anderson Capital ("Kraus") in the amount of $407,882.52, which is secured by a first position security interest in specific personal property of the Debtor. Beginning thirty (30) days after confirmation of the Plan, Debtor will make monthly payments of interest and principal ....which results in a monthly payment of $10,180.85."

c. "Class 12 – Secured Allowed Claim of SG Equipment Finance. Allowed Claim by SG Equipment Finance ("SGEF") in the amount of $195,740.27, which is secured by a first position security interest in specific personal property of the Debtor. Beginning thirty (30) days after confirmation of the Plan, Debtor will make monthly payments of interest and principal....in a monthly payment of $4,872.53."

On February 25, 2011, BOW filed an objection, Docket No. 292, to confirmation of the Second Debtor Plan which, in relevant part, disputes the alleged priority of any secured claim by MCK, Kraus-Anderson, and SG Equipment, and also asserts a number of other objections to confirmation of the Second Debtor Plan. Separate objections to confirmation of the Second Debtor Plan were filed by CML-MO City Development, LLC; Commercial Credit Group, Inc.; and Pony Express Bank, among others.

In addition, if the Bankruptcy Court determines that Kraus-Anderson does not have a lien on the Equipment pursuant to the above discussion about the Kraus-Anderson controversy, then the proposed settlement among Debtor, Kraus-Anderson and National Bank of Kansas City will not be approved and National Bank of Kansas City may have an unsecured claim, instead of a secured claim, against Debtor which needs to be added to the class of General Unsecured Claims without Priority under the Second Debtor Plan.

The Pending Adversary Action

Also on February 25, 2011, BOW filed an adversary action, Case No. 11-0454, subsequently amended and restated in a filing on March 7, 2011, against Debtor, MCK Partnership, LLC; Kraus-Anderson Capital, Inc.; SG Equipment Finance USA Corporation; Commercial Credit Group, Inc.; and CML-MO City Development, LLC to obtain a final

determination from the Bankrutpcy Court on the various controversies identified above. No trial date has been set yet, but a pretrial conference currently is scheduled for April 20, 2011.

14. THE REORGANIZED DEBTOR

On the Effective Date of the Creditor Plan, the Debtor will assume and continue to own and operate its business and assets presently being operated by the Debtor. As discussed above, the CRO will manage the day-to-day operations of the Debtor. All other directors, officers, and employees will continue to be employed by the Debtor at the CRO's discretion.

15. SUMMARY OF CREDITOR PLAN OF REORGANIZATION

BOW's Creditor Plan in its entirety is enclosed concurrently with this Disclosure Statement. THE FOLLOWING IS A BRIEF SUMMARY OF THE CREDITOR PLAN. THIS SUMMARY SHOULD NOT BE RELIED ON FOR VOTING PURPOSES. EACH CREDITOR IS URGED TO READ THE ENTIRE CREDITOR PLAN AND TO CONSULT WITH COUNSEL OR ANY OTHER TRUSTED ADVISER IN ORDER TO FULLY UNDERSTAND THE CREDITOR PLAN. THE CREDITOR PLAN IS COMPLEX AND REPRESENTS A PROPOSED LEGALLY BINDING DOCUUMENT.

(a) Financial Basis for the Creditor Plan.

The Creditor Plan is based upon an orderly sale of Debtor's assets over a period of about six (6) months with the proceeds being distributed to the Debtor's creditors. Although BOW cannot assure any party that they will receive more than they would under the Second Debtor Plan, the Creditor Plan complies with the Bankruptcy Code and offers greater certainty to creditors. BOW therefore believes that confirmation of the Creditor Plan would be in the best interest of the creditors and the Debtor.

(b) Administrative Expenses

Administrative Expenses are treated under the Creditor Plan in the manner required by the Bankruptcy Code and, therefore, are unclassified. The Creditor Plan provides that all administrative expenses, which include the costs and expenses incurred in connection with the Reorganization Case subsequent to the filing date, will be paid in full in cash according to the ordinary terms under which they are incurred or, if due and not previously paid, on the Effective Date. They include all fees and costs of certain attorneys, accountants, consultants, other professionals employed at the expense of the Debtor's Estate, and the fees of the Office of the United States Trustee. Such fees, costs and expenses will be paid at a time and in an amount allowed by the Bankruptcy Court.

