

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	
	)	
M&R CHARLESTON STATION, INC.	)	CHAPTER 11
d/b/a THE SPAGHETTI SHOP	)	
f/k/a M&R OUTER LOOP INC.	)	
	)	
Debtor	)	CASE NO. 16-90506-BHL-11
_____	)	

**DISCLOSURE STATEMENT FOR PLAN OF REORGANIZATION  
SUBMITTED BY M&R CHARLESTON STATION, INC.**

\* \* \* \* \*

Respectfully submitted,

/s/ Neil C. Bordy \_\_\_\_\_  
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## 1. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the chapter 11 bankruptcy case of M&R Charleston Station, Inc. (“M&R,” or the “Debtor”) which was commenced on April 4, 2016 (the “Petition Date”). This Disclosure Statement contains information about the Debtor and describes its Plan of Reorganization (the “Plan”) filed on October 3, 2016.

*You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

The Debtor is seeking Confirmation of the Plan, through approval of holders of Claims and Interests. This Disclosure Statement is submitted by the Debtor in connection with the solicitation of acceptances of the Plan.

**THE DEBTOR BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND OTHER STAKEHOLDERS. ALL CREDITORS ENTITLED TO VOTE ARE URGED TO VOTE IN FAVOR OF THE PLAN BY THE VOTING DEADLINE.**

### *1.1 Purpose of this Disclosure Statement*

This Disclosure Statement describes the Debtor and significant events during the Chapter 11 Case; how the Plan proposes to treat Claims or Interests of the type you hold (*i.e.*, what you can expect to receive based on your Claim or Interest if the Plan is confirmed); who may vote on and/or object to Confirmation of the Plan; what factors the Bankruptcy Court will consider when deciding whether to confirm the Plan; why the Debtor believes the Plan is feasible; how the treatment of your Claim or Interest under the Plan compares to what you would likely receive on your Claim or Interest in a liquidation of the Debtor; and the effect of Confirmation of the Plan. It is important to read the Plan as well as this Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### *1.2 Disclaimers*

The summaries of the Plan and other documents contained in this Disclosure Statement are qualified by reference to the Plan itself, the exhibits thereto, and the documents described therein. The Debtor will file all exhibits to the Plan, in their final form, with the Bankruptcy Court no later than seven (7) days before the Voting Deadline.

The information contained in this Disclosure Statement, including the information regarding the history, business, and operations of the Debtor, the financial information regarding the Debtor and the liquidation analysis relating to the Debtor, is included for purposes of soliciting acceptances of the Plan, but, as to contested matters and adversary proceedings, is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations.

The descriptions of the relief sought or obtained in this Chapter 11 Case throughout this Disclosure Statement are summaries only. All pleadings filed in the Chapter 11 Case and all orders entered by the Bankruptcy Court are publicly available and may be found, downloaded, and read from the Bankruptcy Court website found at [www.insb.uscourts.gov](http://www.insb.uscourts.gov). Please note that access to pleadings at the Bankruptcy Court website requires registration on PACER and certain fees per page are charged.

This Disclosure Statement contains forward-looking statements based primarily on the current expectations of the Debtor, and projections about future events and financial trends affecting the financial condition of the Debtor. The words “believe,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “expect,” and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including those described below under the caption “Risk Factors” in Article 7. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtor does not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise.

The requirements for Confirmation, including the vote of creditors to accept the Plan and certain statutory findings that must be made by the Bankruptcy Court, are set forth in Article 6. Consummation of the Plan and the occurrence of the Effective Date are subject to a number of significant conditions, which are summarized in Section 9.3. There is no assurance that these conditions will be satisfied or waived.

### ***1.3 Important Administrative Information***

#### ***(A) Voting to Accept or Reject the Plan***

If you are entitled to vote to accept or reject the Plan, complete and return the ballot enclosed with the Notice of Hearing on Confirmation of the Plan to counsel for the Debtor via one (1) of the following methods:

E-mail: Swann@derbycitylaw.com  
Subject: 16-90506-BHL-11 M&R Charleston Station, Inc.

Facsimile: (502) 371-9253

U.S. Mail: Seiller Waterman LLC  
Attn: Rebecca Swann  
Meidinger Tower – 22nd Floor  
462 S. Fourth Street  
Louisville, Kentucky 40202

#### ***(B) Deadlines for Voting or Objecting to Confirmation***

The Bankruptcy Court typically establishes the date that is seven (7) days prior to the Confirmation Hearing as the deadline for submission of ballots and filing of objections to

Confirmation of the Plan. Your completed ballot must be received on or before the Voting Deadline (as described in the Order approving this Disclosure Statement or other Bankruptcy Court Order) or it will not be counted. If no Voting Deadline is explicitly established by the Bankruptcy Court, the Voting Deadline is seven (7) days prior to the Confirmation Hearing. Objections to Confirmation of the Plan must be filed with the Bankruptcy Court and served upon counsel for the Debtor and the Office of the United States Trustee on or before the Objection Deadline (as described in the Order approving this Disclosure Statement or other Bankruptcy Court Order) or it will not be heard. If no Objection Deadline is explicitly established by the Bankruptcy Court, the Objection Deadline is seven (7) days prior to the Confirmation Hearing.

*(C) Time and Place of the Confirmation Hearing*

The hearing(s) at which the Bankruptcy Court will determine whether to confirm the Plan will take place at the Lee H. Hamilton Federal Building and U.S. Courthouse, Room 105, 121 W. Spring Street, New Albany, IN 47150, at a date and time to be determined by the Bankruptcy Court and published within the Order approving this Disclosure Statement.

*(D) Whom to Contact for Additional Information*

If you want additional information about the Plan, you should contact counsel for the Debtor via the contact information below:

Neil C. Bordy  
SEILLER WATERMAN LLC  
Meidinger Tower – 22nd Floor  
462 S. Fourth Street  
Louisville, Kentucky 40202  
Telephone: (502) 584-7400  
E-mail: [bordy@derbycitylaw.com](mailto:bordy@derbycitylaw.com)

**2. GENERAL INFORMATION ABOUT THE DEBTOR**

*2.1 Description and History of the Debtor's Business*

The business operated by the Debtor, The Spaghetti Shop is a fast food Italian restaurant. Debtor is a corporation organized under the laws of the Commonwealth of Kentucky in 1988 and presently doing business in Indiana and Kentucky. Gary Rosenberg was and continues to be the sole owner and manager of the Debtor's business operations. The Debtor first opened and operated the Charlestown Road Restaurant, a franchise of The Spaghetti Shop located in New Albany, Indiana, in 1989. As a result of a change in demographics and the expiration of their lease, the New Albany store moved locations in 2007. The expense of moving put a heavy financial burden on the business. On March 28, 2016, the Debtor merged in an all-stock transaction with M&R Outerloop Inc., a Kentucky corporation also owned by Gary Rosenberg, which owned and operated the Outer Loop Restaurant, also an established Spaghetti Shop franchise, in the Okolona neighborhood of Louisville, Kentucky. This store was opened in 1988. The Debtor continues to operate its Charlestown Road and Outer Loop Restaurants. It is the Debtor's intent to close the Outer Loop Restaurant on October 31, 2016.

