IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In Re:

Case No. 11-40764-11

D. J. CHRISTIE, INC.,
Debtor.

DISCLOSURE STATEMENT TO ACCOMPANY THE PLAN OF REORGANIZATION OF THE DEBTOR DATED December 9, 2016

COMES NOW D.J. Christie, Inc., (hereinafter sometimes referred to as "Debtor") by and through its attorneys, Stumbo Hanson, LLP, Topeka, Kansas, and hereby files its Disclosure Statement to accompany the Plan of Reorganization dated December 9, 2016.

I. INTRODUCTION

This is the disclosure statement (the "Disclosure Statement") in the small business Chapter 11 case of D.J. Christie, Inc., (the "Debtor"). This Disclosure Statement contains information about the Debtor and Describes the Debtor's Chapter 11 Plan (the "Plan") filed by the Debtor on December 9, 2016. A full copy of the Plan is attached to this Disclosure Statement as Exhibit "A." ***Your rights may be affected. 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 proposed distributions under the Plan are discussed at pages 8 to 10 of this Disclosure Statement. General unsecured creditors are classified in Class 4, and will receive a pro-rata distribution toward their allowed claims of the hypothetical Chapter 7 Liquidation Value of the Debtor's Bankruptcy estate in nine (9) equal annual installments of principal and interest at prime plus 1.5% amortized over twenty-five (25) years, and a balloon payment of principal and interest

after 10 years. The first annual installment shall become due thirty (30) days after the effective date of Debtor's Plan, and payments shall occur annually thereafter until all payments required to this class have been satisfied.

Purpose of this Document.

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

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

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

1. *Time and Place of Hearing to Finally Approve this Disclosure Statement and Confirm the Plan.*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on **January ____, 2017, at 9:30 o'clock a.m.**, in the United States Bankruptcy Court for the District of Kansas, Carlson Building, 444 SE Quincy, Room 220, Topeka, Kansas 66683.

2. *Deadline for Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to:

Tom R. Barnes II
Stumbo Hanson, LLP
2887 SW MacVicar Ave.
Topeka, KS 66611

See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by **January ____, 2017**, or it will not be counted.

3. *Deadline for Objecting to the Adequacy of Disclosure and Confirmation of the Plan.*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Debtor's counsel at the address stated in the immediately preceding paragraph by **January ____, 2017**.

4. *Identity of Persons to Contact for More Information*

If you want additional information about the Plan, you should contact Debtor's counsel, Tom R. Barnes II and Todd A. Luckman, Stumbo Hanson, LLP, 2887 SW MacVicar Ave., Topeka, KS 66611, (785) 267-3410, facsimile (785) 267-9516, tom@stumbolaw.com; todd@stumbolaw.com.

B. **Disclaimer**

The Court has conditionally approved this Disclosure Statement as containing adequate

information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the plan by the Court, or a recommendation that it be accepted. The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until January ___, 2017.

II. BACKGROUND

A. **Description and History of the Debtor's Business.**

The Debtor is a for profit corporation chartered by the State of Texas. Since its inception in 1983, Debtor has been in the real estate development business, focusing on secure to built and power center opportunities with Home Depot, Target, Kohl's, Goody's Family Clothing, and Hy-Vee stores. The company has been instrumental in completing the development of over $500 Million in aggregate value including retail, offices, apartments and lot development. Its business headquarters is located at 7387 W. 162nd Street, Ste. 200, Stilwell, Kansas 66085.

B. **Insiders of the Debtor**

The Debtor's insiders as that term is defined in §101(31) of the United States Bankruptcy Code (the "Code") and their relationship to the Debtor are as follows:

David J. Christie
7387 W. 162nd Street, Ste. 200
Stilwell, Kansas 66085

David J. Christie is the President of the Debtor and is possessed of 100% of the issued and outstanding common stock of the Debtor. David J. Christie has received compensation from the Debtor since its inception as an employee, but is currently providing management services to the

Debtor without compensation.

Management of the Debtor Before and During the Bankruptcy

During the two years prior to the date on which the Bankruptcy petition was filed, David J. Christie was President of the Debtor as well as only member of the Board of Directors of the Debtor and has continued since the commencement of the case.

