

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE:

TJB AIR CONDITIONING, LLC,

CASE NO. 15-31350

CHAPTER 11

Debtor.

_____ /

THIRD AMENDED DISCLOSURE STATEMENT

The Debtor, TJB AIR CONDITIONING, LLC, submits this Second Amended Disclosure Statement (the “Disclosure Statement”) to its creditors and other parties in interest. The approval of the Disclosure Statement is not tantamount to a decision by the Court on the merits of the Second Amended Plan of Reorganization (the “Plan” or “Plan of Reorganization.”)

I. INTRODUCTION

A. Purpose of this Document.

This Disclosure Statement is submitted pursuant to the requirement imposed on the proponent of a Plan of Reorganization by 11 U.S.C. § 1125. The purpose is to disclose information deemed to be material, important, and necessary for the creditors to arrive at a reasonably informed decision in exercising their right, or to vote for acceptance or rejection of the Plan of Reorganization. This Disclosure Statement should be read in conjunction with the accompanying Plan of Reorganization. The Plan is a legally binding document once it is approved by the Court, and should be read in its entirety. Accordingly, creditors may wish to consult with their own attorney to more fully understand the Plan.

No representations concerning the Debtor, its future business operations, the value of its

property or the value of any benefits offered to holders of claims or interests in connection with the Plan are authorized other than as set forth in this Disclosure Statement. Any representations or inducements made to secure acceptance of the Plan other than those contained in this Disclosure Statement should not be relied upon by a creditor or interest holder. Any such additional representations and inducements should be reported to counsel for the Debtor at the address below and to the United States Trustee.

The information contained in this Disclosure Statement has not been subject to certified audit and is based in large extent on information maintained and collected by the Debtor. While every effort has been made to provide the most accurate information available, the books and records of the Debtor are not warranted or represented to be completely and historically accurate. Further, much of the information contained herein consists of projections of future performance. While every effort has been made to insure that the assumptions are valid and that the projections are as accurate as can be made under the circumstances, neither the Debtor nor its accountant undertakes to certify or warrant the absolute accuracy of the projections.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. Time and Place of the Hearing to Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on _____, in Courtroom A, Room 801, at 1515 North Flagler Drive, West Palm Beach, FL 33401.

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to accept or reject the plan, vote on the enclosed ballot and return the ballot to the United States Bankruptcy Court, 1515 N. Flagler Drive, Room 801, West Palm Beach, FL 33401. See section VIII for a discussion of voting eligibility requirements.

The ballot must be filed with the Bankruptcy Court by _____ or it will not be counted.

3. Deadline for Objecting to the Confirmation of the Plan. Objections to the confirmation of the Plan must be filed with the Court and served upon the Debtor; attorney for the Debtor, Brian K. McMahon, P.A., 1401 Forum Way, 6th Floor, West Palm Beach, FL 33401; Heidi Feinman, Office of the U.S. Trustee, 51 S.W. First Ave, Suite 1204, Miami, FL 33130; and all interested parties by _____.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Brian K. McMahon, 1401 Forum Way, 6th Floor, West Palm Beach, FL 33401.

5. Effective Date. As the term is used in this disclosure statement and the plan of reorganization, the effect date shall be the first business day following fourteen (14) days after the entry of Order of Confirmation.

II. BACKGROUND

The Debtor, TJB Air Conditioning, LLC, is a heating and air conditioning contractor that is a Service Disabled Veteran Owned Small Business. The sole member of the Debtor is Jeffrey Babbitt. The Debtor contracts exclusively with the federal government and works on military bases or with the FAA. The company has been in existence for four years. The principal

of the Debtor, however, has 44 years of experience in heating and air conditioning. The projects on which the Debtor works are located throughout the country. The Debtor has three employees and employs independent contractors throughout the country for the various projects. A few years prior to the filing, the principal of the Debtor was diagnosed with health issues resulting in him being unable to work. During that time, the Debtor did not bid on any projects and incurred a shortfall. In an attempt to keep the Debtor operating and completing the existing projects, the Debtor borrowed money from some factoring companies. Further medical issues of the Debtor's principal again resulted in an inability of the Debtor to bid on any projects. The Debtor got behind on the payments to the factoring companies and they proceeded to file suit. As of now, the Debtor's principal is well and has been busy rebuilding the company. At the time of the filing of the case, the Debtor had, and still has, projects at Minot Air Force Base; Harrisburg, PA; Parsons, Indiana; and, the biggest project, Indiana National Guard. During the course of the bankruptcy, the Debtor has had net income of over \$400,000.00. At the time of the filing of this Disclosure Statement, the Debtor had \$87,030.40 in its bank account. Projects are not limited to the five mentioned. The Debtor will continue to bid on projects during the course of the plan period. Income projections are based on the Debtor receiving a net income of about 10% of the contract price. The projections are based on the Debtor continuing to be awarded projects for the next five years.