All payments to be made to authorized professionals in the Case will be made in accordance with specific procedures established by the Bankruptcy Court relating to the payment of interim compensation and are subject to final allowance by the Bankruptcy Court. After the Confirmation Date, the Bankruptcy Court may review all previously unreviewed fees paid and to be paid to the authorized professionals and any additional requests for compensation and reimbursement of expenses. The Bankruptcy Court may then determine the final fee and cost allowances for these authorized professionals to the extent their fees and costs need to be determined in a final fee and cost allowance.

At the present time, the Court has approved the employment by the Chapter 11 Estate of the law firm of Dunn & Davison, LLC as counsel or Debtor. In addition, the Court has approved the employment of Lentz, Clark Deines PA as counsel or the Official Committee of Unsecured Creditors. And the Court has also approved the employment of various appraisers and other experts by Debtor. Each of these approved professionals may assert Administrative Expense

claims. No estimate for these Administrative Expense Claims has been made. However, Debtor hased filed Monthly Operating Reports to date in the case which suggest that Debtor should be in a position to pay any Administrative Expenses in the ordinary course of business.

(c) Classification and Treatment of Claims

Class 1 – Allowed Claims paid as Administrative Convenience – Pursuant to 11 U.S.C. § 1122(b), Debtor shall pay all Allowed Claims in the amount of $1,000.00 or below as an administrative convenience within thirty (30) days after the later of the Effective Date or the date such Claim becomes an Allowed Claim.

Class 2 –Allowed Secured Claims of CML-MO City Development, LLC

CML-MO City Development, LLC – To the extent CML-MO City Development, LLC ("CML") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent CML has an Allowed General Unsecured Claim, it will be treated Pro Rata in Class 25 with all of the other Allowed General Unsecured Claims. Class 2 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 3 –Allowed Secured Claim of Allen Financial

Allen Financial Corporation – To the extent Allen Financial Corporation has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent Allen Financial Corporation has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 3 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 4 – Allowed Secured Claim of Wells Fargo

Wells Fargo Equipment Finance – To the extent Wells Fargo Equipment Finance ("Wells Fargo") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent Wells Fargo has an Allowed General Unsecured Claim, it will be treated Pro Rata in Class 25 with all of the other Allowed General Unsecured Claims. Class 4 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 5 – Allowed Secured Claim of Citizens Bank & Trust Company

Citizens Bank & Trust Company – To the extent Citizens Bank & Trust Company ("Citizens") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent Citizens has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 5 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 6 – Allowed Secured Claim of MCK Partnership, LLC

MCK Partnership, LLC – To the extent MCK Partnership, LLC ("MCK") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent MCK has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 6 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 7 – Allowed Secured Claim of Commercial Credit Group Inc.

Commercial Credit Group Inc. – To the extent Commercial Credit Group Inc. ("CCG") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in

accordance with the Bankruptcy Code. To the extent CCG has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 7 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 8 – Allowed Secured Claim of Ford Motor Credit Company LLC

Ford Motor Credit Company LLC – To the extent Ford Motor Credit ("Ford") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent Ford has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 8 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 9 – Allowed Secured Claim of Kraus Anderson Capital

Kraus-Anderson Capital – To the extent Kraus-Anderson Capital ("Kraus") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent Kraus has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 9 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 10 – Allowed Secured Claim of M & I Bank

M & I Bank – To the extent M & I Bank ("M & I") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent M & I has an Allowed General Unsecured Claim, it will be treated in Class

25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 10 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 11 – Allowed Secured Claim of National Bank of Kansas City

National Bank of Kansas City – To the extent National Bank of Kansas City ("NBKC") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent NBKC has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 11 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 12 – Allowed Secured Claim of SG Equipment Finance

SG Equipment Finance – To the extent SG Equipment Finance ("SGEF") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent SGEF has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 12 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 13 – Allowed Secured Claim of Pony Express Bank

