

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**In re:**

**Chapter 11**

**Singleton Creek, Inc.,**

**Case No. 16-71772-LRC**

**Debtor.**

**DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR'S PLAN OF LIQUIDATION**

Filed by:

Singleton Creek, Inc., Debtor and Debtor in Possession.

Attorney for Debtor and Debtor in Possession:

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**Disclaimer**

*All Creditors and Holders of Interests are advised and encouraged to read this Disclosure Statement and the Plan in their entirety. Plan summaries and statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan, any exhibits, and the Disclosure Statement as a whole.*

*This Disclosure Statement has been prepared in accordance with § 1125 of the Bankruptcy Code and Rule 3016(c) of the Federal Rules of Bankruptcy Procedure and not in accordance with federal or state securities laws. This Disclosure Statement has neither been approved nor disapproved by the Securities and Exchange Commission (“SEC”), nor has the SEC passed on the accuracy or adequacy of the statements contained herein. This Disclosure Statement was prepared to provide holders of Claims and Interests in Debtor with “adequate information” (as defined in the Bankruptcy Code) so that they can make an informed judgment about the Plan.*

*As to contested matters, adversary proceedings, and other actions or threatened actions, this Disclosure Statement shall not constitute nor be construed as an admission of any fact or liability, stipulation, or waiver, but rather as a statement made in settlement negotiations.*

*The information contained in this Disclosure Statement is included herein for the purpose of soliciting acceptances of the Plan and may not be relied upon for any purpose other than to make a judgment with respect to, and how to vote on, the Plan.*

*This Disclosure Statement shall not be admissible in any non-bankruptcy proceeding involving Debtor and any party, nor shall it be construed to be conclusive advice on the tax, securities, or other legal effects of the Plan as to Holders of Claims against, or Interests in, Debtor.*

**I. Introduction and General Information**

This disclosure statement (“Disclosure Statement”) is submitted by Singleton Creek, Inc. (the “Debtor”), to provide information to parties in interest about the Chapter 11 Plan (the

“Plan”) filed by Debtor. This introductory section is qualified in its entirety by the detailed explanations which follow and the provisions of the Plan. This Disclosure Statement sets forth certain information regarding Debtor's prepetition history and events that have occurred during Debtor's Chapter 11 case. This Disclosure Statement also describes the Plan, alternatives to the Plan, effects of confirmation of the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and voting procedures that holders of Claims in Impaired Classes must follow for their votes to be counted.

This Disclosure Statement contains summaries of certain provisions of the Plan, statutory provisions, documents related to the Plan, events in Debtor's Chapter 11 case, and financial information. Although Debtor believes that the Plan and related document summaries are fair and accurate, such summaries are qualified to the extent that they do not set forth the entire text of such documents or statutory provisions. Factual information contained in this Disclosure Statement has been provided by Debtor's management, except where otherwise specifically noted. Debtor is unable to warrant or represent that the information contained herein, including the financial information, is without any inaccuracy or omission. The financial data set forth herein, except as otherwise specifically noted, has not been subjected to an independent audit.

Nothing contained herein shall (1) constitute an admission of any fact or liability by any party, (2) be admissible in any non-bankruptcy proceeding involving Debtor or any other party; provided, however, that in the event Debtor default under the Plan, the Disclosure Statement may be admissible in a proceeding relating to such default for the purpose of establishing the existence of such default, or (3) be deemed conclusive advice on the tax or other legal effects of Debtor's Plan as to holders of Claims or Interests. You should consult your personal counsel or tax advisor on any questions or concerns regarding tax or other legal consequences of the Plan.

Except for historical information, all the statements, expectations, and assumptions, including expectations and assumptions contained in this Disclosure Statement, involve a number of risks and uncertainties. Although Debtor has used its best efforts to be accurate in making these statements, it is possible that the assumptions made by Debtor may not materialize.

In addition, other important factors could affect the prospect of recovery to Creditors including, but not limited to, the inherent risks of litigation and the amount of Allowed Claims.

***Parties voting on the Plan should read both the Plan and this Disclosure Statement.***

A. Definitions

Unless otherwise defined, capitalized terms used in this Disclosure Statement have the meanings ascribed to them in the Plan. In the event of an inconsistency between the Disclosure Statement and the Plan, the terms of the Plan shall govern and such inconsistency shall be resolved in favor of the Plan. The Filing Date, as defined in the Plan, shall mean December 5, 2016, and the Effective Date is defined in Article 2 of the Plan.

B. The Disclosure Statement

The primary purpose of this Disclosure Statement is to provide parties entitled to vote on the Plan with adequate information so that they can make a reasonably informed decision prior to exercising their right to vote to accept or reject the Plan.

The Bankruptcy Court's approval of this Disclosure Statement constitutes neither a guarantee of the accuracy or completeness of the information contained herein, nor an endorsement of the Plan by the Bankruptcy Court. When and if confirmed by the Bankruptcy Court, the Plan will bind Debtor and all holders of Claims against and Interests in Debtor, whether or not they are entitled to vote or did vote on the Plan and whether or not they receive or retain any Distributions or property under the Plan. Thus, you are encouraged to read this Disclosure Statement carefully. In particular, holders of Impaired Claims who are entitled to vote on the Plan are encouraged to read this Disclosure Statement, the Plan, and any exhibits to the Plan and Disclosure Statement, carefully and in their entirety before voting to accept or reject the Plan. This Disclosure Statement contains important information about the Plan, the method and manner of distributions under the Plan, considerations pertinent to acceptance or rejection of the Plan, and developments concerning this case.

## **II. Voting on the Plan and Confirmation Process**

### **A. Voting Instructions**

Upon filing its Chapter 11 Plan and this Disclosure Statement, Debtor will set a hearing date for the approval of the latter. Upon entry of an Order approving the Disclosure Statement, the Court will set times for objection to the plan, and the Debtor will send copies of (1) the Plan and (2) a Ballot to be executed by holders of Claims in Classes 1 – 5 (the “Voting Classes”) to accept or reject the Plan. The Ballot contains voting instructions. Please read the instructions carefully to ensure that your vote will count.