## ***2.2 Insiders of the Debtor***

In accordance with Bankruptcy Code § 101(31), persons which may qualify as insiders of the Debtor include, without limitation, directors, officers, and other persons in control of the Debtor; relatives of such directors, officers, and other persons in control; affiliates of the Debtor; and the insiders of such affiliates. The directors, officers, and other persons in control of the Debtor are identified in Section 4.5(C), *infra*.

In the year prior to the Petition Date, the Debtor transferred not more than \$40,000.00 as compensation to its sole officer and person in control, Gary Rosenberg.

## ***2.3 Pre-Petition Capital Structure***

Subsequent to the move by the New Albany store, the Debtor was unable to get a line of credit at a bank. The Debtor, as a result obtained loans from mezzanine lender, On Deck Capital, Inc. (“On Deck”). These loans were very high interest rates and onerous repayment terms. The Debtor’s obligations to On Deck were secured by substantially all of the Debtor’s property.

## ***2.4 Events Leading to Chapter 11 Filing***

Due to the increased competition for customers in the fast-casual cuisine market and the onerous repayment terms of its obligation to On Deck, which included pre-arranged drafts of the Debtor’s merchant-services account, the Debtor struggled to generate revenues sufficient to make payments to On Deck and its other unsecured lenders while meeting its current expenses and obligations to its franchisor. Unable to pay its bills as they came due, the Debtor had no choice but to seek chapter 11 protection to attempt to reorganize its debts.

# **3. THE CHAPTER 11 CASE**

## ***3.1 Business Stabilization***

### ***(A) Continuation of Ordinary Course Transactions***

Since the Petition Date, the Debtor has continued to operate as a debtor in possession subject to the supervision of the Bankruptcy Court in accordance with the Bankruptcy Code. While the Debtor is authorized to operate in the ordinary course of business, transactions outside the ordinary course of business require prior Bankruptcy Court approval. Actions with respect to which the Debtor has sought and obtained Bankruptcy Court approval as transactions outside the ordinary course of business primarily reflect the Debtor’s strategic restructuring. Additionally, the Bankruptcy Court has approved the Debtor’s employment of attorneys and other professionals as required by the Bankruptcy Code to assist with its restructuring efforts and to guide the Debtor through its Chapter 11 Case.

### ***(B) Automatic Stay***

An immediate effect of the filing of the Debtor’s chapter 11 petition was the imposition of the automatic stay under Bankruptcy Code § 362(a) that, with limited exceptions, enjoined the

commencement or continuation of the enforcement of liens against the Debtor's property, the continuation of litigation against the Debtor, and any other collection efforts by creditors. This relief afforded the Debtor with the "breathing spell" necessary to assess and reorganize its business. The automatic stay remains in effect, unless modified by the Bankruptcy Court or applicable law, until the Effective Date.

*(C) Use of Cash Collateral*

Since commencement of this Chapter 11 Case, the Debtor has met all of its post-petition tax obligations and has made each and every monthly payment to On Deck required by the Bankruptcy Court's June 2, 2016, Final Order Granting Motion for Authority to Use Cash Collateral and to Provide Adequate Protection.

**3.2 Claims Objections**

Except to the extent that a Claim is already an Allowed Claim pursuant to a Final Order, the Debtor reserves the right to object to Claims. Therefore, even if your Claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your Claim is later upheld. The procedures for resolving Disputed Claims are set forth in Article 6 of the Plan.

**3.3 Assets of the Bankruptcy Estate**

*(A) Debtor's Balance Sheet*

The identity and current fair market value of the estate's assets are listed in **Exhibit A**. The values attributed in Exhibit A are based upon the data available in the Debtor's pre-petition financial statements, bankruptcy schedules, and most recent monthly operating report, as well as proofs of claim filed in this Chapter 11 Case.

*(B) Avoidance Actions*

The Debtor has reviewed its financial records and accounts in light of its powers and duties as a debtor in possession. Based on its review of its records, the proposed treatment of Claims provided for in the Plan, and advice of counsel, the Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions at this time, but said avoidance actions shall not be waived or abandoned until the Effective Date.

**3.4 Post-Petition Operations**

During this Chapter 11 Case, the Debtor has maintained possession of its assets and continued normal business operations as a debtor in possession, without reliance on any credit or borrowing since the Petition Date. No requests for the appointment of a trustee or examiner have been made, and no committees of any kind have been appointed.

The Debtor continues to operate, the Charlestown Road Restaurant as franchises of The Spaghetti Shop, but plans to close the Outer Loop Restaurant on October 21, 2016. The Debtor has enjoyed a small increase in business over the past six (6) months. The Debtor's financial

performance since the petition date can be seen by reviewing the Monthly Operating Reports filed by the Debtor.

### ***3.5 Plan Exclusivity***

The exclusive period during which only the Debtor may file a chapter 11 plan shall, subject to future extensions which may be granted by the Bankruptcy Court, expire on October 3, 2016. The period provided by Bankruptcy Code § 1121(c)(3) within which the Debtor may exclusively seek confirmation of the plan shall, subject to future extensions which may be granted by the Bankruptcy Court, expire on November 2, 2016.

## **4. SUMMARY OF THE PLAN**

### ***4.1 Overview of Chapter 11***

Chapter 11 of the Bankruptcy Code is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its financial obligations and business for the benefit of itself, its creditors and its interest holders.

Chapter 11 promotes equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of the value of a debtor's assets. The commencement of a chapter 11 case, by the filing of a petition, creates an estate that is comprised of all of the legal and equitable property interest held by the debtor as of the commencement date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The confirmation and consummation of a plan of reorganization is the principal objective of a chapter 11 case. A plan of reorganization sets for the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the Bankruptcy Court makes the plan binding upon the debtor, any issuer of securities under the plan, any person or entity acquiring property under the plan, and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder (i) is impaired or has accepted the plan or (ii) receives or retains any property under the plan. Subject to certain limited exceptions and other than as provided in the plan itself or the confirmation order, the confirmation order discharges the debtor from any debt that arose prior to the commencement of the bankruptcy case and substitutes therefor the obligations specified under the confirmed plan, and terminates all rights and interests of equity security holders.