Pony Express Bank – To the extent Pony Express Bank ("PEB") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent PEB has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 13 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 14 – Allowed Secured Claim of UMB Bank

UMB Bank – To the extent UMB Bank ("UMB") has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent UMB has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 14 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 15 – Allowed Secured Claim of Jackson County

Jackson County – To the extent Jackson County has an Allowed Secured Claim, it will be paid from the proceeds of the sale of its collateral in accordance with the Bankruptcy Code. To the extent Jackson County has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 15 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 16 – Allowed Secured Claim of Platte County

Platte County – To the extent Platte County has an Allowed Secured Claim, it will be paid from the proceeds of the sale of its collateral in accordance with the Bankruptcy Code. To the extent Platte County has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. Class 16 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 17 –Allowed Unsecured Claim with Priority of Jackson County

Jackson County - To the extent Jackson County has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. Class 17 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 18 – Allowed Unsecured Claim with Priority of Platte County

Platte County - To the extent Platte County has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. Class 18 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 19 –Allowed Unsecured Claim with Priority of Missouri Division of Employment Security

Missouri Division of Employment Security - To the extent Missouri Division of Employment Security has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. The Class 19 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 20 – Allowed Unsecured Claim with Priority of Clay County

Clay County - To the extent Clay County has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. The Class 20 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 21 – Allowed Unsecured Claim with Priority of Missouri Department of Revenue

Missouri Department of Revenue - To the extent Missouri Department of Revenue has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with

other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. The Class 21 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 22 – Allowed Unsecured Claim with Priority of Mo-Kan Teamsters Fringe Benefits

Mo-Kan Teamsters Fringe Benefits - To the extent the Mo-Kan Teamsters has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. The Class 22 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 23 – Allowed Unsecured Claim with Priority of Operating Engineers Local 101 Fringe Benefits

Operating Engineers Local 101 Fringe Benefits - To the extent the Operating Engineers Local 101 has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. The Class 23 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 24 – Allowed Unsecured Claim with Priority of Heavy Construction Laborers Union Fringe Benefits

Heavy Construction Laborers Union Fringe Benefits - To the extent the Heavy Construction Laborers Union has an Allowed Priority Unsecured Claim, it will be paid on the Final Distribution Date pari passu with other Allowed Priority Unsecured Claims to the extent

possible from the available Cash proceeds after the sale of the Debtor's assets. The Class 24 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 25 – General Unsecured Claims without Priority

General Unsecured Claims without Priority – Class 25 consists of all Allowed General Unsecured Claims not. Class 25 claims shall be paid on the Final Distribution Date subordinate to all Allowed Priority Unsecured Claims to the extent possible from the available Cash proceeds after the sale of the Debtor's assets. Class 25 is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 26 – Contingent, Unliquidated Secured Claim of Bank of the West

Contingent, Unliquidated Secured Claim of Bank of the West ("BOW") – To the extent BOW has an Allowed Secured Claim, it will be paid from the proceeds of the sale of their collateral in accordance with the Bankruptcy Code. To the extent BOW has an Allowed General Unsecured Claim, it will be treated in Class 25 Pro Rata with all of the other Allowed General Unsecured Claims. The Class 26 creditor is an impaired class within the meaning of Section 1124 of the Bankruptcy Code.

Class 27 – Interest of the Member and Owner of Debtor

Interest of the Member and Owner of Debtor – Class 27 consists of the interest of the member and owner of Debtor. These interests will be deemed cancelled as of the Effective Date and any distributions will be limited to available cash, if any, after payment of any Allowed Claims under the Creditor Plan.

16. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

All executory contracts and unexpired leases that are not specifically assumed or rejected prior to confirmation of the Creditor Plan, or which have not been assumed or rejected in

connection with the sale(s) contemplated pursuant to the terms of the Creditor Plan, will be deemed rejected. Notice of a deadline for filing any claims relating to any rejected executory contract or unexpired lease will be provided after completion of the sale(s) contemplated pursuant to the terms of the Creditor Plan.

18. MEANS FOR EXECUTION OF THE CREDITOR PLAN

(a) Cash Flow from Business Operations.