The Disclosure Statement, the form of Ballot, and the related materials delivered together herewith (collectively, the “Solicitation Package”), will be furnished to Holders of Claims in Classes 1 – 5 for the purpose of soliciting votes on the Plan.

If you do not receive a Ballot in your Solicitation Package, and believe that you should have received a Ballot, please contact the Law Offices of Douglas Jacobson, LLC, 2450 Atlanta Highway, Suite 803, Cumming, GA, 30040, (770-887-3700).

### **B. Who May Vote**

Only a holder of an Allowed Claim classified in an Impaired Class is entitled to vote on the Plan. As set forth in section 1124 of the Bankruptcy Code, a class is “Impaired” if legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified or altered.

Any class that is “unimpaired” is not entitled to vote to accept or reject a plan of reorganization and is conclusively presumed to have accepted the Plan.

A Claim must be “allowed” for purposes of voting in order for such creditor to have the right to vote. Generally, for voting purposes a Claim is deemed “allowed” absent an objection to the Claim if (1) a proof of claim was timely filed, or (ii) if no proof of claim was filed, the Claim is identified in Debtor's Schedules as other than “disputed,” “contingent,” or “unliquidated,” and

an amount of the Claim is specified in the Schedules, in which case the Claim will be deemed allowed for the specified amount. In either case, when an objection to a Claim is filed, the creditor holding the Claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection, or allows the Claim for voting purposes. ***Accordingly, if you did not receive a Ballot and believe that you are entitled to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim for voting purposes.***

Debtor in all events reserves the right through the claim reconciliation process to object to or seek to disallow any claim for distribution purposed under the Plan.

### C. Requirements of Confirmation

The Bankruptcy Court can confirm the Plan only if all the requirements of § 1129 of the Bankruptcy Code are met. Those requirements include the following:

- ↪ The Plan classifies Claims and Interests in a permissible manner;
- ↪ The contents of the Plan comply with the technical requirements of the Bankruptcy Code;
- ↪ The Plan has been proposed in good faith and not by any means forbidden by law;
- ↪ The disclosures concerning the Plan are adequate and include information concerning all payments made or promised in connection with the Plan, as well as the identity, affiliations, and compensation to be paid to all officers, directors, and other insiders; and
- ↪ The principal purpose of the Plan is not the avoidance of tax or the avoidance of the securities laws of the United States.

In addition to the confirmation requirements described above, the Plan must also be approved by all Impaired Classes of Claims entitled to vote. If, however, the Plan has not been approved by all Impaired Classes of Claims, the Court may nevertheless “cram down” the Plan

over the objections of a dissenting Class. The Plan may be “crammed down” so long as it does not discriminate unfairly, is fair and equitable with respect to each dissenting Class of Claims, and at least one Impaired Class has voted in favor of the Plan without regard to any votes of insiders. If necessary, Debtor will seek to “cram down” the Plan.

#### D. Acceptance or Rejection of the Plan and Cram Down

The Class containing your Claim will have accepted the Plan by the favorable vote of majority in number and two-thirds in amount of Allowed Claims actually voting. In the event that any Impaired Class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan if an Impaired Class accepts it and if, as to each Impaired Class that has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.” If you hold an Allowed Secured Claim, the Plan is fair and equitable if you retain your lien and receive deferred cash payments totaling the allowed amount of your Secured Claim as of the Effective Date of the Plan, the collateral is sold and your Lien attaches to the proceeds of the sale, or you are otherwise provided with the “indubitable equivalent” of your Allowed Secured Claim. If you hold a Claim that is not an Allowed Secured Claim, and is not entitled to priority under § 507 of the Bankruptcy Code, the Plan is fair and equitable if you receive property of a value equal to the allowed amount of your Claim or if no junior Class receives or retains anything under the Plan.

#### E. Confirmation Hearing

The Bankruptcy Court may enter an order (the “Scheduling Order”) that schedules a final hearing to consider confirmation of the Plan (“Confirmation Hearing”) at the time indicated in the Scheduling Order. The Confirmation Hearing may be adjourned from time to time without further notice except for announcement at the Confirmation Hearing or notice to those parties present at the Confirmation Hearing.

#### F. Objections to Confirmation

Any objections to Confirmation of the Plan must be in writing, set forth the objector's standing to assert any such objection, and must be filed with the Bankruptcy Court and served on

counsel for Debtor. The Scheduling Order contains all relevant procedures relating to the submission of objections to confirmation and should be reviewed in its entirety by any party who has an objection to confirmation.

#### G. Hearing on Confirmation

Upon approval of the Disclosure Statement, the Court will set a date for a hearing (the “Confirmation Hearing”) to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for Confirmation of the Plan have been satisfied. The Confirmation Hearing will be held in the United States Courthouse, Courtroom 1204, 75 Spring Street, SW, Atlanta, Georgia 30303 before the Honorable Lisa Ritchey Craig, United States Bankruptcy Judge. The Confirmation Hearing may be continued from time to time and day to day without further notice. If the Court confirms the Plan, it will enter the Confirmation Order.

#### H. Whom to Contact for More Information

If you have any questions about the procedure for voting your Claim or the packet of materials you received, please contact Douglas Jacobson at the address indicated below or by telephone at (770) 887-3700. If you wish to obtain additional copies of the Plan, this Disclosure Statement, or the exhibits to those documents, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), please contact the Law Offices of Douglas Jacobson, LLC, 2450 Atlanta Highway, Suite 803, Cumming, GA, 30040. You may also contact Mr. Jacobson by telephone at (770) 887-3700 or by electronic mail at [douglas@douglasjacobsonlaw.com](mailto:douglas@douglasjacobsonlaw.com)

### **III. Historical Background**

#### A. Description of Debtor

Debtor is a corporation with an ownership interest in a nine-hole golf course and driving range in Gwinnett County, Georgia, from which it derives all of its income.



## B. Prepetition Assets and Liabilities

Debtor's assets as of the Filing Date consisted of the following: Equity in real estate of approximately \$830,000.00.