Confirmation of a plan, which is the vehicle for satisfying the rights of holders of Claims against and equity Interests in a debtor, is the overriding purpose of a chapter 11 case. Although referred to as a plan of reorganization or liquidation, a plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of its assets. In either event, upon confirmation of a plan, it becomes binding on the debtor and all of its creditors and stakeholders, and the obligations owed by the debtor to those parties are compromised and exchanged for the obligations specified in the plan.

In this Chapter 11 Case, the Plan contemplates the reorganization of existing debt and continuation of the Debtor's normal business operations. The primary objectives of the Plan are to: (a) maximize the value of the ultimate recoveries to all creditor groups on a fair and equitable basis; and (b) settle, compromise, or otherwise dispose of certain Claims and Interests on terms that the Debtor believes to be fair and reasonable and in the best interests of the Debtor's Estate and its creditors.

#### *4.2 Structure of the Plan*

**All capitalized terms used in this Disclosure Statement and not otherwise defined herein have the meanings ascribed in the Plan.**

**As required by the Bankruptcy Code, the Plan places Claims and Interests in various Classes and describes the treatment each Class will receive. The Plan also states whether each Class of Claims or Interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the treatment provided by the Plan.**

#### *4.3 Claims and Interests*

Pursuant to Bankruptcy Code § 1122, set forth below is a designation of classes of Claims against and Interests in the Debtor. A Claim or Interest is placed in a particular Class for purposes of voting on the Plan and receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classification set forth on the Ballots tendered or returned by holders of Claims and Interests in connection with voting on the Plan: (a) are set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim or Interest as representing the actual classification of such Claims under the Plan for distribution purposes; and (d) shall not be binding on the Debtor.

##### *(A) Unclassified Claims*

Certain types of Claims are automatically entitled to specific treatment under the Bankruptcy 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 Bankruptcy Code. Accordingly, the Debtor has not placed the following Claims in any Class:

##### (1) Administrative Claims

Administrative Claims are Claims for costs and expenses of administering the Chapter 11 Case which are allowed under Bankruptcy Code § 503(b) and entitled to priority pursuant to Bankruptcy Code § 507(a). Administrative Claims also include Claims allowed by Final Order



(after notice and a hearing) for the value of any goods sold to the Debtor in the ordinary course of business and received within twenty (20) days prior to the Petition Date. The Bankruptcy Code requires that all Administrative Claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to different treatment.

The following table estimates the Allowed Administrative Claims against the Debtor that will exist on the Effective Date, and describes their proposed treatment under the Plan:

<u>Type of Administrative Claim</u>	<u>Projected Claim Amount</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business after the Petition Date	\$0.00	Paid in full on the Effective Date, or according to the terms of the obligation if later.
The Value of Goods Received in the Ordinary Course of Business within 20 Days before the Petition Date	\$0.00	Paid in full on the Effective Date, or according to the terms of the obligation if later.
Professional Fees, as approved by the Bankruptcy Court	\$15,000.00	Paid in full on the Effective Date, or according to separate written agreement, or according to court order if such fees have not been approved by the Bankruptcy Court on the Effective Date.
Clerk’s Office Fees	\$0.00	Paid in full on the Effective Date.
Other Administrative Expenses	\$0.00	Paid in full on the Effective Date or according to separate written agreement.
Office of the U.S. Trustee Fees	\$4,875.00	Paid in full on the Effective Date.
<b>TOTAL:</b>	<b>\$16,900.00</b>	

(2) Priority Tax Claims

Priority Tax Claims are unsecured income, employment, and other taxes described by Bankruptcy Code § 507(a)(8). Unless the holder of a Priority Tax Claim agrees otherwise, it must receive the present value of such Claim, in regular installments paid over a period not exceeding five (5) years from the Petition Date. Holders of Allowed Priority Tax Claims shall be treated as follows under the Plan:

<u>Description</u>	<u>Allowed Priority Tax Claim</u>	<u>Date of Assessment</u>	<u>Treatment</u>
Withholding and Corporate Income Taxes owed to United States Government, Internal Revenue Service	\$2,352.60	Unassessed prior to Petition Date	Paid in full.
Retail Sales Taxes owed to the Indiana Department of Revenue	\$4,746.98	March 21, 2016	Interval: Monthly Amount: \$201.94 Begin Date: January 1, 2017 End Date: December 1, 2018 Interest Rate: 2.0% Total Payout: \$4,846.49

*(B) Classes of Claims and Interests*

The following are the Classes set forth in the Plan, and the treatment that each Class is proposed to receive under the Plan:

(1) Priority Claims

Priority Claims that are referred to in Bankruptcy Code §§ 507(a)(1), (4), (5), (6), and (7) are required to be placed in Classes. The Bankruptcy Code requires that each holder of such a Claim receive cash on the Effective Date equal to the allowed amount of such Claim. However, a Class of holders of such Claims may vote to accept different treatment.

As of the Date this Disclosure Statement is filed, there have been no Claims asserted which may qualify as an Allowed Priority Claim against the Debtor, and the Debtor is not aware of any Claim which may be entitled to allowance as a Priority Claim. Therefore, the Debtor has not placed any Claims into a Class of Allowed Priority Claims.

(2) Secured Claims

Allowed Secured Claims are Claims secured by property of the Debtor’s Estate to the extent allowed as Secured Claims under Bankruptcy Code § 506. If the value of the collateral or setoffs securing the creditor’s Claim is less than the amount of the creditor’s Allowed Claim, the deficiency will be classified as a general Unsecured Claim unless specifically otherwise provided in the Plan.

The following table identifies all Classes containing Allowed Secured Claims against the Debtor:

<u>Class</u>	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>
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<p>Class 2 – Allowed Secured Claim Arising from Two Promissory Notes Delivered to On Deck Prior to the Petition Date</p>	<p><i>Secured Claim of:</i> On Deck Capital, Inc.</p> <p><i>Collateral:</i> Security interest in all of the Debtor’s inventory, chattel paper, accounts, equipment, general intangibles, products, proceeds, and instruments as recorded in a UCC financing statement filed in the office of the Kentucky Secretary of State.</p> <p><i>Priority of Liens:</i> First</p> <p><i>Total Claim:</i> \$92,325.30</p> <p><i>Allowed Secured Claim:</i> \$50,000.00</p> <p><i>Allowed Unsecured Claim:</i> \$42,325.30</p>	<p>Impaired</p>	<p>The Allowed Claim of On Deck shall be bifurcated and its Allowed Class 2 Claim shall be not greater than the value of the Debtor’s interest in the collateral pledged to secure the indebtedness prior to the Petition Date (<i>viz.</i> \$50,000.00).</p> <p>Upon the Effective Date, the two promissory notes from the Debtor to On Deck shall be deemed to have been modified and treated as a single promissory note to have a principal balance of \$50,000.00, to bear interest at the fixed rate of 6% per annum, mature on the date that is 4 years after the Effective Date, and require regular monthly payments of principal and interest on the outstanding indebtedness. The Debtor’s performance of obligations under the modified Class 2 Claim will continue to be secured by the existing security interest.</p> <p>The Debtor’s monthly payment obligation to the holder of the Class 2 Claim shall be \$1,174.25.</p>
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(3) Unsecured Claims

Unsecured Claims are not secured by property of the Estate and are not entitled to priority treatment under Bankruptcy Code § 507(a).