The CRO will execute the Creditor Plan through a continuation of operations as contemplated under the Creditor Plan. The operation of Debtor's business is expected to generate sufficient Net Cash Flow to fully pay all Allowed Administrative Claims that are to be paid by or on the Effective Date, and all remaining Allowed Secured Claims and Allowed Unsecured Claims will be paid with proceeds from the sale of the Debtor's assets in accordance with the Creditor Plan.

(b) Cash From Sale of Assets.

During the approximately six (6) month period after the Effective Date, the CRO, with the assistance of the Investment Banker, will market and sell Debtor's to the highest and best bids. All sales will be free and clear of all liens and claims without having to obtain any consent from any creditor holding any lien, provided however, that the relevcant secured creditor will be given notice of and opportunity to credit bid at any sale(s) and the net sale proceeds will be delivered to the secured creditor (and applied against the Allowed Secured Claim) in accordance with the terms and conditions of the Creditor Plan.

18. VOTING ON ACCEPTANCE OR REJECTION OF THE CREDITOR PLAN AS GOVERNED BY THE PROVISIONS OF THE BANKRUPTCY CODE

Each voting creditor will be supplied with an official ballot in the form prescribed by the bankruptcy court. Creditors may vote to accept or reject the Creditor Plan by filing a completed ballot with the clerk of the bankruptcy court. A class of creditors will be considered to have accepted the Creditor Plan, (1) if accepted by creditors holding at least two-thirds an amount and more than one half in number of the Allowed Claims of such class that have voted; or (2) if the class is unimpaired within the meaning of the Bankruptcy Code.

After time for voting on the Creditor Plan passes, the Bankruptcy Court will hold a hearing and rule on confirmation of the Creditor Plan in accordance with the Bankruptcy Code. If all requirements for confirmation of Creditor Plan under the Bankruptcy Code are satisfied except that the Creditor Plan is not accepted by each class of creditors, the Bankruptcy Court may confirm the Creditor Plan without acceptance of creditors if the Bankruptcy Court finds that the Creditor Plan does not discriminate unfairly, and is fair and equitable, within the meaning of the Bankruptcy Code with respect to any class of creditors that does not accept the Creditor Plan.

19. TREATMENT OF EQUITY INTEREST HOLDERS

Any and all equity interests in Debtor will be deemed cancelled and any distributions will be limited to Cash, if any, after payment of all Allowed Claims under the Creditor Plan.

20. DISTRIBUTIONS AND CAUSES OF ACTION

On and after the Effective Date, the Reorganized Debtor will make all distributions under the Creditor Plan required to be made by the Reorganized Debtor to or for the benefit of the holders of Allowed Claims.

Pursuant to § 1123(b)(3)(B) of the Bankruptcy Code, the Debtor may investigate, file, enforce, exercise, abandon, prosecute, adjust, settle or compromise all Claims, proceedings, rights and causes of action of the Debtor and its Estate, other than Claims, proceedings, rights

and causes of action that have been waived, released, compromised or settled under or in connection with the Creditor Plan or otherwise. After the Effective Date, the Reorganized Debtor reserves its right to pursue any avoidance actions under §§ 544, 545, 547, 548, and 549 of the Bankruptcy Code.

DEBTOR DID NOT DISCLOSE ANY RETAINED CAUSES OF ACTION UNDER THE SECOND DEBTOR DISCLOSURE STATEMENT OR THE SECOND DEBTOR PLAN. ACCORDINGLY, BANK OF THE WEST IS UNABLE TO SPECIFICALLY IDENTIFY ANY SUCH RETAINED CAUSES OF ACTION THAT MAY EXIST UNDER THE CREDITOR PLAN. HOWEVER, EACH CREDITOR IS HEREBY ADVISED THAT SUCH CREDITOR MAY BE SUED TO AVOID AND RECOVER AS A PREFERENCE UNDER SECTION 547 OF THE BANKRUPTCY CODE ANY TRANSFER OF CASH OR OTHER PROPERTY IT RECEIVED FROM DEBTOR WITHIN THE 90 DAYS PRIOR TO THE PEITION DATE. IN ADDITION, EACH CREDITOR IS HEREBY ADVISED THAT SUCH CREDITOR MAY BE SUED TO AVOID AND RECOVER AS A FRAUDULENT TRANSFER UNDER EITHER SECTIONS 544 OR 548 OF THE BANKRUPTCY CODE ANY TRANSFER OF CASH OR OTHER PROPERTY IT RECEIVED FROM DEBTOR UP TO FOUR YEARS OR MORE PRIOR TO THE PETITION DATE.