Debtor's liabilities consist of the following debts secured by collateral:

- 1) a debt of approximately \$2,567,481.51, secured by real estate located at 2987 Satellite Boulevard, Duluth, Georgia;
- 2) a debt of \$1,082,433.54, secured by real estate located at 2987 Satellite Boulevard, Duluth, Georgia;
- 3) a debt of approximately \$500,000.00, secured by real estate located at 2987 Satellite Boulevard, Duluth, Georgia;
- 4) a debt of \$17,631.97, secured by a lien of the Gwinnett County Tax Commissioner.

Information with respect to assets and liabilities was taken from Debtor's schedules and claims filed in the case.

## **IV. The Chapter 11 Case**

### A. Reasons for Filing Chapter 11 and Commencement of the Chapter 11 Case

Debtor is a Georgia corporation formed in 2006 by Hoke S. Randall, III and Kevin McOmber. It presently owns and operates a golf course and driving range located on a single tract of real property located on Satellite Boulevard in Gwinnett County, Georgia. (the "Real Property") The property is subject to three (3) outstanding security deeds, described above.

Debtor has engaged in business since 2009, but a decrease in the public's disposable income has negatively affected its business, and a proposed sale of its property in 2016 failed to

come to fruition, leaving Debtor with no option other than filing this Chapter 11 case in order to maximize the value of the Real Property for the benefit of all of its creditors and interest holders.

In order to liquidate in an orderly manner, Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on December 5, 2016 (the “Chapter 11 Case”). No trustee or examiner has been appointed in the Chapter 11 Case. Debtor has continued to operate as Debtor in Possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code.

#### B. Bar Order

On December 6, 2016, Debtor filed its Motion to Establish Bar Date for Filing Proofs of Claim (the “Bar Motion”) wherein Debtor requested that the Court enter an order under Bankruptcy Rule 3003(c)(3) establishing a deadline for filing proofs of claim. On December 12, 2016, this Court entered an Order setting February 6, 2017, as the deadline for non-government proofs of claim.

#### **V. Plan Overview**

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. The Plan is a plan of liquidation and provides for the distribution of the proceeds from Debtor’s liquidation of its assets (as discussed below).

The Plan provides for the classification and treatment of Claims against and Interests in Debtor. For classification and treatment of claims against and equity interests in each Debtor, the Plan designates five (5) Classes of Claims and one (1) Class of Interests. These classes and plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Interests. Pursuant to the Plan, Debtor will be dissolved and all existing interests in Debtor (including all issued and outstanding membership interests) will be extinguished and canceled.

5.1 Summary of Classification and Treatment of Claims and Interests under the Plan

The following chart briefly summarizes the treatment of Creditors and Interest Holders under the Plan. Amounts listed below are estimated. Actual Claims and Distributions will vary depending upon, among other things, the outcome of objections to Claims.

a. Unclassified Claims

Class No.	Description	Estimate of Amounts Allowable	Treatment
N/A	Admin Claims: Estimated Recovery: 100%	\$0	Debtor will pay each Holder of an Allowed Administrative Claim in full in the amount of its Allowed claim from the Administrative/Priority claims account, without interest, in cash promptly after the date the claim becomes an Allowed Claim. The Holder of an Allowed Administrative Claim may be paid on such other date and upon such other terms as may be agreed upon in writing by that Holder of an Allowed Administrative claim and Debtor
N/A	Professional Fees Claims Estimated Recovery: 100%	\$42,500.00	Debtor will pay Professionals all of their respective accrued and Allowed fees and reimbursement of expenses arising prior to the Effective Date plus post-Effective Date fees.

b. Classified Claims

<b>Class No.</b>	<b>Description</b>	<b>Estimate of Claims Allowable</b>	<b>Treatment</b>
1	Secured Claim of Gwinnett County Tax Commissioner; Estimated Recovery: 100%	\$17,631.97	Class 1 consists of the Allowed Claim of the Gwinnett County Tax Commissioner secured by the Real Property. Class 1 will be paid in full upon the sale of the Real Property; provided, however that any Holder of Allowed Class 1 Claim may be treated on such less favorable terms as may be agreed to in writing by such Holder. Class 1 is an Impaired Class and Holders of a Class 1 Claim are entitled to vote on the plan.
2	Secured Claim of Gwinnett Community Bank; Estimated Recovery: 100%	\$2,567,481.51	Class 2 consists of the Allowed Claim of the Gwinnett Community Bank secured by the Real Property. Class 2 will be paid in full upon the sale of the Real Property; provided, however that any Holder of Allowed Class 2 Claim may be treated on such less favorable terms as may be agreed to in writing by such Holder. Class 2 is an Impaired Class and Holders of a Class 2 Claim are entitled to vote on the plan.
3	Secured Claim of U.S. Small Business Administration; Estimated Recovery: 100%	\$1,082,433.54	Class 3 consists of the first Allowed Claim of the U.S. Small Business Administration, secured by the Real Property. Class 3 will be paid in full upon the sale of the Real Property; provided, however that any Holder of Allowed Class 3 Claim may be treated on such

			less favorable terms as may be agreed to in writing by such Holder. Class 3 is an Impaired Class and Holders of a Class 3 Claim are entitled to vote on the plan.
4	Secured Claim of U.S. Small Business Administration; Estimated Recovery: 100%	\$500,000.00 (anticipated)	Class 4 consists of the second Allowed Claim of the U.S. Small Business Administration, secured by the Real Property. Class 4 will be paid in full upon the sale of the Real Property; provided, however that any Holder of Allowed Class 4 Claim may be treated on such less favorable terms as may be agreed to in writing by such Holder. Class 4 is an Impaired Class and Holders of a Class 4 Claim are entitled to vote on the plan.
5	Disputed Priority Claim of the Internal Revenue Service; Estimated Recovery: \$0	\$0.00	Debtor disputes validity of the IRS Claim and has requested that an amended proof of claim be filed.
6	Equity Interests	\$30,000.00	The value of the Assets is expected to be sufficient to satisfy the Allowed Claims of Classes 1 – 4 in full. Any funds remaining after payment of all Allowed claims (whether classified or unclassified) will be paid to Holders of the Equity Interests. Class 6 is an Unimpaired Class and is deemed to have accepted the Plan pursuant to 11 U.S.C. § 1126(f)

**VI. Administrative Expense Claims and Professional Fees**

Treatment of administrative expense claim is set forth in Article 5 of the Plan and summarized below.