The following table identifies all Classes containing Allowed Unsecured Claims against the Debtor:

<u>Class</u>	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>																										
3	<p>Allowed Claims against the Debtor which are not Administrative Claims, Priority Tax Claims, Priority Claims, Secured Claims, Rejection Claims, or Cure Claims</p> <p><i>Projected Allowed Claims in Class:</i></p> <table border="0"> <tr><td>On Deck</td><td>\$42,325.30</td></tr> <tr><td>American Express Bank, FSB</td><td>\$3,899.05</td></tr> <tr><td>American Express Bank, FSB</td><td>\$6,464.46</td></tr> <tr><td>Capital One</td><td>\$22,833.13</td></tr> <tr><td>Chase Bank</td><td>\$30,013.99</td></tr> <tr><td>Creative Concepts Advertising</td><td>\$1,800.00</td></tr> <tr><td>Fox River Foods Inc.</td><td>\$72,091.71</td></tr> <tr><td>Pepsi Beverage Co.</td><td>\$1,851.36</td></tr> <tr><td>PNC Bank</td><td>\$45,392.50</td></tr> <tr><td>Sam’s Club</td><td>\$5,192.89</td></tr> <tr><td>Sofa Foods of Kentucky</td><td>\$30,158.66</td></tr> <tr><td>Weingarten Investors</td><td>\$7,570.09</td></tr> <tr><td>Wells Fargo</td><td>\$96,177.19</td></tr> </table>	On Deck	\$42,325.30	American Express Bank, FSB	\$3,899.05	American Express Bank, FSB	\$6,464.46	Capital One	\$22,833.13	Chase Bank	\$30,013.99	Creative Concepts Advertising	\$1,800.00	Fox River Foods Inc.	\$72,091.71	Pepsi Beverage Co.	\$1,851.36	PNC Bank	\$45,392.50	Sam’s Club	\$5,192.89	Sofa Foods of Kentucky	\$30,158.66	Weingarten Investors	\$7,570.09	Wells Fargo	\$96,177.19	Impaired	<p>Between the Effective Date and the date that is five (5) years after the Effective Date, the Debtor shall make available for distributions to holders of Allowed Class 3 Claims the amount necessary to pay each Allowed Class 3 Claims with no interest 50% of their allowed claim. Commencing thirty (30) days after the Effective Date and continuing every ninety (90) days thereafter, each holder of an Allowed Class 3 Claim will receive cash payments from the Debtor representing all or a portion of the holder’s pro-rata share of the funds available for distribution to members of Class 3.</p> <p>The Debtor shall make payments of \$9,144.26 per quarter until the holders of Class 3 have</p>
On Deck	\$42,325.30																												
American Express Bank, FSB	\$3,899.05																												
American Express Bank, FSB	\$6,464.46																												
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Sofa Foods of Kentucky	\$30,158.66																												
Weingarten Investors	\$7,570.09																												
Wells Fargo	\$96,177.19																												

	<i>Projected Total:</i>	\$365,770.33	received 50% of their allowed claim.
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#### (4) Equity Interests

Holders of equity Interests are parties who have an ownership interest (*i.e.*, equity security) in the Debtor. In a corporation, entities holding preferred or common stock are Interest holders. In a partnership, Interest holders include both general and limited partners. In a limited liability company, the Interest holders are the members.

The following table identifies all Classes containing Allowed Equity Interests in the Debtor:

<u>Class</u>	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>
4	All membership Interests in the Debtor	Unimpaired	Holders of Class 4 Interests shall retain their Interests in the Debtor upon the Effective Date.

#### ***4.4 Unexpired Leases and Executory Contracts***

The Plan, in Table 7.1 lists all Executory Contracts and Unexpired Leases that the Debtor intends to assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and leases, and to cure defaults of the type that must be cured under the Bankruptcy Code, if any. Table 7.1 also specifies how the Debtor proposes to cure and compensate the other party to such contract or lease for any such defaults.

The Confirmation Order will be deemed to be an Order approving the Debtor's assumption of Executory Contracts and Unexpired Leases identified in Table 7.1 of the Plan, as amended by the Debtor prior to Confirmation. If you object to the assumption of your Unexpired Lease or Executory Contract, the proposed cure of any defaults, or the adequacy of assurance of future performance, you must file and serve your objection to Confirmation within the objection deadline unless the Bankruptcy Court has set an earlier time.

All Executory Contracts and Unexpired Leases that are not referred to in Table 7.1 will be deemed rejected by the Debtor under the Plan upon Confirmation. Consult your advisor or attorney for more specific information about the effect of rejection on your Executory Contract or Unexpired Lease with the Debtor.

If you oppose the Debtor's rejection of your Executory Contract or Unexpired Lease, the characterization of your rights vis-à-vis the Debtor as arising under an Executory Contract or Unexpired Lease, or the proposed treatment of your claim for rejection damages under the Plan, you must file and serve your objection to Confirmation within the objection deadline unless the Bankruptcy Court has set an earlier time.

*The deadline for filing a proof of claim based on a Claim arising from the rejection of an Executory Contract or Unexpired Lease under the Plan is twenty-eight (28) days after entry of the Confirmation Order.* Any Claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Bankruptcy Court orders otherwise.

#### **4.5 Means of Implementing the Plan**

##### *(A) Source of Payments*

Upon entry of the Confirmation Order, the Debtor will continue to operate its business and manage its assets, which will generate income projected to be sufficient for the Debtor to meet its ongoing expenses and obligations contemplated under the Plan.

##### *(B) Financial Projections*

The Debtor's anticipated future revenues and expenses, as of the date this Disclosure Statement is filed, are attached hereto as **Exhibit B** (the "Financial Projections").

##### *(C) Post-Confirmation Management*

The Debtor anticipates that the daily operations of the Debtor will be managed by the following individuals on the Effective Date:

<u>Individual</u>	<u>Position</u>	<u>Salary</u>	<u>Length of Service</u>
Gary Rosenberg	President	\$75,000.00	28 years

#### **4.6 Federal Tax Consequences of Plan**

*Holders of Claims and/or Interests concerned with how the Plan may affect their tax liabilities should consult with their own accountants, attorneys, and/or advisors.*

IRS Circular 230 Disclosure: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

##### *(A) General*

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW. NO RULING HAS BEEN REQUESTED FROM THE IRS AND NO LEGAL OPINION HAS BEEN REQUESTED FROM COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN, AND NO TAX OPINION IS GIVEN BY THIS DISCLOSURE STATEMENT.

THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF CLAIMS.

FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX-EXEMPT ORGANIZATIONS, AND FOREIGN TAXPAYERS, NOR DOES IT ADDRESS TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTOR. THIS DESCRIPTION DOES NOT DISCUSS THE POSSIBLE STATE TAX OR NON-U.S. TAX CONSEQUENCES THAT MIGHT APPLY TO THE DEBTOR OR TO HOLDERS OF CLAIMS.

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE UNIQUE CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

*(B) Tax Consequences of Payment of Allowed Claims Pursuant to Plan*

The federal income tax consequences of the implementation of the Plan to holders of Allowed Claims will depend, among other things, on the consideration to be received by the holder, whether the holder reports income on the accrual or cash method, whether the holder receives distributions under the Plan in more than one taxable year, whether the holder's Claim is allowed or disputed on the Effective Date, and whether the holder has taken a bad debt deduction or worthless security deduction with respect to its Claim.

(1) Recognition of Gain or Loss

In general, a holder of an Allowed Claim should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim less the holder's tax basis in the Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the holder, the length of time the holder held the Claim and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation. The holder's tax basis for any property received under the Plan generally will equal the amount realized. The holder's amount realized generally will equal the sum of the cash and the fair market value of any other property received by the holder under the Plan on the Effective Date or a subsequent distribution date, less the amount (if any) treated as interest, as discussed below.

(2) Post-Effective Date Distributions

Because certain holders of Allowed Claims, including Disputed Claims that ultimately become Allowed Claims, may receive cash distributions after the Effective Date, the imputed interest provisions of the Internal Revenue Code may apply and cause a portion of the subsequent distribution to be treated as interest. Additionally, because holders may receive distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial distribution, any loss and a portion of any gain realized by the holder may be deferred. All holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

### (3) Receipt of Interest

Holders of Allowed Claims will recognize ordinary income to the extent that they receive cash or property that is allocable to accrued but unpaid interest which the holder has not yet included in its income. If an Allowed Claim includes interest, and if the holder receives less than the amount of the Allowed Claim pursuant to the Plan, the holder must allocate the Plan consideration between principal and interest. The holder may take the position that the amounts received pursuant to the Plan are allocable first to principal, up to the full amount of principal, and only then to interest. However, the proper allocation of Plan consideration between principal and interest is unclear and holders of Allowed Claims should consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.

### (4) Bad Debt or Worthless Securities Deduction

A holder who receives in respect of an Allowed Claim an amount less than the holder's tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under Internal Revenue Code § 166(a) or a worthless securities deduction under Internal Revenue Code § 165(g). The rules governing the character, timing, and amount of bad debt and worthless securities deductions place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

### *(C) Information Reporting and Withholding*

Under the Internal Revenue Code's backup withholding rules, the holder of an Allowed Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless the holder comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact, or provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax. Holders of Allowed Claims may be required to establish exemption from backup withholding or make arrangements with respect to the payment of backup withholding.

## **5. CONFIRMATION PROCEDURES**

### ***5.1 Approval of Disclosure Statement***

This Disclosure Statement has been prepared in accordance with Bankruptcy Code § 1125 and Bankruptcy Rule 3016(b), and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws. The purpose of this Disclosure Statement is to provide adequate information to enable the holder of a Claim against or equity Interest in the Debtor to make a reasonably informed decision with respect to the Plan prior to exercising its right to vote to

accept or reject the Plan. Prior to the Debtor's dissemination of this Disclosure Statement to holders of Claims and Interests for the purpose of soliciting votes to accept the Plan, the Debtor must obtain Bankruptcy Court approval of this Disclosure Statement as containing information of a kind and in sufficient and adequate detail to enable such holders to make an informed judgment with respect to acceptance or rejection of the Plan. The Bankruptcy Court's approval of this Disclosure Statement does not constitute either a guarantee of the accuracy or completeness of the information contained herein or an endorsement of the Plan by the Bankruptcy Court.

### *5.2 Solicitation of Votes*

No person is authorized by the Debtor in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference, and, if given or made, such information or representation may not be relied upon as having been authorized by the Debtor.

### *5.3 Voting on the Plan*

In accordance with the Bankruptcy Code, only Classes of Claims against or equity Interests in the Debtor that are "impaired" under the terms of the Plan are entitled to vote to accept or reject the Plan. A Class is "impaired" if the legal, equitable, or contractual rights attaching to the Claims or Interests of that Class are modified, other than by curing defaults and reinstating maturity. Classes of Claims and Interest that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan unless such Class otherwise indicates acceptance. The classification and treatment of Claims and Interests is summarized in Section 4.3(B).

VOTING ON THE PLAN BY EACH HOLDER OF AN IMPAIRED CLAIM ENTITLED TO VOTE ON THE PLAN IS IMPORTANT. IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS, IF YOU HOLD MULTIPLE GENERAL UNSECURED CLAIMS, OR UNDER CERTAIN OTHER CIRCUMSTANCES, YOU MAY SUBMIT MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN, AND RETURN A CORRESPONDING BALLOT FOR EACH CLAIM YOU HOLD AGAINST THE DEBTOR.

PLEASE CAREFULLY FOLLOW ALL OF THE INSTRUCTIONS CONTAINED ON THE BALLOT MADE AVAILABLE TO YOU. ALL BALLOTS MUST BE COMPLETED AND RETURNED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED THEREON.

TO BE COUNTED, YOUR BALLOT MUST ACTUALLY BE RECEIVED BY THE VOTING DEADLINE. IT IS OF THE UTMOST IMPORTANCE TO THE DEBTOR THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN.

**Votes cannot be transmitted orally. Accordingly, you are urged to return your signed and completed Ballot by hand delivery, facsimile, e-mail, overnight service, or regular U.S. mail.**



*(A) Eligibility*

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

In this case, the Debtor believes that Classes 2 and 3 are impaired and that holders of Allowed Claims or Interests in each of those Classes are therefore entitled to vote on the Plan.

(1) Allowed Claims and Allowed Interests

Only the holder of an Allowed Claim or an Allowed Interest has the right to vote on the Plan. When a Claim or Interest is not allowed, the purported creditor or equity interest holder cannot vote to accept or reject the Plan unless the Bankruptcy Court, after notice and hearing, either determines in a Final Order that the disputed claim or interest is an Allowed Claim or an Allowed Interest, or allows the Claim or Interest for voting purposes pursuant to Bankruptcy Rule 3018(a).