21. REVESTING OF PROPERTY OR DISCHARGE OF CLAIMS

(a) Revesting of Property.

The Estate will terminate and all property will revest in Debtor on the Effective Date subject to the terms and conditions of the Plan.

(b) No Discharge of Claims and Debts.

Pursuant to Section 1141(d)(3), confirmation of the Creditor Plan will not discharge Debtor or any claim against Debtor. However, the rights of all creditors to assert any Claim will be governed by the terms of the Creditor Plan and the Confirmation Order

22. JURISDICTION OF THE BANKRUPTCY COURT

Pursuant to Section 11.1 of the Creditor Plan, after the Confirmation Date and after the Effective Date, the Bankruptcy Court will retain the authority and jurisdiction as is allowed under Title 28 of the United States Code, the Bankruptcy Code or other applicable law. Section 11.10.1 further describes a number of specific matters and proceedings with respect to which the Bankruptcy Court will continue to have jurisdiction, including, but not limited to, (1) proceedings relating to Claims, Interests or rights in, Liens on or title to property the Debtor or its Estate; (2) the enforcement, interpretation or modification of the Creditor Plan, the Confirmation Order or any document, instrument, agreement or action undertaken in connection with the Creditor Plan or the Confirmation Order or any order entered in the Case before or after the Effective Date; (3) taxes, tax refunds, tax attributes and tax benefits and similar related matters with respect to the Debtor, its Estate or the Reorganized Debtor arising prior to the Effective Date or relating to the period of administration after the Effective Date; and (4) applications for compensation or reimbursement of expenses incurred before or after the Effective Date, to the extent provided under the Bankruptcy Code, the Bankruptcy Rules, the Creditor Plan or the Confirmation Order.

23. CONDITIONS TO THE EFFECTIVENESS OF THE CREDITOR PLAN

(a) Conditions.

The following conditions must occur and be satisfied on or before the Effective Date for the Creditor Plan to be effective on the Effective Date:

i. The Confirmation Order shall have been signed by the Bankruptcy Court and duly entered on the docket for the Case by the Clerk of the Bankruptcy Court in form and substance acceptable to BOW; and

ii. The Confirmation Order shall be a Final Order.

(b) Waiver of Conditions.

The conditions set forth above may be waived or modified in whole or in part by BOW.

24. MISCELLANEOUS PROVISIONS

(a) Dates on which Distributions are Made.

All distributions under the Creditor Plan to be made to or for the benefit of the holders of Allowed Claims shall be made by the Debtor to or for the benefit of the holders of Allowed Claims as and when due in the manner set forth in the Creditor Plan, or as soon thereafter as is practicable. Each distribution to be made by the Debtor to the holders of Allowed Claims shall be made by check.

(b) Modification of the Creditor Plan.

The Creditor Plan may be altered, amended or modified only by BOW before, on, or after the Confirmation Date pursuant to § 1127 of the Bankruptcy Code. The Creditor Plan may not be altered, amended, or modified without the written consent of BOW or Order of the Bankruptcy Court, as the case may be.

(c) Addresses for Distributions to the Holders of Allowed Claims.

Unless otherwise provided in the Creditor Plan or a Final Order of the Bankruptcy Court, distributions to be made under the Creditor Plan by Debtor to the holders of Allowed Claims shall be made by first class United States mail, postage prepaid, to the latest mailing address set forth in a Proof of Claim timely filed with the Bankruptcy Court by or on behalf of the holders of

the Allowed Claim or, if no such Proof of Claim has been timely filed, the mailing address set forth in the Schedules of Assets and Liabilities filed by the Debtor in the Reorganization Case, as amended. It is the duty and responsibility of each holder of an Allowed Claim entitled to participate in distributions under the Creditor Plan to notify the Debtor of its most recent address. The Reorganized Debtor is not required to make any other effort to locate or ascertain the address of the holder of any Allowed Claims.