**A. Summary.**

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims against Debtor are not classified for purposes of voting on, or receiving Distributions under this Plan. Holders of such Claims are not entitled to vote on this Plan. All such Claims are instead treated separately in accordance with this Article VI and in accordance with the requirements set forth in section 1129(a)(9)(A) of the Bankruptcy Code.

With respect to potential Administrative Expense Claims, Debtor, pursuant to Court order, retained the law firm of Law Offices of Douglas Jacobson, LLC (“Jacobson”) to serve as bankruptcy counsel. As set forth in the employment application and supporting documents, Jacobson received \$10,000.00 from the Debtor pre-petition, with \$1717.00 expended for the Chapter 11 filing fee and \$675.00 for pre-petition work. The amount of \$7,608.00 remains in Jacobson's IOLTA account, and shall remain there until proper application is made therefor.

Debtor will incur additional fees, which Debtor shall pay to Jacobson on the Effective Date, unless otherwise agreed by the firm.

Debtor, pursuant to further Court Order, retained the law firm of Gilbert, Harrell, Sumerford and Martin, PC, as Special Counsel. As set forth in the employment application, order authorizing post-petition financing and supporting documents, Special Counsel is authorized to receive \$30,000.00 from the Debtor post-petition upon proper application.

**B. Administrative Expense Claims.**

Subject to the provisions of sections 328, 330(a) and 331 of the Bankruptcy Code, each holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in Cash on the latest of (1) the Effective Date, (ii) as soon as practicable after the date on which such Claim becomes an Allowed Administrative Expense Claim, (iii) upon such other terms as may be agreed upon by such holder and Debtor or Reorganized Debtor, or (iv) as otherwise ordered by the Bankruptcy Court; provided, however, that

Allowed Administrative Expense Claims representing obligations incurred by Debtor in the ordinary course of business, or otherwise assumed by Debtor on the Effective Date pursuant to this Plan, including any tax obligations arising after the Filing Date, will be paid or performed by

Reorganized Debtor when due in accordance with the terms and conditions of the particular agreements or non-bankruptcy law governing such obligations.

Except as otherwise provided in this Plan, any Person holding an Administrative Expense Claim, other than an Administrative Expense Claim arising from Debtor's operation of its business in the ordinary course of business, shall file a proof of such Administrative Expense Claim with the Bankruptcy Court within thirty (30) days after the Effective Date. At the same time any Person files an Administrative Expense Claim, such Person shall also serve a copy of the Administrative Expense Claim upon counsel for Reorganized Debtor. Any Person who fails to timely file and serve a proof of such Administrative Expense Claim shall be forever barred from seeking payment of such Administrative Expense Claims by Debtor, the Estate, or Reorganized Debtor.

Any Person seeking an award by the Bankruptcy Court of Professional Compensation shall file a final application with the Bankruptcy Court for allowance of Professional Compensation for services rendered and reimbursement of expenses incurred through the Effective Date within the time set by the Bankruptcy Court. Debtor's attorney fees during the remaining pendency of the case shall be paid as the same may be approved by the Bankruptcy Court. The Plan provides that Debtor may pay professional fees incurred after confirmation of the Plan without Court approval. Debtor shall pay all pre-confirmation fees of professionals as payment of the same is approved by the Court.

## **VII. Classification and Treatment of Classified Claims and Equity Interests**

### **A. Summary**

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, Confirmation, and distribution pursuant to the Plan and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest will be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies

within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

**B. Classification and Treatment of Claims against Debtor**

The classification of Claims and Equity Interests against Debtor pursuant to the Plan, is as follows:

<u>Class</u>	<u>Status</u>	<u>Voting Rights</u>
Class 1 – Gwinnett Co. Tax	Impaired	Entitled to Vote
Class 2 – Gwinnett Community Bank	Impaired	Entitled to Vote
Class 3 – U.S. SBA (1)	Impaired	Entitled to Vote
Class 4 – U.S SBA (2)	Impaired	Entitled to Vote
Class 5 – I.R.S	Disputed	Disputed
Class 6 – Equity Interests	Unimpaired	Not Entitled to Vote

**1. Classes 1- 4: Secured Claims**

**a. Classification:**

Classes 1-4 consist of the Secured Claims of the Gwinnett County Tax Commissioner, Gwinnett Community Bank and the U.S. Small Business Administration.

**b. Treatment:**

Debtor will pay from the proceeds from the sale of the Real Property the Allowed amount of the Class 1-4 Secured Claims to the Gwinnett County Tax Commissioner, Gwinnett Community Bank and U.S. Small Business Administration as soon as practicable, in cash, in full, following the later of (a) the Effective Date, (b) the date such Class 1-4 Secured Claim becomes an Allowed Claim (or as otherwise permitted by law), and (c) the consummation of a sale of the Real Property.

**c. Voting:**

Classes 1-4 are Impaired Classes and Holders of Class 1-4 Claims are entitled to vote on the Plan.



2. Class 5: Priority Tax Claims

a. Classification:

Class 5 consists of the disputed Priority Tax Claim against Debtor.

b. Treatment:

The Class 5 Claim of the Internal Revenue Service is disputed by Debtor. Should the Claim be allowed, Debtor will pay from the proceeds from the sale of the Real Property the Allowed amount of each Class 5 Priority Tax Claim to each Entity holding a Class 5 Priority Tax Claim, in cash, in full, as soon as practicable following the later of (a) the Effective Date, (b) the date such Class 2 Priority Tax Claim becomes an Allowed Claim (or as otherwise permitted by law), (c) the consummation of a sale of the Real Property.

c. Voting.

Should the Claim be allowed, Class 5 is an Impaired Class and Holders of Class 5 Claims are entitled to vote on the Plan.

3. Class 6: Equity Interests

a. Classification

Class 6 consists of all Equity Interests in Debtor. The only Holders of a Class 6 Equity Interest are Hoke S. Randall, III, and Kevin McOmber.

b. Treatment

The value of Debtor's Assets is expected to be sufficient to satisfy the Allowed Claims of Classes 1, 2, 3 and 4 in full. All Class 6 Equity Interest Holders will retain their interest in the company and whatever equity would result therefrom after all other Allowed Claims are satisfied (whether classified or unclassified).

c. Voting

Holders of Class 6 Equity Interests are Unimpaired. Pursuant to section 1126(f) of the Bankruptcy Code they are conclusively presumed to have accepted the Plan and are therefore not entitled to vote.