(2) Impairment

The holder of an Allowed Claim or Allowed Interest has the right to vote only if it is in a Class that is *impaired* under the Plan. As provided in Bankruptcy Code § 1124, a Class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that Class.

*(B) Voting in Multiple Classes*

The holder of an Allowed Claim that has been allowed in part as a Secured Claim and in part as an Unsecured Claim, or multiple Allowed Claims in multiple Classes, is entitled to accept or reject the Plan in each capacity, and should cast one ballot for each Class in which the holder is a member.

*(C) Persons Not Entitled to Vote*

The holders of the following types of Claims and Interests are *not* entitled to vote on the Plan unless they hold other Allowed Claims in one or more impaired Classes: those that have been disallowed by Final Order of the Bankruptcy Court; those that are in a Class that is unimpaired by the Plan; those entitled to priority pursuant to Bankruptcy Code §§ 507(a)(2), (a)(3), and (a)(8); those that will not receive or retain any value or property under the Plan; and those that are Administrative Expenses.

## **6. CONFIRMATION REQUIREMENTS**

To be confirmable, the Plan must meet the requirements listed in Bankruptcy Code §§ 1129(a) or (b). These include the requirements that: the Plan must be proposed in good faith; at least one impaired Class of claims must accept the Plan, without counting the votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation, unless the creditor or equity

interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in Bankruptcy Code § 1129, and they are not the only requirements for Confirmation.

### ***6.1 Feasibility of the Plan***

Bankruptcy Code § 1129(a)(11) requires that the Bankruptcy Court must find that Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor unless contemplated by the Plan. This requirement is commonly referred to as the “feasibility” requirement. The Plan does not contemplate a subsequent liquidation or financial reorganization, and the Debtor believes that it will be able to timely perform all obligations described in the Plan. Therefore, the Debtor believes that the Bankruptcy Court will find that the Plan is feasible.

In order to substantiate a finding that the Plan meets the feasibility requirement, the Debtor has prepared the Financial Projections as set forth in Exhibit B to this Disclosure Statement.

### ***6.2 Best Interests Test***

#### ***(A) Finding of Fact Required***

Even if the Plan is accepted by each Class of Holders of Claims and Interests, the Bankruptcy Code requires the Bankruptcy Court to determine that the Plan is in the best interests of all holders of Claims and Interests that are impaired by the Plan and that have not accepted the Plan. The “best interests” test, as set forth in Bankruptcy Code § 1129(a)(7), requires the Bankruptcy Court to find either that (i) all members of an impaired Class of Claims or Interests have accepted the Plan, or (ii) the Plan will provide a member who has not accepted the Plan with a recovery of property of a value, as of the Effective Date, that is not less than the amount such holder would recover if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

#### ***(B) Liquidation Analysis***

To calculate the probable distribution to members of each impaired Class of Claims or Interests if the Debtor was liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be generated from the Debtor’s assets if this Chapter 11 Case was converted to a case under chapter 7 of the Bankruptcy Code. This “liquidation value” would consist primarily of the proceeds from a forced sale of the Debtor’s assets by a Chapter 7 Trustee. As discussed in Section 8.1, *infra*, the amount of liquidation value available to unsecured creditors would be reduced by the administrative costs of the case proceeding under chapter 7 of the Bankruptcy Code.

Once the Bankruptcy Court ascertains the secured creditors’ and priority claimants’ recoveries in a liquidation, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in a liquidation. If such probable distribution has a greater value than the distributions to be received by such creditors and equity security holders under a chapter 11 plan, then such plan is not in the best interests of creditors and equity security holders.

*(C) Application of Bests Interests Test*

Notwithstanding the difficulties in quantifying recoveries to creditors in a hypothetical liquidation with precision, the Debtor believes that, considering that the distributions contemplated under the Plan will fully pay all Allowed Claims in impaired Classes in short amount time after the Effective Date, the Plan clearly satisfies the “best interests” test of Bankruptcy Code § 1129(a)(7). The Debtor believes that the members of each impaired Class will receive at least as much under the Plan as they would through liquidation in a hypothetical chapter 7 case.

Creditors will receive a better recovery through the distributions contemplated by the Plan because the continued operation of the Debtor as a going concern rather than its forced liquidation will allow the realization of more value for the Debtor’s assets. In liquidation, the Debtor’s substantial secured debt obligations could potentially preclude any meaningful recovery by holders of Unsecured Claims. Moreover, as a result of the Debtor’s reorganization, creditors such as the Debtor’s employees will retain their jobs and most likely make few, if any, claims against the Estate. Finally, if the Debtor was liquidated in a chapter 7 case, the aggregate amount of general Unsecured Claims would increase significantly and be subordinated to increased Priority Claims. For example, employees would file Administrative Expense Claims for post-petition wages, pensions, and other benefits; landlords and certain contract parties would file rejection damage claims; and the Chapter 7 Trustee and his professionals would be entitled to administrative priority. The resulting increase in both general Unsecured and Priority Claims would undoubtedly decrease percentage recoveries to unsecured creditors currently positioned to receive distributions under the Plan.

**6.3 Votes Necessary for Confirmation**

As a condition to Confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances.

*(A) Class Acceptance*

Bankruptcy Code § 1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of (i) at least two-thirds (2/3) in dollar amount and (ii) more than one-half (1/2) in number of claims in that class but, for the latter purpose, counts only those who actually vote to accept or reject the plan. Thus, a Class of Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number actually voting cast their Ballots in favor of acceptance.

A Class of Interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the Allowed Interests in the Class who cast votes on the Plan accept the Plan.

*(B) Treatment of Non-Accepting Classes*

Even if one or more Impaired Class votes to reject the Plan, the Bankruptcy Court may nonetheless confirm the Plan if at least one (1) impaired Class of Claims has accepted the Plan, and the non-accepting Classes are treated in a manner prescribed by Bankruptcy Code § 1129(b). A plan that binds non-accepting Classes is commonly referred to as a “cramdown” plan.

*You should consult your own attorney if a cramdown confirmation will affect your Claim or Interest, as the variations on this general rule are numerous and complex.*

#### **6.4 “Cramdown” Confirmation**

Bankruptcy Code § 1129(b) provides that a plan can be confirmed even if it has not been accepted by all impaired classes as long as at least one impaired class of claims (excluding the votes of “insiders”) has accepted it. The Bankruptcy Court may confirm the Plan at the Debtor’s request notwithstanding an impaired Class’ rejection of the Plan as long as the Plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired Class that has not accepted it.