After the effective date of the order confirming the Plan, David J. Christie will continue as the Post Petition Manager of the Debtor. David J. Christie will continue to be responsible for the general business management of the Debtor and his compensation will be maintained at a rate not to exceed $60,000 per year with appropriate raises after taking into consideration business growth and satisfaction of all payments as required under Debtor's Chapter 11 Plan.

C. **Events Leading to the Chapter 11 Filing**

D.J. Christie, Inc. was named as a defendant in an action commenced by Alan E. Meyer ("Meyer"), John R. Pratt ("Pratt"), and their company, namely Dovetail Builders 2, LLC ("Dovetail"), in the United States District Court for the District of Kansas for breach of contract arising out of the development of "The Bluff Apartments," a real estate development project in Junction City, Kansas.[1] The action was tried before a jury which returned a verdict in favor of Meyer, Pratt and Dovetail which was memorialized on September 8, 2009, when Judge Carlos Murguia of the United States District Court for the District of Kansas issued a final judgment in said suit in favor of Meyer, Pratt and Dovetail in the amount of $9,196,445.00, plus post-judgment interest. On March 15, 2011, the Tenth Circuit reduced the award of damages to Meyer and Pratt to $7,170,603.00 and reversed the entry of judgment in favor of Dovetail. The Tenth Circuit also

1 *Meyer, et al. vs. Christie, et al.*, United States District Court for the District of Kansas, Case No. 07-2230-CM.

remanded to the District Court the question of whether D.J. Christie, Inc., Alexander W. Glenn ("Glenn") and David J. Christie ("Christie") may be liable to Meyer and Pratt for damages attributable to lost contracting profits. On July 15, 2011, after deliberating on the remanded issue, Judge Murguia issued his second final order after determining that D.J. Christie, Inc. and its co-defendants were not liable to Meyer and Pratt for damages attributable to lost profits. As a result, Meyer and Pratt held an enforceable judgment against D.J. Christie, Inc. (the Debtor in this proceeding), Glenn and Christie in the amount of $7,170,603.00 plus post judgment interest and costs.

During April and May of 2011, the Christie Parties acquired $9,436,978.02 in judgments entered against the Dovetail Parties. These judgments originated in Iowa and were registered by the Christie Parties in the District Court of Dickinson County Kansas and in the Circuit Courts of Jackson County and Platte County Missouri ("the Iowa Judgments"). Accordingly, D.J. Christie, Inc., Glenn and Christie were creditors of Meyer and Pratt by virtue of holding the aforementioned judgments originating in Iowa and currently registered in the District Court of Dickinson County, Kansas (hereinafter "Iowa Judgments"). On May 20, 2011, shortly after acquiring the Iowa Judgments, Debtor filed its petition under Chapter 11 of Title 11 to restructure its debts and to emerge as a viable real estate development company. After filing the bankruptcy, Debtor filed an adversary case to determine the claims of the Dovetail Parties against it, including whether the Christie Parties are entitled to setoff the Iowa Judgments against the amended Federal Judgment.

Throughout their history of litigation, the Christie Parties and the Dovetail Parties failed three times at mediation. After conducting several months of written discovery and depositions in the adversary case, the parties attempted a fourth mediation and were successful. Liberty Bank, a creditor of one of the Dovetail Parties, had sought and was allowed to intervene in the

aforementioned Adversary Proceeding, but was not a party to the mediation. The Christie Parties and the Dovetail Parties moved the bankruptcy court pursuant to the Federal Rules of Bankruptcy Procedure to approve the settlement that they reached during mediation ("the settlement"). On May 17, 2013, over Liberty Bank's objection, the bankruptcy court approved the settlement agreement finding it fair, equitable and in the best interest of the bankruptcy estate. Liberty Bank has appealed the Bankruptcy Court's approval of the settlement agreement to the United States District Court for the District of Kansas which upheld the Bankruptcy Court's decision, and Liberty Bank has appealed that decision to the Tenth Circuit Court of Appeals from which the parties are awaiting a determination.