## VIII. ACCEPTANCE OR REJECTION OF THE PLAN

A. Voting Classes

Each Holder of an Allowed Claim in Classes 1, 2, 3 and 4 is entitled to vote either to accept or to reject the Plan. Only those votes cast by Holders of Allowed Claims will be counted

in determining whether acceptances have been received sufficient in number and amount to obtain Confirmation.

B. Acceptance by Impaired Classes

An Impaired Class of Claims will have accepted the Plan if: (a) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under Section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

C. Presumed Acceptance/Rejection of Plan

The Holders of Class 6 Equity Interests are unimpaired and are therefore not entitled to vote.

D. Nonconsensual Confirmation

If any Class rejects the Plan Debtor will request the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code. Without limiting the foregoing, if any Class of Claims entitled to vote on the Plan fails to accept the Plan as required by section 1129(a) of the Bankruptcy Code the Plan may be amended.

E. How to Vote

A form of Ballot is being provided to Creditors in Classes 1-4 by which Creditors in such Class may vote their acceptance or rejection of the Plan. The Ballot for voting on the Plan gives you one important choice to make with respect to the Plan—you can vote for or against the Plan. To vote on the Plan, please complete the Ballot, as indicated thereon, (1) by indicating on the enclosed ballot that (a) you accept the Plan or (b) reject the Plan and (2) by signing your name and returning the Ballot to the **Clerk, U.S. Bankruptcy Court, Room 1340, 75 Ted Turner Drive, SW, Atlanta, GA 30303.**

## **IX. Means for the Implementation of the Plan**

### **9.1 Sale of Real Property**

The Debtor marketed the Real Property before the Petition Date and has begun again after the Court entered an Order authorizing the employment of Brown Realty as Real Estate Broker. The Debtor intends to seek the approval of the Bankruptcy Court once a contract for sale of the Real Property has been signed. The proceeds from the sale of the Real Property will be held in escrow by counsel for Debtor or by a real estate closing attorney (who will submit an Application for Employment to the Court) and disbursed by such counsel in accordance with the terms of the Plan.

### **9.2 Full and Final Satisfaction**

Commencing upon the Effective Date, the Debtor will be authorized and directed to distribute the amounts required under the Plan to the Holders of Allowed Claims according to the provisions of the Plan. Upon the Effective Date, all Debts of the Debtor will have no liability on account of any Claims or Interests except as set forth in the Plan. All payments and all distributions made by Debtor under the Plan will be in full and final satisfaction, settlement and release of all Claims against the Debtor.

### **9.3 Distribution Procedures**

Except as otherwise agreed by the Holder of a particular Claim, or as provided in the Plan, all amounts to be paid by the Debtor under the Plan will be distributed in such amounts and at such times as is reasonably prudent. Except as otherwise provided in the Plan, the Debtor will make payments to the Holders of Allowed Claims; (a) in U.S. dollars by check drawn on a domestic bank selected by the Debtor in its sole discretion, or by wire transfer from a domestic bank, at the Debtor's option, and (b) by first-class mail (or by other equivalent or superior means as determined by the Debtor).

### **9.4 Resolution of Disputed Claims**

All objections to Claims will be filed and served not later than 180 days following the Effective Date; provided, however, such date may be extended by the Bankruptcy Court beyond

180 days upon motion (the “Extension Motion”) filed by the Debtor prior to the deadline established in the Plan. If an objection is not timely filed or if no Extension Motion is pending by such deadline, any remaining Disputed Claims will be deemed to be Allowed Claims for purposes of the Plan. Unless otherwise provided in the Confirmation Order, the Debtor is authorized to settle, or withdraw any objections to, any Disputed Claim following the Effective Date without further notice to Creditors or authorization of the Bankruptcy Court, in which event such Claim will be deemed to be an Allowed Claim in the amount compromised for purposes of the Plan. Under no circumstances will any distributions be made on account of Disallowed Claims.

#### 9.5 Allocation of Distributions

Distributions to any Holder of an Allowed Claim will be allocated first to the principal amount of any such Allowed Claim, as determined for federal income tax purposes, next, to the extent the distribution exceeds such amount, to interest, if any, and finally, to the extent the distribution exceeds the principal and interest, to attorney’s fees and expenses. Allocation and distribution of funds for interest or attorney’s fees and expenses will be solely to the extent that such charges are an allowable portion of the Allowed Claim.

#### 9.6 Setoffs

Nothing contained in the Plan will constitute a waiver or release by the Debtor of any right of setoff or recoupment the Debtor may have against any Creditor.

#### 9.7 No Distributions on Late-Filed Claims

Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a Proof of Claim was first filed after the applicable Bar Date will be a Disallowed Claim, and the Debtor will not make any distribution to a Holder of such a Claim; provided, however, that to the extent such Claim was listed in the Schedules (other than as contingent, disputed, or unliquidated) and would be an Allowed Claim but for the lack of a timely proof of Claim, the Debtor will treat such Claim as an Allowed Claim in the amount in which it was so listed.

9.8 Withholding Taxes

Pursuant to section 346(h) of the Bankruptcy Code, the Debtor will be entitled to deduct any federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. From and as of the Effective Date, the Debtor will comply with all reporting obligations imposed on it by any Governmental Unit in accordance with applicable law with respect to such Withholding Taxes. As a condition to making any distribution under the Plan, the Debtor, if on the Effective Date, or the Debtor, if on or after the Effective Date, may require that the Holder of an Allowed Claim provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Debtor, if on the Effective Date, and the Debtor, if on or after the Effective Date, to comply with applicable tax reporting and withholding laws.

9.9 United States Trustee Fees

All outstanding amounts due under 28 U.S.C. § 1930 that have not been paid will be paid by the Debtor on or before the Effective Date. Thereafter, the Debtor will pay any statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) and such fees will be paid until entry of a final decree or an order converting or dismissing the case.