A plan is fair and equitable as to a class of secured claims that rejects such plan if the plan provides (1)(a) that the holders of such claims in the rejecting class retain their liens securing those claims to the extent of the allowed amount of such claims, whether the collateralized property is retained by the debtor or transferred to another entity, and (b) that each holder of such a claim receives on account of that claim deferred cash payments totaling at least the allowed amount of that claim, of a value, as of the effective date of the plan, of at least the value of the holder’s interest in the estate’s interest in such property; (2) for the sale, subject to Bankruptcy Code § 363(k), of any property that is subject to the liens securing the claims including in the rejecting class, free and clear of the liens, with the liens to attach to the proceeds of the sale, and the treatment of the liens on proceeds under clause (a) or (b) of this sentence; or (3) for the realization by such holders of the indubitable equivalent of their claims.

A plan is fair and equitable as to a class of unsecured claims that rejects such plan if the plan provides (1) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) that the holder of any claim or interest that is junior to the claims of such rejecting class will not receive or retain on account of such junior claim or interest any property at all.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (1) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (2) that the holder of any interest that is junior to the interest of such rejecting class will not receive or retain under the plan on account of such junior interest any property at all.

In the event that any impaired Class votes to reject the Plan, the Debtor will seek Confirmation of the Plan pursuant to Bankruptcy Code § 1129(b).

## **7. RISK FACTORS**

The holder of a Claim against the Debtor should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents

delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or reject the Plan. These factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

### ***7.1 Considerations Regarding the Chapter 11 Case***

*(A) Any significant delay in the Debtor's emergence from bankruptcy may disrupt business operations.*

The impact that prolonging of the Chapter 11 Case may have on the Debtor's operations cannot be accurately predicted or quantified. Although the Debtor has endeavored to minimize the effects of any bankruptcy-related disturbances since the commencement of this case, certain disruptions in operations have been unavoidable. The continuation of this Chapter 11 Case, particularly if the Plan is not approved or confirmed within the targeted timeframe, could further adversely affect the Debtor's operations and relationships with its suppliers, employees, consumers, and agents. If Confirmation and consummation of the Plan do not occur within the periods currently contemplated, the Chapter 11 Case could result in, among other things, increased costs for professional fees and similar Administrative Expenses.

In addition, a prolonged exit from this Chapter 11 Case may make it more difficult for the Debtor to retain management and other key personnel, and is likely to require the Debtor's senior management to expend significant amounts of time and effort dealing with the financial reorganization instead of focusing on the operation of the business.

*(B) The Debtor may not be able to obtain Confirmation of the Plan.*

The Debtor cannot insure that it will receive the requisite acceptances from the holders of Allowed Claims to confirm the Plan. Even if all impaired Classes accept or could be deemed to have accepted the Plan, the Debtor cannot insure that the Bankruptcy Court will confirm the Plan. One or more non-accepting holders(s) of Claims and/or Interests, or the United States Trustee, might challenge the adequacy of this Disclosure Statement or the balloting procedures and results as not being in compliance with the Bankruptcy Code or the Bankruptcy Rules. Even if the Bankruptcy Court determined that this Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met. Bankruptcy Code § 1129 sets forth the requirements for Confirmation and requires, among other things, a finding by the Bankruptcy Court that (a) Confirmation of the Plan is not likely to be followed by liquidation or a need for further financial reorganization; (b) the Plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting Classes; (c) the value of distributions to dissenting holders of Claims and Interests will not be less than the value of distributions such holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code; and (d) the Plan and the Debtor have otherwise complied with the applicable provisions of the Bankruptcy Code. Although the Debtor believes that the Plan will meet all applicable tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

Consummation of the Plan is also subject to certain conditions described in Section 9.3, *infra*. If the Plan is not confirmed, it is unclear whether a restructuring of the Debtor could be

implemented and what distributions holder of Claims ultimately would receive with respect to their Claims. If an alternative reorganization could not be agreed to, it is possible that the Debtor would have to liquidate its assets, in which case it is likely that holders of Claims would receive substantially less favorable treatment than they would receive under the Plan.

*(C) Parties in interest may object to the Debtor's classification of Claims and Interests.*

Bankruptcy Code § 1122 provides that a plan of reorganization may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code, as augmented or clarified by controlling legal precedent.

*(D) The actual amounts of Allowed Claims may vary from the Debtor's estimated amounts of Allowed Claims and reduce the percentage recovery on general unsecured claims.*

The estimated Claims set forth in the Plan and Disclosure Statement are based on various assumptions and the actual amounts of Allowed Claims may significantly differ from the estimates. In addition, the Debtor may have omitted, whether by error or ignorance, a Claim that is ultimately proven to be an Allowed Claim which could alter the recovery realized by holders of other similarly situated Allowed Claims. Should any of the underlying assumptions relied upon in the estimation of Claims ultimately prove to be incorrect, the actual allowed amounts of Claims may vary from the estimated Claims contained herein. As a result, such differences may materially and adversely affect the percentage recovery on Class 3-C General Unsecured Claims under the Plan.

*(E) The Debtor may attempt to achieve Confirmation notwithstanding an inability to obtain necessary votes for consensual Confirmation.*

Pursuant to the “cramdown” provisions of Bankruptcy Code § 1129, the Bankruptcy Court can confirm the Plan at the Debtor's request if (i) at least one impaired Class has accepted the Plan (with such acceptance being determined without including the acceptance of any “insider” in such Class) and (ii) with respect to each impaired Class that has not accepted the Plan, the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable.” In accordance with Bankruptcy Code § 1129(a)(8), the Debtor will request that the Bankruptcy Court confirm the Plan without the acceptance of all impaired Classes entitled to vote.

The Debtor hereby reserves the right to modify the terms of the Plan as necessary for Confirmation without the acceptance of all impaired Classes. Such modification could result in less favorable treatment for any non-accepting Classes than the treatment currently provided for in the Plan. Such less favorable treatment could include a distribution of property of a lesser value than that currently proposed in the Plan or no distribution of property whatsoever.

## **7.2 Considerations Regarding the Debtor's Business**

*(A) The Debtor's financial projections are inherently uncertain and actual results may materially differ.*

The Debtor's financial personnel have proceeded in utmost good faith in their attempt to produce a realistic projection of the Debtor's financial position over the relevant years in which substantially all of the Debtor's restructured debts will be serviced under the Plan. Nonetheless, any undertaking in the area of financial projections necessarily requires a host of assumptions, and event and circumstances frequently do not occur as expected. The degree of difference between the projected and actual results cannot be known, but such differences may prove to be material with respect to the Debtor's financial well-being following Confirmation.

Because the actual results achieved throughout the periods covered by the Financial Projections may vary from the projected results, the Financial Projections should not be relied upon as a guaranty, representation, or other assurance of or against the actual results that will occur. The Debtor does not intend to update the Financial Projections; thus, the Financial Projections will not reflect the impact of any subsequent events not already accounted for in the disclosed assumptions.