III. FINANCIAL INFORMATION

The Debtor has filed schedules of assets, liabilities, income and expenses, a Statement of Financial Affairs, and Monthly Operating Reports which contain the most accurate and current information available to the Debtor.

A. Real Property. The Debtor does not own any real property.

B. Personal Property

The Debtor has office furniture, inventory, and raw materials. A complete list of these items are attached hereto.

C. Ability to Fund and Complete Plan

The Debtor's ability to fully fund the plan and make payments is dependent on continuing to be awarded governmental contracts. In the next six to nine months, the Debtor expects to have net income of approximately \$1,115,000.00. This income is subject to being reduced by higher than expected expenses.

IV. EXECUTORY CONTRACTS

The Debtor has a lease with Mike O'Hara for its manufacturing plant in New Jersey. At this location, the Debtor manufactures sheet metal. The Debtor has determined that it may be cheaper to buy sheet metal from another source. Thus the Debtor has rejected this lease. It also has a copier lease with Delage. This lease is assumed.

Any warranties for the Debtor's work that existed at the time of the filing of the case and still remain are assumed by the Debtor.

V. LIQUIDATION ANALYSIS

Estimated value of assets:

Deposits	\$101,600.00
Tools, equipment and inventory	\$3,240.00
Office furniture and equipment	\$2,000.00
Accounts Receivable	<u>\$80,056.00</u>

Cash on hand ____\$87,030.40_____

Liens on assets:

Colonial Business Funding	\$ 258,764.23
Colonial Surety Company	\$ 50,000.00 ¹
St. Lucie County	<u>\$ 73,560.00</u>

Total Liens	\$382,324.23
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Amount available for unsecured creditors	\$0.00
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Administrative Claims	\$104,064.69
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Priority Claims	\$ 0.00
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Amount available for general unsecured creditors	\$0.00
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V. SPECIAL RISK FACTORS

Certain substantial risk factors are inherent in most plans of reorganization in Chapter 11 cases. If such plans are accepted, it is usually because they represent a greater return in dividends than in a liquidating Chapter 7 case. This Plan bears the risk that the Debtor continues to receive contracts from the federal government. If this case were dismissed or converted, it is not likely that creditors will receive any distribution.

ALL THE RISK FACTORS INHERENT IN A PLAN OF REORGANIZATION UNDER CHAPTER 11 ARE PRESENT IN THIS CASE. CREDITORS ARE URGED TO CAREFULLY READ THIS DISCLOSURE STATEMENT AND THE ACCOMPANYING

¹ The \$50,000 represents a settlement with Colonial Surety as part of the Plan.

PLAN OF REORGANIZATION SO THAT AN INFORMED JUDGMENT CAN BE MADE WITH RESPECT TO VOTING ON THE PLAN.

VII. SUMMARY OF NON-BANKRUPTCY LITIGATION

At the time of the filing of the case, there were not any pending cases against the Debtor. There were three lawsuits listed on the statement of financial affairs at the time of the filing.

Pemberton Farms Associates vs. TJB Air Conditioning – this suit was not against TJB, the suit was filed against another company owned by the son of the Debtor’s principal.

Luna Concrete Contracting vs. TJB Air Conditioning – this suit was not against TJB, the suit was filed against another company owned by the son of the Debtor’s principal.

Capital Funding Network vs. TJB Air Conditioning – this suit is resolved by the payments provided in the plan.

A lawsuit was filed in the United States District Court, District of New Jersey, captioned United States for the use of Ciright Automation, LLC, et al. v. Volmar Construction, Inc., et al. Case No. 15-cv07586. Ciright and Tristate have filed claims totaling less than \$100,000.00. Volmar has filed a cross-claim against the Debtor for approximately \$1,000,000.00. The Debtor disputes these claims and has hired an attorney, approved by this Court, to defend the action. The lawsuit is not likely to be resolved prior to confirmation. To avoid delay in payment to other creditors, the parties involved in this lawsuit have been placed in a separate class.