(d) Cramdown.

If any impaired Class under the Creditor Plan fails to vote to accept the Creditor Plan, BOW has reserved the right to request at the Confirmation Hearing that the Bankruptcy Court find that the Creditor Plan does not discriminate unfairly and is fair and equitable with respect to each such impaired Class, and confirm the Creditor Plan pursuant to § 1129(b) of the Bankruptcy Code.

25. RISK ANALYSIS

The following is intended to be a summary of certain material risks associated with the Creditor Plan and the Reorganized Debtor, but is not exclusive. Each creditor should analyze and evaluate the Creditor Plan and the risks and the other information set forth in this Disclosure Statement as a whole with the creditor's advisors in determining whether to vote to accept or reject the Creditor Plan.

(a) Inherent Uncertainty in Continued Operations.

There can be no assurance that the Reorganized Debtor will be able to continue to operate as a going concern. If the Reorganized Debtor is unable to continue operating as a going concern, then the values received from the sale(s) of the Reorganized Debtor's assets may be substantially

less than they would have been if the Reorganized Debtor was able to continue operating as a going concern.

(b) Tax Consequences.

Confirmation of the Creditor Plan may have significant tax consequences that may adversely affect the Reorganized Debtor and certain creditors. See Section 26 below.

(c) Other Factors.

In addition, other issues unidentified or unquantified at the present may adversely affect the Reorganized Debtor.

26. TAX CONSEQUENCES OF THE CREDITOR PLAN

(a) Introduction.

BOW BELIEVES THAT EACH HOLDER OF A CLAIM SHOULD DISCUSS ANY POTENTIAL INCOME TAX CONSEQUENCES OF THE CREDITOR PLAN WITH A COMPETENT TAX ADVISER IN ORDER TO FULLY UNDERSTAND THE TAX IMPACT OR POTENTIAL IMPACT OF THE CREDITOR PLAN ON SUCH HOLDER OF A CLAIM OR INTEREST.

(b) Federal Taxes.

A summary description of certain United States ("U.S.") federal income tax consequences of the Creditor Plan is provided below. The description of tax consequences below is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various U.S. federal income tax consequences of the Creditor Plan as discussed herein. Only potential material U.S. federal income tax consequences of the Creditor Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Creditor Plan,

and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the Internal Revenue Service (the "IRS") or any other tax authorities have been obtained or sought with respect to any tax consequences of the Creditor Plan, and the discussion below is not binding upon the IRS or such authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Creditor Plan to the Debtors or to any particular holder of claims or Interests. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the U.S. federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated and proposed thereunder, judicial decisions, and administrative rulings and pronouncements of the IRS and other applicable authorities, all as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained herein would affect the tax consequences to the holders of claims or Interests. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

The Creditor Plan may modify or affect the timing of the federal income tax treatment of Claims. The Creditor Plan proposes to pay less than 100% of many Allowed Claims. Accordingly, it is anticipated that the Reorganized Debtor may have cancellation of debt issues with respect to Federal income tax consequences.

THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE OR LOCAL TAX CONSEQUENCES OF THE CREDITOR PLAN, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE CREDITOR PLAN TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES, S CORPORATONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE GENERALLY NOT DISCUSSED HEREIN.

BOW MAKES NO REPRESENTATION NOR RENDERS ANY OPINION AS TO WHAT THE INCOME TAX CONSEQUENCES WILL BE OR ARE LIKELY TO BE IN THE CASE OF CONFIRMATION OF THE CREDITOR PLAN TO ANY CREDITOR. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. EACH MEMBER OF EACH CLASS IS SOLELY RESPONSIBLE FOR DETERMINING THE FEDERAL INCOME TAX CONSEQUENCES APPLICABLE TO ITS OWN CIRCUMSTANCES. CREDITORS ARE ADVISED TO CONSULT WITH THEIR TAX ADVISORS CONCERNING THE TAX CONSEQUENCES OF THE CREDITOR PLAN AS IT AFFECTS THEIR PARTICULAR CLAIM OR INTEREST, INCLUDING THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE CREDITOR PLAN, INCLUDING WITH RESPECT TO TAX REPORTING AND

RECORD KEEPING REQUIREMENTS. NO OPINION OF TAX COUNSEL HAS BEEN SOUGHT AFTER OR OBTAINED IN CONNECTION WITH THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED HEREIN ARE ONLY GENERAL OBSERVATIONS AND ARE NOT TO BE INTERPRETED OR CONSTRUED AS LEGAL ADVICE.