**X. Treatment of Executory Contracts and Unexpired Leases**

10.1 Rejection of Executory Contracts and Unexpired Leases

Except with respect to executory contracts or unexpired leases that: (i) were previously assumed or rejected by order of the Bankruptcy Court, and (ii) are the subject of a pending motion to assume or reject, pursuant to section 365 of the Bankruptcy Code, on the Effective Date, each executory contract and unexpired lease entered into by Debtor prior to the Petition Date that has not previously expired or terminated pursuant to its own terms will be deemed rejected pursuant to Section 365 of the Bankruptcy Code; provided, however, that nothing in this Section will cause the rejection, breach or termination of any contract of insurance benefiting the Debtor and its Estate. Further, the Plan will be deemed a motion to assume such insurance

contracts. Nothing in this Article VII will be construed as an acknowledgment that a particular contract or agreement is executory or is properly characterized as a lease. The Confirmation Order will constitute an Order of the Bankruptcy Court approving such rejections pursuant to Section 365 of the Bankruptcy Code, as of the Effective Date. The non-Debtor parties to any rejected personal property leases will be responsible for taking all steps necessary to retrieve the personal property that is the subject of such executory contracts and leases and the Debtor will bear no liability for costs associated with such matters.

#### 10.2 Claims Based on Rejection of Executory Contracts or Unexpired Leases

All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Confirmation of the Plan, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the earlier of the Effective Date or an order of the Bankruptcy Court approving such rejection. Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to Confirmation of the Plan that is not Filed within such times will be forever barred from assertion against the Debtor and its property. All such Claims for which proofs of claim are timely and properly Filed and ultimately Allowed will be treated as Unsecured Claims subject to the provisions of the Plan.

### **XI. Effective Date of the Plan**

#### 11.1 Conditions to Confirmation of the Plan

Confirmation of this Plan is conditioned upon the satisfaction of each of the following conditions precedent, any one or more of which may be waived by the Debtor in writing: (i) the Bankruptcy Court will have approved a Disclosure Statement to this Plan in form and substance acceptable to the Debtor in its sole discretion; (ii) the Court will have signed the Confirmation Order and entered it on the docket of the Bankruptcy Case, which Confirmation Order will be in form and substance acceptable to the Debtor and may not be amended, modified, supplemented, or clarified without the prior consent of the Debtor; and (iii) the Confirmation Order will not be subject to any stay of effectiveness.

#### 11.2 Conditions to Effective Date

The occurrence of the Effective Date is conditioned upon the satisfaction of each of the following conditions precedent, any one or more may be waived by the Debtor in writing: (i) the Confirmation Order will have become a Final Order which is unstayed; (ii) the Confirmation Date will have occurred; and (iii) no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code will have been made, or if made, will remain pending.

### 11.3 Effect of Failure of Conditions to Confirmation the Effective Date

If any one or more of the conditions in Section 8.1 is not met, the Debtor may withdraw this Plan and, if withdrawn, this Plan will be of no further force or effect.

### 11.4 Effective Date

Provided the above-referenced conditions to the occurrence of the Effective Date are satisfied, this Plan will become effective on the Effective Date.

## **XII. Effects of Confirmation**

### 12.1 Binding Effect of Plan

The provisions of the confirmed Plan will bind the Debtor, any Entity acquiring property under the Plan, and any Creditor or Interest Holder, whether or not such Creditor or Interest Holder has filed a Proof of Claim or Interest in the Chapter 11 Case, whether or not the Claim of such Creditor or the Interest of such Interest Holder is impaired under the Plan, and whether or not such Creditor or Interest Holder has accepted or rejected the Plan. All Claims and Debts will be as fixed and adjusted pursuant to the Plan. The Plan will also bind any taxing authority, recorder of deeds, or similar official for any county, state, or governmental unit or parish in which any instrument related to under the Plan or related to any transaction contemplated under the Plan is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

12.2 Vesting of Property of Debtor

Upon the Effective Date, title to all property of the Estate of the Debtor in the Chapter 11 Case will vest in the Debtor and will be retained by the Debtor for the purposes contemplated under the Plan, subject to any security interests upon such property.

12.3 Limitation of Liability

The Debtor, and its respective officers, directors, managers, employees, members, agents, advisors, accountants, attorneys and representatives (collectively, the “Exculpated Parties”), will neither have nor incur any liability to any entity for any action in good faith taken or omitted to be taken after the Petition Date in connection with or related to the Chapter 11 Case or the formulation, preparation, dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any agreement created or entered into in connection with the Plan; provided, however, that this limitation will not affect or modify the obligations created under the Plan, or the rights of any Holder of an Allowed Claim to enforce its rights under the Plan and will not release any action (or inaction) constituting willful misconduct, fraud or gross negligence (in each case subject to determination of such by final order of a court of competent jurisdiction); provided that any Exculpated Party will be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities (if any) under the Plan and such reasonable reliance will form an absolute defense to any such claim, cause of action, or liability. Without limiting the generality of the foregoing, each Exculpated Party will be entitled to and granted the protections of section 1125(e) of the Bankruptcy Code. No provision of the Plan or the Disclosure Statement will be deemed to act to or release any claims or liabilities that the Debtor or its Estate may have against any Entity or person for any act, omission, or failure to act that occurred prior to the Petition Date, nor will any provision of the Plan be deemed to act to release any claims.

12.4 Injunction

In implementation of the Plan, except as otherwise expressly provided in the Confirmation Order or the Plan, and except in connection with the enforcement of the terms of the Plan or any documents provided for or contemplated in the Plan, all entities who have held, hold or may hold Claims against or Interests in the Debtor or the Estate that arose prior to the



Effective Date are permanently enjoined from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against the Debtor, the Estate, or any property of the Debtor or the Estate with respect to any such Claim or Interest; (b) the enforcement, attachment, collection or recovery by any manner or means, directly or indirectly, of any judgment, award, decree, or order against the Debtor, the Estate, or any property of the Debtor or the Estate with respect to any such Claim or Interest; (c) creating, perfecting or enforcing, directly or indirectly, any Lien or encumbrance of any kind against the Debtor, the Estate, , or any property of the Debtor or the Estate with respect to any such Claim or Interest; (d) asserting, directly or indirectly, any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtor, the Estate, or any property of the Debtor or the Estate, with respect to any such Claim or Interest; and (e) any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan with respect to such Claim or Interest. Nothing contained in this section will prohibit the Holder of a timely-filed Proof of Claim from litigating its right to seek to have such Claim declared an Allowed Claim and paid in accordance with the distribution provisions of the Plan, or enjoin or prohibit the interpretation or enforcement by the Claimant of any of the obligations of the Debtor under the Plan.