VIII. CLAIMS

The deadline to file a proof of claim was April 7, 2016.

The Debtor's scheduled unsecured claims totaled \$742,744.09.

The Debtor filed objections to claims and received orders disallowing claims totaling \$181,713.66. See ECF 130 and 131 entered on November 15, 2016.

The claims of Everest Business Funding were listed as unsecured in the amount of \$84,594 but Everest has a secured claim.

The total amount of scheduled unsecured claims, not including the claims of Volmar Construction, Ciright Automation, Tristate HVAC Equipment, and Colonial Surety Company, is \$376,767.43.

Colonial Surety Company has filed a secured claim in the amount of \$2,296,418.47. It is anticipated that Colonial Surety will be reducing its claim. Colonial Surety has agreed to limit the secured portion of its claim as a settlement with Debtor as part of its Plan to \$50,000.00. A portion of the claim of Colonial Surety is contingent on the amount of claims it will have to pay on behalf of the Debtor. To date, Colonial Surety has paid certain claims post-petition, and has incurred substantial fees and costs, and is in the process of and/or at risk for having to pay additional claims post-petition.

Colonial Surety has asserted an administrative claim and will be filing an application with the Court for such claim. In settlement of Colonial Surety's allowed administrative claim Debtor and Colonial Surety have agreed as part of the Plan on the amount of \$79,064.69 to be paid in equal installment 60 months to be approved by separate order and/or as part of the Confirmation Order approving the Plan. The settlement of Colonial Surety's administrative claim is an integral part of the Plan. The Debtor does not object to this claim as a settlement amount and the plan proposes payment of the claim. Any deficiency between Colonial Surety's claimed administrative expense claim and the amount agreed upon as part of the Plan shall be

treated as an allowed general unsecured claim and will receive a pro rata distribution according to the Plan.

The claims filed by Volmar Construction, Inc., Ciright, Tristate are disputed and subject to litigation in New Jersey.² Ciright (allegedly owed \$45,340) and Tristate (allegedly owed \$54,329) are sub-contractors of the Debtor and filed a lawsuit for payment against Volmar, the contractor, and the Debtor (the “New Jersey litigation”). Volmar has filed a cross-claim against the Debtor in the amount of \$1,071,784.65. The Debtor has counter-claims against Ciright and Tristate. The Debtor contends that the claim asserted by Volmar is inflated and unsubstantiated.

To allow other creditors to be paid pending the New Jersey litigation, the claims of Volmar Construction, Ciright Automation, Tristate HVAC Equipment, and Colonial Surety Company will be separately classified so that payments can begin for the undisputed creditors.

For purposes of voting and without prejudice to any party’s rights regarding the allowed amount of such claims, including, without limitation, for distribution purposes, Colonial Surety Company shall be permitted to vote an allowed unsecured claim in Class 7 in the amount of \$1,623,050.90.

Adjustment of Certain Claims: At such time as the Litigation is resolved, Debtor shall be authorized to move, on notice to all parties in interest and with an opportunity for same to object, to expunge and/or adjust the amounts of the unsecured claims of Volmar, Colonial Surety Company, Tristate HVAC and Ciright Automation in accordance with the final, non-appealable resolution of the Litigation. All parties reserve their rights, claims and defenses with respect to the claims against the estate and any motion to expunge and/or adjust such claims.

² Debtor disputes the amount of Colonial Surety’s claim to the extent the claim includes the disputed claims of Ciright, Tri-state and Volmar.

IX. SUMMARY OF PLAN OF REORGANIZATION

A. Purpose of the Plan of Reorganization

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

1. Administrative Claims

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

Administrative claims:

Professional fees:	Estimated \$25,000.00	Subject to Court authorization, to be paid in
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		full on effective date or as agreed to by attorney and Debtor. To date, the Debtor has paid a retainer of \$20,000.00
Office of the U.S. Trustee	Current	Paid in full on effective date
Colonial Surety Company	\$79,064.69 ³	To be paid in equal installments over 60 months.

2. Priority Claims

No priority claims have been filed.