Significant Events Leading up to and During the Bankruptcy Case

Events of significance leading up to and occurring since the filing of this case are as follows:

On January 20, 2010, Washington International Insurance Co. ("Surety") issued a Supersedeas Bond, Bond #90713617 in the amount of $1,125,000.00 ("Bond") to stay collection pending an appeal of the Federal Judgment.

- On March 15, 2011, the United States Court of Appeals for the Tenth Circuit reduced the award of damages to Meyer and Pratt to $7,170,603.00 and reversed the entry of judgment in favor of Dovetail Builders 2, L.L.C. The Tenth Circuit issued its mandate on April 25, 2011.
- Between April 29, 2011 and May 19, 2011, Debtor, Christie and Glenn acquired approximately $9,312,432.70 (as of December 6, 2012) in judgments originally rendered in Iowa ("Iowa Judgments") against Meyer and Pratt in favor of other creditors.
- Between May 19, 2011 and June 3, 2011, Debtor, Christie and Glenn registered all of the

Iowa Judgments in the District Court of Dickinson County, Kansas. Interest is accumulating on the Iowa Judgments at the aggregate rate of $3,193.05 per day.

- Also on May 19, 2011, Debtor, Christie and Glenn registered a single Iowa Judgment, *Christie*, et al., successors-in-interest to *Bankers Trust Co.* v. *Meye*r, et al., Case No. EQCV071091, District Court of Johnson County, Iowa in the amount of $3,924,766.76 (as of December 6, 2012) in the Circuit Court of Jackson County, Missouri.
- On May 20, 2011 DJ Christie, Inc. filed for Chapter 11 Reorganization.
- On June 29, 2011, to aid collection of the Iowa Judgments, Debtor, Christie and Glenn caused the Surety to be served with a garnishment order issued by the Circuit Court of Jackson County, Missouri (Execution No. 11-EXEC-6844) applicable to Meyer, as a judgment debtor.
- On July 15, 2011, the Federal Judgment was amended in accord with the remand issued by the Tenth Circuit and the amended Federal Judgment was entered in favor of Meyer and Pratt against Debtor, Christie and Glenn in the amount of $7,170,603.00 plus $100.00 in punitive damages plus post-judgment interest and costs. Interest accrues on the amended Federal Judgment at the rate of .18% per annum or $35.36 per day.
- On July 29, 2011, D.J. Christie, Inc. filed an adversary proceeding captioned *D.J. Christie, Inc. v. Alan E. Meyer, et al.*, Case No. 11-7043 in the United States Bankruptcy Court for the District of Kansas, ("adversary case") directed at obtaining, among other remedies, a judicially sanctioned setoff of the judgments it and its affiliates hold against Mr. Meyer and Mr. Pratt and the judgment entered against them in the United States District Court for the District of Kansas referred to above.
- On August 5, 2011, to aid collection of the Iowa Judgments, Debtor, Christie and Glenn

caused the Surety to be served with a garnishment order issued by the Circuit Court of Jackson County, Missouri (Execution No. 11-EXEC-7710) applicable to Pratt, as a judgment debtor.

- On August 25, 2011, Meyer filed Proof of Claim No. 5 in Debtor's bankruptcy case for $7,210,690.48, the full amount of the amended Federal Judgment plus costs as of August 25, 2011.
- On August 25, 2011, Pratt filed Proof of Claim No. 6 in Debtor's bankruptcy case for $7,210,690.48, the full amount of the amended Federal Judgment plus costs as of August 25, 2011.
- On October 13, 2011, the District Court directed the Surety to pay the Bond ("Payment Order") to the attorneys for Meyer and Pratt within five days.
- On October 18, 2011, the Surety filed a motion for relief from stay in Debtor's bankruptcy case noting that the Bond is subject to conflicting court orders and may constitute property of the bankruptcy estate.

