

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

In re:)
Top Shelv Worldwide LLC) Case No: 17-21434-dob
(46-1915997))
5117 Garfield Road) Chapter 11
Auburn, MI 48611)
Debtors) Hon. Daniel Opperman

**DEBTOR'S COMBINED PLAN OF REORGANIZATION
AND DISCLOSURE STATEMENT**

Prepared by:

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PLAN OF REORGANIZATION

INTRODUCTION

Top Shelf Worldwide L.L.C., (“Top Shelf”) hereby proposes in good faith the following Plan of Reorganization (the “Plan”) for the resolution of outstanding Creditor Claims and equity Interests (each as defined below). Reference is made to the Disclosure Statement (as that term is defined below) combined with this Plan, for a discussion of the Debtor’s history, business, property, results of operations, risk factors and a summary and analysis of this Plan. The Debtor is the proponent of this Plan within the meaning of Section 1129 of the Bankruptcy Code.

All holders of Claims or Interests are encouraged to read this Plan of Reorganization and the related information provided in the Disclosure Statement before voting to accept or reject this Plan.

ARTICLE I

DEFINITIONS, RULES OF INTERPRETATION, COMPUTATION OF TIME AND GOVERNING LAW

1.1 **SCOPE OF DEFINITIONS; RULES OF CONSTRUCTION.** For the purposes of the Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise assigned shall have the meaning ascribed to them in this Article I of the Plan. Any term used in the Plan that is not defined in this Article I of the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules (as defined below) or the Disclosure Statement shall have the meaning ascribed to such terms in the Bankruptcy Code or the Bankruptcy Rules or the Disclosure Statement as the case shall be. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine and the feminine shall include the masculine.

1.2 **DEFINITIONS.**

1.2.1 **“ADMINISTRATIVE CLAIM”** means a Claim for payment of an administrative expense of a kind specified in Section 503(b) or 507(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(2) or 507(b) of the Bankruptcy Code, including, but not limited to:

- (A) The actual necessary costs and expenses, incurred after the Petition Date, of preserving the Estate and operating the business of the Debtor, including wages, salaries, or commissions for services rendered after the Petition Date;
- (B) Professional Fees;
- (C) All fees and charges assessed against the Estate under 28 U.S.C. § 1930; and
- (D) Allowed Claims that are entitled to be treated as administrative claims pursuant to a Final Order under Section 546(c)(2) of the Bankruptcy Code.

1.2.2 “**ADMINISTRATIVE CREDITOR**” means any Creditor holding an Allowed Administrative Claim.

1.2.3 “**ALLOWED**” means when used in reference to a Claim or Interest, within a particular Class, an Allowed Claim or Allowed Interest of the type described in such Class.

1.2.4 “**ALLOWED CLAIM**” means:

A. A Proof of Claim or Interest that was:

1. Timely filed,
2. Deemed filed pursuant to Section 1111(a) of the Bankruptcy Code, or
3. Filed late with leave of the Bankruptcy Court after notice and an opportunity for a hearing given to the Debtor and counsel for the Debtor; and

B.

1. The Claim is not a Contested Claim or a Contested Interest, or
2. The Claim is Allowed (and only to the extent Allowed) by a Final Order of the Bankruptcy Court

1.2.5 “**AUBURN HOLDCO**” means Auburn Holdco, L.L.C..

1.2.6 “**AVOIDANCE ACTIONS**” means all Claims granted by the Debtors-in-Possession or to their Estates under Chapter 5 of the Bankruptcy Code.

1.2.7 “**BALLOT**” means the official bankruptcy form number 14 adopted for this Case or a document prepared to substantially conform to the same which is distributed to all Creditors and parties-in-interest in connection with the solicitation of votes for or against the Plan.

1.2.8 “**BANKRUPTCY CODE**” or “**CODE**” means the Bankruptcy Reform Act of 1978, as codified in Title 11 of the United States Code (11 U.S.C. §§ 101, *et seq.*) as in effect as of the Petition Date, or thereafter amended to the extent such amendments are applicable to this Chapter 11 Case.

1.2.9 “**BANKRUPTCY COURT**” or “**COURT**” means the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, or such other court as may have jurisdiction over this Chapter 11 Case.