### **XIII. Retention of Jurisdiction**

From and after the Confirmation Date, the Bankruptcy Court will retain such jurisdiction as is legally permissible, including, but not limited to, for the following purposes:

- i. To hear and determine any and all objections to the allowance of a Claim, actions to equitably subordinate a Claim, approval of any necessary claims reconciliation protocols, or any controversy as to the classification of a Claim in a particular Class under the Plan;
- ii. To administer the Plan;
- iii. To liquidate any Disputed Claims;
- iv. To hear and determine any and all adversary proceedings, contested matters or applications pending on the Effective Date;
- v. To hear and determine any and all applications by Professionals for an award of Professional Fees;
- vi. To enable the Debtor to commence and prosecute any Litigation which

may be brought after the Effective Date;

vii. To interpret and/or enforce the provisions of the Plan and the injunction provided for in the Plan and to determine any and all disputes arising under or regarding interpretation of the Plan or any agreement, document or instrument contemplated by the Plan;

viii. To enter and implement such orders as may be appropriate in the event Confirmation is for any reason stayed, reversed, revoked, modified or vacated;

ix. To modify any provision of the Plan to the extent permitted by the Bankruptcy Code and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

x. To enter such orders as may be necessary or appropriate in furtherance of Confirmation and the successful implementation of the Plan and to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code; and

xi. To close the Chapter 11 Case.

#### **XIV. Miscellaneous**

##### **14.1 Withdrawal of Plan of Reorganization**

The Debtor reserves the right to withdraw the Plan at any time on or before the Confirmation Date. If the Debtor withdraws the Plan pursuant to this section, or if Confirmation or the Effective Date does not occur, then the Plan will be deemed null and void and, in such event, nothing contained herein will be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other entity or to prejudice in any manner the rights of the Debtor or any entity in any further proceedings involving the Debtor.

##### **14.2 Severability of Plan Provisions**

In the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will, with the consent of the Debtor, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will

then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions hereof will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision hereof, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### 14.3 Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, the laws of the State of Georgia.

#### 14.4 Reservation of Rights

Neither the filing of the Plan nor any statement or provision contained in the Plan or in the Disclosure Statement, nor the taking by any party in interest of any action with respect to the Plan, will (a) be or be deemed to be an admission against interest, and (b) until the Effective Date, be or be deemed to be a waiver of any rights any party in interest may have (i) against any other party in interest, or (ii) in any of the assets of any other party in interest, and, until the Effective Date, all such rights are specifically reserved. In the event that the Plan is not confirmed or fails to become effective, neither the Plan nor the Disclosure Statement nor any statement contained in the Plan or in the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding or controversy within or without this Chapter 11 Case involving the Debtor, except with respect to Confirmation of the Plan.

#### 14.5 Computation of Time Periods

In computing any period of time prescribed or allowed by the Plan, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in the Bankruptcy Court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

#### 14.6 Defects, Omissions and Amendments

The Debtor may, with the approval of the Bankruptcy Court and without notice to all Holders of Claims or Interests, insofar as it does not materially and adversely affect Holders of Claims, correct any defect, omission or inconsistency in the Plan in such manner and to such extent as may be necessary or desirable to expedite the execution of the Plan. The Plan may be altered or amended before or after Confirmation as provided in section 1127 of the Bankruptcy Code if, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interests of Holders of Claims, so long as the Plan, as modified, complies with sections 1122 and 1123 of the Bankruptcy Code and the Debtor has complied with section 1125 of the Bankruptcy Code. The Plan may be altered or amended before or after the Confirmation Date but, prior to substantial consummation, in a manner which, in the opinion of the Bankruptcy Court, materially and adversely affects Holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code sections 1122 and 1123, the Debtor has complied with Bankruptcy Code section 1125 and, after notice and a hearing, the Bankruptcy Court confirms such Plan, as modified, under Bankruptcy Code section 1129.

#### 14.7 Successors and Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan will be binding on, and will inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such entity.

#### 14.8 Implementation

Upon Confirmation, the Debtor will be authorized to take all steps and execute all documents necessary to effectuate the provisions contained in the Plan.

14.9 Waiver of Fourteen (14) Day Stay

Debtor requests as part of the Confirmation Order a waiver from the Bankruptcy Court of the fourteen (14) day stay of Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the fourteen (14) day stay of Bankruptcy Rule 6004(h).

14.10 Substantial Consummation

On the Effective Date, the Plan will be deemed substantially consummated under Bankruptcy Code sections 1101 and 1127(b).

**XV. Summary of Distributable Assets**

Debtor owns one marketable asset; the Real Property. Debtor estimates that the Real Property is valued at \$5,000,000.00 based upon a prepetition contract that was not finalized. This value also presupposes the resolution of the Army Corps of Engineers' filing of a Notice in the Gwinnett County Deed records, a task for which Special Counsel was employed. Assuming this value is accurate, there is sufficient value in the Real Property to pay all Claims and Administrative Expenses.

**XVI. Risk Factors**

Because the Plan is essentially a "pot plan," Distributions to Holders of Allowed Claims are subject to the success of Debtor in marketing and selling the Real Property. Notwithstanding Debtor's best efforts to provide reasonable estimates of the expected return to the Holders of Claims, there is always a possibility that the efforts of Debtor are less successful than predicted. Additionally, there may be significant delay before any distribution is made on account of Allowed Claims, given the uncertainties of selling the Real Property.

For the reasons set forth in this Disclosure Statement, Debtor believes that the very same risks described herein are present in and significantly greater to Creditors in a chapter 7 case.

## **XVII. Best Interests of the Creditors Test**

Confirmation of the Plan requires, among other things, that each holder of a claim in an impaired class and each holder of an interest either: (a) accepts the Plan; or (b) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if Debtor were liquidated under chapter 7 of the Bankruptcy Code. This requirement is commonly referred to as the “Best Interests Test.”