C. Classes of Claims and Equity Interests

The Plan shall provide for the payment of all expenses of this proceeding, including fees due the Office of the U.S. Trustee. The accompanying Plan of Reorganization divides creditors into the following classes:

Class 1 – The allowed secured claim of Colonial Funding in the amount of \$258,764.23 will be paid in full at the interest rate of 5% over a period of 60 months. The monthly payments will be in the amount of \$4,883.20, and the first payment will be on the effective date with each subsequent payment being made on the same date of the month as the first payment. Liens against collateral shall remain until this claim is paid in full according to this Plan. This class is impaired.

Class 2 – The allowed secured claim of Everest Business Funding in the amount of \$73,560.00. This amount will be paid at a rate of 0% over a period of 60 months. The monthly

³ Colonial Surety's administrative claim has not yet been approved by the Court. The plan provides for an allowed administrative claim in an amount of _\$79,064.69 as a settlement of Colonial Surety's administrative claim.

payment will be in the amount of \$1,226.00 and the first payment will be on the effective date with each subsequent payment being made on the same date of the month as the first payment. Liens against collateral shall remain until this claim is paid in full according to this Plan. This class is impaired.

Class 3 – The allowed secured claim of Nissan Motor Acceptance is secured by a vehicle and will be paid in accordance with the contract. Liens against collateral shall remain until this claim is paid in full according to this Plan. This class is unimpaired.

Class 4 – Colonial Surety Company will have an allowed secured claim in the amount of \$50,000.00 and be paid through equal monthly installments starting on the effective date and with each subsequent payment being made on the same date of the month as the first payment and continuing for 60 months (\$833.33 per month). Colonial Surety Company will maintain all its secured interests and liens as they existed prior to the bankruptcy until paid in full and such secured interests and liens shall survive confirmation of the Plan. Colonial Surety Company has reserved all of its rights with respect to bonds issued by Colonial Surety Company and with respect to the payment and indemnity agreement as to non-debtor indemnitors and there are no third-party releases by Colonial Surety under the Plan.⁴ This class is impaired.

Class 5 – Unsecured Claims. Class 5 – This class excludes the unsecured claims of Volmar, Tristate HVAC and Ciright Automation and Colonial Surety Company and claims asserted against and/or being paid by Colonial Surety and/or to which Colonial Surety is

⁴ By agreement and order of the Court [ECFR #108] payments to the Debtor for projects in which Colonial Surety Company is the surety shall be placed in a separate bank account (“Account”) and shall be used only for payment of subcontractors and material men on those projects. Debtor shall provide notice to Colonial Surety Company of all disbursements from and deposits into the Account. This agreement shall survive confirmation of the Plan and shall remain in full force and effect post-effective date, subject to any modifications agreed to by and between Debtor and Colonial Surety Company in writing.

subrogated and/or is assignee.⁵

The allowed claims of non-insider unsecured creditors will be paid in full over a period of 60 months. The estimated amount of unsecured claims excluding those listed above and any claims paid by Colonial Surety, is \$186,354.67. Subject to the provisions set forth for payment to Class 7 creditors below, the Debtor will pay \$3,100.00 per month pro rate for 60 months to holders of allowed unsecured claims who are not insiders or officers of the Debtor until such claimants are paid in full. Notice will be mailed to claimants with allowed claims in Class 5 and Class 7 when Class 5 is paid in full. Insiders or officers of the Debtor will not receive a distribution. This class is impaired.

Class 6 – Convenience Class. Any creditor that has an allowed unsecured claim of less than \$5,000.00 can opt to be paid in this class. This class of creditors will be paid 25% of their total allowed unsecured claims within 30 days of the effective date. Creditors receiving payments in this class will not be entitled to any further payment. Creditors holding claims in excess of \$5,000.00 have the option of reducing their claim to \$5,000.00 and being paid in this class. This class is impaired.

Class 7 - The claims of Volmar, Colonial Surety Company, Tristate HVAC and Ciright Automation and other claims asserted against Colonial, allegedly total approximately \$1,623,050.90 and are unliquidated and subject to litigation pending in New Jersey (the “Litigation”). The Litigation will not be resolved prior to confirmation. The Debtor proposes to dedicate \$8,900.00 per month (the “Escrow Distribution”) to the payment of these creditors until fully paid. The money will be placed in an escrow account of Debtor’s counsel until the litigation is resolved (the “Escrow Account”). This class is impaired.