- On November 29, 2011, Debtor filed an objection to Proof of Claim No. 5.
- On December 2, 2011, Debtor filed an objection to Proof of Claim No. 6
- On January 11, 2012, Liberty Bank, F.S.B. intervened in the adversary case.
- On March 23, 2012, an interpleader fund was established in the case of *Nazar* v. *Christie*, et al., Case No. 12-7016 with a portion of the proceeds from the sale of The Bluffs apartment complex in Junction City, Kansas.
- In response to a motion to withdraw the reference filed by Pratt in the adversary case, the Hon. Carlos Murguia adopted the Bankruptcy Court's Report and Recommendation and

entered an order on June 27, 2012 directing that the Bankruptcy Court preside over the adversary case for pretrial mattes until jury issues become well-defined and ready for trial.

- On December 6, 2012, a Settlement Agreement was reached between Meyer and Pratt, the Debtor, Christie and Glenn that globally resolves the above-mentioned matters pending the Bankruptcy Court's approval.
- On February 6, 2013, Debtor filed its Motion to Approve Compromise and Settlement and caused the same to be noticed to all creditors and parties in interest.
- On February 19, 2013, Liberty Bank, F.S.B. ("Liberty"), a judgment creditor of Alan E. Meyer a party to the aforementioned Settlement Agreement, filed its Objection to the Debtor's Motion to Approve Compromise and Settlement.
- On May 17, 2013, the Court approved the Debtor's Motion to Approve Compromise and Settlement over the Objection of Liberty Bank, F.S.B., subject to certain conditions which have now been met.
- Liberty Bank successfully appealed the Bankruptcy Court's May 17, 2013 decision approving the Settlement Agreement and on December 19, 2013, the United States District Court for the District of Kansas reversed the Bankruptcy Court's approval of the Settlement Agreement and remanded the matter to the Bankruptcy Court for further proceedings.
- The Bankruptcy Court concluded that on remand it was directed to (1) make detailed findings of fact as to the priority of interests in the Federal Judgment and (2) to determine, in light of those priorities, the impact on Liberty Bank of the "offset in full" provision of the Settlement Agreement and whether the Settlement Agreement is fair and equitable.
- The Bankruptcy Court considered Liberty Bank's priority on remand and determined by order issued on March 4, 2015 that "the offsets of the Iowa Judgments against the Federal

Judgment had priority over Liberty Bank's rights as garnishor."

- Upon appeal by Liberty Bank of the Bankruptcy Court's ruling to the United States District Court a second time, the District Court ordered on January 13, 2016 that the decision of the Bankruptcy Court be affirmed.
- On January 27, 2016, Liberty Bank field a motion for rehearing in the District Court, which was denied on June 15, 2016.
- On July 14, 2016, Liberty Bank appealed the District Court's ruling affirming the Bankruptcy Court's order approving the compromise and settlement between the Christie Parties and the Dovetail Parties to the 10th Circuit. The appeal is currently outstanding.

D. **Recovery of Avoidable Transfers**

Debtors' management has reviewed prepetition transactions with its bankruptcy counsel for possible actions to avoid transfers of assets made within the 90 days immediately preceding the commencement of the case as regard non-insiders and those transfers made to insiders within the 12 months immediately preceding the commencement of the case. No preference, fraudulent conveyance or other avoidable transfers have been determined to exist. Therefore, the Debtor does not intend to pursue preference, fraudulent conveyance or other avoidance actions.

E. **Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable 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.

F. **Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in the Liquidation

Analysis attached hereto and marked Exhibit "B." The values given are Debtor's best estimate of what the assets would bring at auction sale.

The most recent post-petition operating report filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit "C." A summary of Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit "D."

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

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

B. Unclassified Claims

The Debtor has classified all claims under its Chapter 11 Plan.

C. Classes of Claims and Equity Interest Holders

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

1. *Class 1 - Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's Chapter 11 case, which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the

value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the filing of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

2. *Class 2 – Priority Tax Claims*

Priority tax claims are unsecured income, employment, sales and other taxes describe by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) 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 order of relief.

Debtor has no scheduled priority tax claims. This class is considered unimpaired under the Debtor's Plan.

3. *Class 3 Allowed Secured Claims as Classified Under Debtor's Plan*

Allowed Secured Claim are claims secured by property of the Debtor's bankruptcy estate to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral 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.