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

### ***8.1 Chapter 7 Liquidation***

Notwithstanding acceptance of the Plan by the requisite number of members of any Class, the Bankruptcy Court must still independently determine that the Plan provides each member of each impaired Class of Claims and Interests a recovery that has a value at least equal to the distribution that each such Claim or Interest holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on the Effective Date.

If no plan is confirmed, the Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code. In a chapter 7 case, a trustee would be appointed to liquidate the assets of the Estate. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Interests in the Debtor.

However, the Debtor believes that creditors would lose the benefit of a substantially higher going concern value if the Debtor was forced to liquidate. In addition, the Debtor believes that in liquidation under chapter 7, before holders of Allowed Claims received any distribution, additional Administrative Expenses involved in the appointment of a trustee and the necessary attorneys, accountants, and other professionals to assist such trustee(s) would cause a substantial diminution in the value of the Estate. The assets available for distribution to creditors would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of Unexpired Leases and other Executory Contracts in connection with the cessation of the Debtor's operations.

### ***8.2 Chapter 11 Liquidation***

The Debtor could also be liquidated pursuant to a chapter 11 plan if the Plan is not confirmed. In liquidation under chapter 11, the Debtor's assets could be sold in an orderly fashion over a more extended period of time than in liquidation under chapter 7. Thus, a chapter 11 liquidation might result in greater recoveries than a chapter 7 liquidation, but the delay in distributions could result

in lower present values received and higher administrative costs. Because a trustee is not required in a chapter 11 liquidation, expenses for professional fees could be lower than in a chapter 7 case in which a trustee must be appointed. Any distribution to the holders of Claims and Interests under a chapter 11 liquidation plan probably would be delayed substantially. Notwithstanding the potentially lower administrative costs associated with a chapter 11 liquidation, the value of any distributions to holders of Claims against the Debtor would be substantially diluted by the increased amount and value of Claims resulting from the cessation of the Debtor's operations.

The likely form of any liquidation would be by piecemeal sale of individual assets. Based on this analysis, a liquidation of the Debtor's assets likely would produce less value for distribution to creditors than that recoverable in each instance under the Plan. In the Debtor's opinion, the recoveries projected to be available in liquidation are not likely to afford holders of Claims and Interests as great a realization potential as provided for under the Plan.

### ***8.3 Alternative Plans***

If the Plan is not confirmed, the Debtor or any other party in interest in this Chapter 11 Case could, subject to the expiration of the Debtor's exclusivity period, propose a different plan.

## **9. EFFECT OF CONFIRMATION OF THE PLAN**

**The effectiveness of the Plan is subject to material conditions precedent, some of this may not be satisfied. See § 9.3(A). There is no assurance that these conditions will be satisfied.**

### ***9.1 Discharge of Debtor***

Upon Confirmation of the Plan, the Debtor shall be discharged from any debt that arose prior to Confirmation, subject to the occurrence of the Effective Date, to the extent specified in Bankruptcy Code § 1141(d)(1)(A), provided, however, that the Debtor shall not be discharged of any debt (1) imposed by the Plan, (2) of a kind specified in Bankruptcy Code § 1141(d)(6)(A) if a timely complaint was filed in accordance with Bankruptcy Rule 4007(c), or (3) of a kind specified in Bankruptcy Code § 1141(d)(6)(B). After the Effective Date your Claims against the Debtor will be limited to the debts described in clauses (1) through (3) of the preceding sentence.

### ***9.2 Modification of Plan***

The Debtor may modify the Plan at any time prior to Confirmation. However, the Bankruptcy Court may require a new disclosure statement and/or additional voting on the Plan.

The Debtor may also seek to modify the Plan at any time after Confirmation only if (1) the Plan has not been substantially consummated, and (2) the Bankruptcy Court authorizes the proposed modifications after notice and hearing.

### ***9.3 Consummation of Plan***



*(A) Conditions Precedent*

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Section 9.3(B) of this Disclosure Statement:

- (1) The Bankruptcy Court shall have entered one or more Orders (which may include the Confirmation Order) authorizing the assumption or rejection of Unexpired Leases and Executory Contracts by the Debtor as contemplated by Section 4.4 of this Disclosure Statement;
- (2) The Confirmation Order has been entered, has not been reversed, stayed, modified, or amended, and has become a Final Order;
- (3) The Bankruptcy Court shall have entered an Order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtor to take all actions necessary or appropriate to implement the Plan in form and substance reasonably acceptable to the Debtor, which Order shall include provisions for the implementation and completion of all transactions contemplated by the Plan and the implementation and consummation of the contracts, instruments, releases, and other agreements or documents entered into or delivered in connection with the Plan; and
- (4) All other actions, documents, consents, and agreements necessary to implement the Plan shall have been effected, obtained, and/or executed.

*(B) Waiver of Conditions*

The conditions set forth Section 9.3(A) of this Disclosure Statement may be waived by the Debtor without any notice to other parties in interest or the Bankruptcy Court and without a hearing. The failure of the Debtor to exercise any of the foregoing rights, in their sole discretion, shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

**9.4 Retention of Jurisdiction**

Pursuant to Bankruptcy Code §§ 105(a) and 1142, the Debtor will request that the Confirmation Order provide that the Bankruptcy Court retains exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including, without limitation, the matters described in Section 13.2 of the Plan. Notwithstanding the foregoing, the Debtor and any party may agree in writing that the jurisdiction of the Bankruptcy Court shall not be exclusive, but concurrent with other courts of competent jurisdiction.

**9.5 Final Decree**

Once the Estate has been fully administered, as provided in Bankruptcy Rule 3022, the Debtor or such other party as the Bankruptcy Court may designate in the Confirmation Order shall file a motion with the Bankruptcy Court to obtain a final decree to close the case. Alternatively, the Bankruptcy Court may enter such final decree on its own motion.

## 10. RECOMMENDATION AND CONCLUSION

It is the Debtor's position that the Plan is substantially preferable to liquidation under chapter 7 of the Bankruptcy Code. Conversion of the Chapter 11 Case to a case under chapter 7 would result in: (i) substantial delays in the distribution of proceeds (if any) available under such alternative; (ii) increased uncertainty as to whether payments would be made to unsecured creditors; and (iii) substantially increased administrative costs.

It is important that you exercise your right to vote on the Plan. It is the Debtor's belief that the Plan fairly and equitably provides for the treatment of all Claims against and Interests in the Debtor. **The Debtor recommends and urges all parties to vote to accept the Plan.**

IN WITNESS WHEREOF, the Debtor has submitted this Disclosure Statement this 30<sup>th</sup> day of September, 2016.

M&R CHARLESTON STATION, INC.  
DEBTOR AND DEBTOR IN POSSESSION

/s/ Gary Rosenberg  
GARY ROSENBERG  
President