⁵ To the extent Colonial Surety asserts subrogation rights, Colonial Surety shall not be subordinated to such claimants.

Volmar, Colonial Surety Company, Tristate HVAC and Ciright Automation will receive notice of where the Escrow Account is held and any change in such account as well as thereafter quarterly statements and a final statement when the funds in escrow are released. Promptly, upon the resolution of the Litigation and fixing of claims, Volmar, Colonial Surety Company, Tristate HVAC and Ciright Automation, to the extent that they have allowed unsecured claims, will receive distributions from the Escrow Account on account of such claims and, if such claims have not been paid in full, will thereafter receive contemporary monthly distributions of \$8,900 pro rata until paid in full. The first payment into the Escrow Account will occur on the Effective Date and thereafter all monthly payments shall be paid on the same day of the month as the first.

Class 7 includes the unsecured claims Colonial Surety may assert via subrogation rights and/or as assignee and further includes any difference between the amounts agreed upon as Colonial Surety's administrative expense claim and secured claim as part of the Plan and the amounts claimed by Colonial Surety and Colonial Surety will receive pro rata distributions on account of such claims under the Plan until the principal amount is paid in full.

When Class 5 claimants are paid in full, if Class 7 claimants have not yet been paid in full, Class 7 Claimants to the extent each such claimant has an allowed claim shall also receive pro rata until they are paid in full the additional \$3,100 which was being paid to Class 5 as set forth herein. If the Class 7 claims have not been liquidated, the additional \$3,100 shall be placed in the Escrow Account. If the Class 7 claims have been liquidated, Class 7 claimants will receive pro rata distributions on account of such allowed claims until paid in full. Similarly, if Class 7 Claimants are paid in full and Class 5 Claimants have not yet been paid in full, Class 5 Claimants shall receive pro rata until they are paid in full as additional monthly pro

rata distributions the \$8,900 per month which was paid to Class 7. To the extent any overage in payment remains in the Escrow Account after Class 5 and Class 7 claimants have been paid in full, such funds shall be paid to the Debtor. If Class 7 is paid in full prior to Class 5, notice will be mailed to claimants with allowed claims in Class 5 and Class 7 when Class 7 is paid in full. Class 7 is impaired.

Class 8 – The members of the Debtor shall retain all property of the estate. Debtor's principal shall not receive a draw and/or salary in excess of the current draw/salary of approximately \$2,000.00 per week until creditors in Class 5 and Class 7 are paid in full.

The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. Section 1930(a)(6) within ten (10) days of the entry of this order for pre-confirmation periods and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period. The reorganized Debtor shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon all disbursements of the reorganized debtor for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), until the earlier of the closing of this case by the issuance of a Final Decree by the Court, or upon the entry of an Order by this Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code, and the party responsible for paying the post-confirmation United States Trustee fees shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the cash disbursements for the relevant period.

The plan proposes to pay all costs and expenses of administration within thirty days of the date of confirmation of the Plan, or within such additional time as the administrative claimants may allow (such as in the case of Colonial Surety). The total amount of

administrative expenses has not yet been determined, but will be set by the Court at the hearing on the confirmation of the Plan.

The plan will be funded by the income received by the Debtor from current and future projects it is awarded. The Debtor has attached the debtor in possession monthly reports and future projections. The Plan of Reorganization is deemed by the Debtor to be feasible.

X. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requires that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. What is an Allowed Claim?

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was April 6, 2016.

2. What is an Impaired Claim?

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is Not Entitled to Vote?

The holders of the following types of claims and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of claims and equity interests that are not “allowed claims” or “allowed equity interests”, unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3) and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and

– administrative expenses

Even if you are not entitled to Vote on the Plan, you have a right to object to Confirmation of the Plan.

4. Who Can Vote in More than One Class?

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class of creditors, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes as discussed below in Section B.2.

1. Votes Necessary for a Class to Accept the Plan

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Nonaccepting Classes

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the

Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes or of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a “cram down” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

XI. EFFECT OF CONFIRMATION OF PLAN

On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan, your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

XII. CONCLUSION

The Plan offers to cure the amount owed to secured creditors and pay unsecured 100% of their allowed claim without interest.

TJB Air Conditioning, LLC
By Jeffrey Babbitt, its Managing Member

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By: /s/ Brian K. McMahon

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