### **17.1 Chapter 7**

To determine the value that the holders of impaired claims and interests would receive if Debtor were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of Debtor’s assets and properties in the context of a chapter 7 liquidation case. Bankruptcy Code section 704 requires a chapter 7 trustee to collect and reduce to money the property of the estate as expeditiously as is compatible with the best interests of parties in interest.

The Cash available for satisfaction of Allowed Claims would consist of the proceeds resulting from the disposition of Debtor’s physical assets, augmented by the Cash, if any, held by Debtor at the time of the commencement of the chapter 7 case. Any such Cash amount would then be reduced by the amount of any Allowed Claims secured by such assets, the costs and expenses of the liquidation and such additional Administrative Claims and other priority claims that may result from the use of chapter 7 for the purposes of liquidation.

The costs of liquidation under chapter 7 would include fees payable to a trustee in bankruptcy, as well as those that might be payable to his or her attorneys and to other professionals that such trustee may engage, plus any unpaid expenses incurred by Debtor during the Chapter 11 Case that would be allowed in the chapter 7 case, such as compensation for attorneys, appraisers, accountants or other professionals. Such Administrative Claims would have to be paid in Cash, in full from the liquidation proceeds before the balance of those proceeds could be made available to pay other Claims.

### **17.2 Liquidation Analysis**

Pursuant to Bankruptcy Code section 1129(a)(7), unless there is unanimous acceptance of the Plan by an impaired Class, Debtor must demonstrate, and the Bankruptcy Court must determine that with respect to such Class, each holder of a Claim will receive property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive if Debtor were liquidated under chapter 7 of

the Bankruptcy Code on the Effective Date of the Plan. This requirement is commonly referred to as the “Best Interests of Creditors Test.”

The Plan satisfies the Best Interests of Creditors Test. The Plan provides greater recovery to the Holders of Allowed General Unsecured Claims than such Holders would receive under a liquidation under chapter 7 primarily because the Plan avoids a layer of administrative expense associated with the appointment of a chapter 7 trustee, while increasing the efficiency of administering Debtor’s assets for the benefit of its Creditors.

Moreover, in chapter 7 cases, the chapter 7 trustee would also be entitled to seek a sliding scale commission based upon the funds distributed by such trustee. This is an expense that Creditors will avoid under the Plan. A chapter 7 liquidation would result in delay in the Distributions to Creditors. Among other things, a chapter 7 case would trigger a new bar date for filing Claims that would be more than 90 days following conversion of the case to chapter 7. Fed. R. Bankr. P. 3002(c). Hence, a chapter 7 liquidation would not only delay Distributions, but raise the prospect of additional Claims that were not asserted in the Chapter 11 Case. Based on the foregoing, the Plan provides an opportunity to bring the greatest return to Creditors.

#### **XVIII. Certain Federal Income Tax Consequences of the Plan**

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to Debtor and to Holders of Claims and Interests. This discussion is based on the IRS, Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the IRS as in effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims (including Claims within the same Class) and Interests, the Holder’s status and method of accounting (including Holders within the same Class) and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Furthermore, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to Debtor and the Holders of Claims and Interests.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to Debtor or the Holders of Claims or Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, brokers and dealers in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, regulated investment companies and foreign taxpayers). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

***The following summary is not a substitute for careful tax planning and advice based upon the personal circumstances of each Holder of a Claim or Interest. Each Holder of a Claim or Interest is urged to consult with such Holder's tax advisors concerning the U.S. federal, state, local, foreign and other tax consequences applicable under the Plan.***

#### 18.1 Consequences to Debtor

Debtor is an S Corporation and is therefore not a tax-paying entity.

#### 18.2 Consequence to Holders of Claims

The federal income tax consequences of the Plan to a Holder of a Claim will depend upon several factors, including but not limited to: (i) the origin of the Holder's Claim, (ii) whether the Holder is a resident of the United States for tax purposes, (iii) whether the Holder reports income on the accrual or cash basis method, (iv) whether the Holder has taken a bad debt deduction or worthless security deduction with respect to this Claim and (v) whether the Holder receives distributions under the Plan in more than one taxable year. ***Holders are strongly advised to consult their tax advisors with respect to the tax treatment under the plan of their particular claims.***

##### a. Holders of Claims

Generally, a Holder of an Allowed Claim will recognize gain or loss equal to the difference between the "amount realized" by such Holder and such Holder's adjusted tax basis in the Allowed Claim. The "amount realized" is equal to the sum of the Cash and the fair market value of any other consideration received under the Plan in respect of a Holder's Claim.



b. Distributions in Discharge of Accrued but Unpaid Interest

Pursuant to the Plan, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to accrued but unpaid interest. However, there is no assurance that the IRS will respect such allocation for federal income tax purposes. Holders of Allowed Claims not previously required to include in their taxable income any accrued but unpaid interest on an Allowed Claim may be treated as receiving taxable interest, to the extent any consideration they receive under the Plan is allocable to such accrued but unpaid interest. Holders previously required to include in their taxable income any accrued but unpaid interest on an Allowed Claim may be entitled to recognize a deductible loss, to the extent that such accrued but unpaid interest is not satisfied under the Plan. ***Holders should consult their own tax advisors concerning the allocation of consideration received in satisfaction of their allowed claims and the federal income tax treatment of accrued but unpaid interest.***

c. Character of Gain or Loss; Tax Basis; Holding Period

The character of any gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss recognized by a Holder of Allowed Claims under the Plan will be determined by a number of factors, including, but not limited to, the status of the Holder, the nature of the Allowed Claim in such Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Allowed Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Allowed Claim. The Holder's aggregate tax basis for any consideration received under the Plan will generally equal the amount realized in the exchange (less any amount allocable to interest as described in the next paragraph). The holding period for any consideration received under the Plan will generally begin on the day following the receipt of such consideration.

## XIX. CONCLUSION

Debtor believes that the Plan is in the best interest of Creditors and urges Creditors to vote to accept the Plan.

This 5<sup>th</sup> day of March, 2017.

**LAW OFFICES OF DOUGLAS JACOBSON, LLC**

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