THE IRS REQUIRES WRITTEN ADVICE REGARDING ONE OF MORE U.S. FEDERAL TAX ISSUES TO MEET CERTAIN STANDARDS. THOSE STANDARDS INVOLVE A DETAILED AND CAREFUL ANALYSIS OF THE FACTS AND APPLICABLE LAW WHICH HAVE NOT BEEN DETERMINED TO MAKE THAT TYPE OF ANALYSIS IN CONNECTION WITH THE FOREGOING DISCUSSION. AS A RESULT, WE ARE REQUIRED TO ADVISE YOU THAT ANY U.S. FEDERAL TAX ADVICE RENDERED IN THE FOREGOING DISCUSSION IS NOT INTENDED OR WRITTEN TO BE USED AND CANNOT BE USED FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED BY THE IRS.

27. ALTERNATIVES TO THE CREDITOR PLAN

If the Creditor Plan is not confirmed, the alternatives for creditors include the filing of another Plan by Debtor or another party-in-interest, conversion of the Chapter 11 case to Chapter 7 liquidation, or dismissal of the case. The pending Second Debtor Plan is discussed herein and in the Second Debtor Disclosure Statement. Any other plan of reorganization that might be offered by any other party is difficult to predict. Accordingly, the liquidation and dimsissal alternatives are discussed below.

A. LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

A liquidation of the Debtor under Chapter 7 could be conducted. For the reasons set forth below, BOW believes that the distributions to all Allowed Claims under the Creditor Plan will be at least equal to, if not greater than, the distributions that might be received after a liquidation of the Debtor pursuant to Chapter 7 of the Bankruptcy Code. To calculate what a member of each Class of Claims and Interests would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the dollar amount that would be generated from the liquidation of the Debtor. In a Chapter 7 case, a Chapter 7 trustee likely would immediately discontinue operation of Debtor's busienss. This would prevent the Chapter 7 Trustee from realizing a "going concern value" for the Debtor's assets. Instead, the Chapter 7 Trustee likely would realize only a "liquidation value" for the Debtor's assets. While the Creditor Plan cannot assure that Debtor's operations will continue, or that a "going concern value" will be realized, the Creditor Plan at least maximizes the possibility of that happening and should not result in recovering less than a "liquidation value" that otherwise might be realized in the Chapter 7 case.

In addition, in a Chapter 7 case, any liquidation proceeds must be reduced by the costs of the Chapter 7 liquidation in order to ascertain the possible distributions to holders of General Unsecured Claims and Interests. The costs of liquidation under Chapter 7 would likely include at least the fees and expenses of the Chapter 7 trustee, as well as those of counsel and other professionals that might be retained by the Chapter 7 trustee. These Allowed Claims, and such other Allowed Claims as might arise in the Chapter 7 liquidation may be higher or lower than the Allowed Claims for professionals retained by the Reorganized Debtor under the Creditor Plan.

B. DISMISSAL

Dismissal of the case would have the effect of restoring (or attempting to restore) all parties to their status prior to the filing of the Reorganization Case. The likely consequence of a dismissal is the institution of foreclosure proceedings by one or more of the secured creditors and lawsuits by unsecured creditors who would then attempt to levy on the Debtor's assets. These foreclosures would terminate the Debtor's business operations and piecemeal liquidation at foreclosure prices Therefore, BOW believes that dismissal of the case is not a viable alternative to the Creditor Plan.

30. CONFIRMATION REQUIREMENTS

At the hearing on the confirmation of the Creditor Plan, the Bankruptcy Court will confirm the Creditor Plan only if the requirements of the Bankruptcy Code, particularly those set forth in §1129, have been satisfied.