Debtor has no scheduled secured claims. This class is considered unimpaired under the Debtor's Plan.

4. *Class 4 – General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. All unsecured claimants' claims shall be considered impaired for the purposes of Debtor's Plan, as they shall receive periodic payments toward their allowed claim of a pro-rata distribution of $80,588.96 representing the hypothetical

Chapter 7 Liquidation Value of the Debtor's Bankruptcy estate. Such distributions will consist of nine (9) equal annual installments of principal and interest at prime plus 1.5% amortized over twenty-five (25) years, and a balloon payment of principal and interest on tenth anniversary of the effective date of the Debtor's Plan. The first annual installment shall become due thirty (30) days after the effective date of Debtor's Plan, and payments shall occur annually thereafter until all payments required to this class have been satisfied.

Class 5 – Equity Interest Holders

Equity interest holders are parties who hold an ownership interest (*i.e.,* equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. The Debtor herein is a corporation, and it has issued one class of common stock. Its equity interest holder is David J. Christie. The claim of this individual shall be considered impaired under the Debtor's Plan, as his interest in the Debtor shall be cancelled and new shares issued to him at a par value representing funds he has agreed to advance to pay in full the unpaid administrative and any priority claims at confirmation of this plan.

D. **Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded from the Debtor's future earnings.

2. *Post-confirmation Management*

The Post-confirmation Managers of the Debtor and their compensation, shall be as follows:

Name	Position	Insider (yes/no)	Compensation
David J. Christie	President	Yes	Not to exceed $60,000 annually

E. **Risk Factors**

The proposed Plan has the following risks: The Debtor relies greatly upon the overall business economy of the Midwest region of the United States where it concentrates its commercial real estate development activities, and the demand for commercial/retail real estate. Debtor is also at risk to fluctuations in the business interest rates and declines in the construction economy similar to other building and development contactors.

F. **Executory Contract and Unexpired Leases**

All executory contracts and unexpired leases that are not identified herein to be assumed will be rejected under the Plan. Consult your attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objection to confirmation of the Plan. Debtor has no unexpired leases or executory contracts.

G. **Tax Consequences of Plan**

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Tax Advisors.

IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: The Plan must be proposed in good faith; at least one impaired class must accept the plan, without counting 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 case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. The requirements are not the only

requirements listed in § 1129, and they are not the only requirements for confirmation.

A. **Who May Vote or Object**

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

Many parties in interest, however, 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 equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtor believes that Classes 4 and 5 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Debtor further believes that Classes 1, 2 and 3 are unimpaired and that holders of claims in these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

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

The deadline for filing a proof of claim in this case was August 25, 2011.

A deadline for filing objections to claims of December 15, 2011, was set by the Court and has expired.

2. ***What Is an Impaired Claim or Impaired Equity Interest?***

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

3. *Who is* ***Not*** *Entitled to Vote?*

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

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

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of The Disclosure Statement.

4. *Who Can Vote in More than One Class*

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

B. **Votes Necessary to Confirm the Plan**

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

1. *Votes Necessary for a Class to Accept the Plan*

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

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interest in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribe by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that

has not voted to accept the Plan.

You should consult your own attorney if "cramdown" confirmation will affect your claim or equity interests, as the variations on this general rule are numerous and complex.

C. **Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit "B."

D. **Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Debtor believes that it will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. A table showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit "E."

2. *Ability to Make Future Plan Payments and Operate Without Further Reorganization*

The Debtor must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Debtor has provided projected financial information. Those projections are listed in Exhibit "F."

The Debtor's financial projections show that the Debtor will have an aggregate average cash flow, after paying operating expenses and post-confirmation taxes sufficient to service the payments under this Plan. The final Plan payment is expected to be paid on or before March 31, 2027.

You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to the Projections set forth in Exhibits "E" and "F."

V. EFFECT OF CONFIRMATION OF PLAN

A. DISCHARGE OF DEBTOR

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

B. Modification of Plan

The Debtor may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting 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 Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules

of Bankruptcy Procedure, the Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

Respectfully submitted,
STUMBO HANSON, LLP

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