A. ACCEPTANCES NECESSARY TO CONFIRM THE CREDITOR PLAN

At the hearing on the confirmation of the Creditor Plan, the Bankruptcy Court must determine, among other things, whether the Creditor Plan has been accepted by the requisite amount and number of Allowed Claims in each impaired Class. Under the Bankruptcy Code, a Class of creditors is impaired if their legal, equitable or contractual rights are altered by a proposed Creditor Plan of Reorganization. If a Class is not impaired, each creditor in such unimpaired Class is conclusively presumed to have accepted the Creditor Plan pursuant § 1126(f) of the Bankruptcy Code. All Classes are impaired under the Creditor Plan and holders of Allowed Claims in such Classes are entitled to vote for or against the Creditor Plan by completing and returning the ballots mailed to them with the Disclosure Statement in the manner set forth in the ballots.

Under § 1126 of the Bankruptcy Code, an impaired Class of creditors and each holder of a Claim in such Class will be deemed to have accepted a Creditor Plan if the holder of at least two-thirds in amount and more than one-half in number of the Allowed Claims in such impaired Class for which completed ballots have been received have voted for acceptance of the Creditor Plan. An impaired Class of equity Interests and each holder of an Interest in such Class will be deemed to have accepted a Creditor Plan if the Creditor Plan has been accepted by at least two-thirds in amount of the Interests in such Class who actually vote on the Creditor Plan.

If all impaired Classes under the Creditor Plan do not accept the Creditor Plan, the Debtor intends to request the Bankruptcy Court to confirm the Creditor Plan pursuant to § 1129(b) of the Bankruptcy Code. To confirm the Creditor Plan under § 1129(b) of the Bankruptcy Code, the Bankruptcy Court must determine, among other things, that the Creditor Plan does not discriminate unfairly and that it is fair and equitable with respect to each Class of impaired Allowed Claims that have not voted to accept the Creditor Plan.

B. BEST INTERESTS OF CREDITORS

To satisfy one of the requirements necessary for confirmation of the Creditor Plan, the proponent of the Creditor Plan must establish and the Bankruptcy Court must find that, with respect to each Class of Allowed Claims under the Creditor Plan, each holder of an Allowed Claim in that Class either has accepted the Creditor Plan or will receive or retain under the Creditor Plan on account of such Allowed Claims property of a value that is at least the amount that such holder would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Section 29 of this Disclosure Statement entitled "Liquidation Under Chapter 7 of the Bankruptcy Code" contains an analysis of the likely results of a Chapter 7 liquidation of the Debtor. The Bankruptcy Court must compare the value of the distributions that would be made to

each Class in a Chapter 7 liquidation case to the value of the distributions to each Class under the Creditor Plan to determine if the Creditor Plan is in the best interest of each Class of Allowed Claims. BOW BELIEVES THAT THE CREDITOR PLAN IS IN THE BEST INTEREST OF THE HOLDERS OF ALL ALLOWED CLAIMS AND PROVIDES VALUE TO ALL OF THEM AT LEAST IN AMOUNTS COMPARABLE TO WHAT THEY WOULD RECEIVE IN A CHAPTER 7 LIQUIDATION CASE OF THE DEBTOR.

C. FEASIBILITY

As a condition to confirmation of the Creditor Plan, the Bankruptcy Code requires the Bankruptcy Court to determine that confirmation is not likely to be followed by liquidation of the Reorganized Debtor or the need for its further financial reorganization. BOW believes that the results set forth in the Creditor Plan are reasonable and attainable, and that the Reorganized Debtor will generate sufficient funds to operate and meet the obligations under the Creditor Plan.

HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CAREFULLY READ AND CONSIDER THE FACTORS SET FORTH ABOVE AS WELL AS OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT PRIOR TO VOTING TO ACCEPT OR REJECT THE CREDITOR PLAN. BOW BELIEVES THAT THE CREDITOR PLAN IS FEASIBLE AND URGES THE HOLDERS OF ALL ALLOWED CLAIMS VOTING ON THE CREDITOR PLAN TO VOTE TO ACCEPT THE CREDITOR PLAN.

BANK OF THE WEST

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