1.2.10 “**BANKRUPTCY RULES**” or “**RULES**” means the Federal Rules of Bankruptcy Procedure, as promulgated by the Supreme Court that are in effect at the time of the Petition Date, and any amendments thereto, and the Federal Rules of Civil Procedure, as amended, and as made applicable to this Chapter 11 Case or proceedings therein. To the extent applicable,

Bankruptcy Rules also refers to the Local Rules of the United States District Court for the Eastern District of Michigan, and as applicable to this Chapter 11 Case, and the Local Bankruptcy Rules for the Eastern District of Michigan, as amended.

1.2.11 “**BAR DATE(S)**” means the date(s), if any, designated by the Bankruptcy Court as the last date(s) for filing Proofs of Claims or Interest against the Debtor, or otherwise asserting any Claim against the Debtor, or, in the absence of such designation, as shall be applicable under the Bankruptcy Rules.

1.2.12 “**CASH**” means legal tender of the United States or equivalence thereof.

1.2.13 “**CAUSES OF ACTION**” means any and all actions, proceedings, causes of action, suits, accounts, demands, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, non-contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, and whether asserted or assertable directly or derivatively in law, equity, or otherwise, including Avoidance Actions and all actions identified on **Exhibit 1.2.13**, unless otherwise waived or released by the Debtor or the Reorganized Debtor to the extent such Cause of Action is a Cause of Action, held by the Debtor or the Reorganized Debtor.

1.2.14 “**CHAPTER 11 CASE**” or “**CASE**” means, unless specifically stated otherwise, the case currently pending before the Bankruptcy Court styled *In re Top Shelv Worldwide LLC*, Case No. 17-21434 (Bankr. E.D. Mich.)

1.2.15 “**CLAIM**” shall have the same meaning as that term is defined in the Bankruptcy Code, 11 U.S.C. 101(5)(A) and (B).

1.2.16 “**CLASS**” means a category of Holders of Claims or Interests as described in Article III of this Plan.

1.2.17 “**COLLATERAL**” means any property or interest in property of an Estate subject to an unavoidable Lien that secures the payment or performance of a Secured Claim.

1.2.18 “**COMMITTEE**” means the official committee of unsecured creditors or any other official committee that has been or may be appointed pursuant to Section 1102(a) of the Bankruptcy in this Chapter 11 Case.

1.2.19 “**CONDITIONS PRECEDENT**” means those conditions to the Effective Date of the Plan set forth in Article 5.1 below.

1.2.20 “**CONFIRMATION DATE**” means the date on which the Bankruptcy Court enters the Confirmation Order.

1.2.21 “**CONFIRMATION HEARING**” means the hearing to consider the confirmation of the Plan under Section 1128 of the Bankruptcy Code.

1.2.22 “**CONFIRMATION ORDER**” means the order entered by the Bankruptcy Court

confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

1.2.23 “**CONTESTED**” means, when used in reference to a Claim or Interest in this Plan, any Claim or Interest as to which a Debtor or any other party in interest has interposed an objection or commenced an adversary proceeding in accordance with the Bankruptcy Code, Bankruptcy Rules, and this Plan, and which objection has not been determined by a Final Order.

1.2.24 “**CREDITOR**” means any Holder of a Claim against the Debtor.

1.2.25 “**CURE**” means the payment or other honor of all obligations required to be paid or honored in connection with the assumption of an executory contract or unexpired lease pursuant to Section 365 of the Bankruptcy Code, including, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law:

- (A) The cure of any non-monetary defaults to the extent required, if at all, pursuant to Section 365 of the Bankruptcy Code, and
- (B) With respect to monetary defaults, the distribution within a reasonable period of time following the Effective Date of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption (or assumption and assignment) of an executory contract or unexpired lease, pursuant to Section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations or such lesser amount as may be agreed upon by the parties, under such executory contract or unexpired lease.

1.2.26 “**DEBTOR**” or “**DEBTOR-IN-POSSESSION**” means Top Shelv Worldwide, L.L.C.

1.2.27 “**DEFICIENCY CLAIM**” means any Claim asserted by a Secured Claim Holder that is not an Allowed Secured Claim or a Priority Claim.

1.2.28 “**DISALLOWED CLAIM**” means:

- (A) A Claim, or any portion thereof, that has been disallowed by a Final Order or a settlement,
- (B) A Claim or any portion thereof that is Scheduled at zero, contingent, disputed, or unliquidated, and as to which a Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or
- (C) A Claim or any portion thereof that is not Scheduled and as to which a Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

1.2.29 “**DISCLOSURE STATEMENT**” means the written Disclosure Statement that relates to the Plan, attached hereto, as amended, supplemented or modified from time to time, and that was prepared and distributed in accordance with Section 1125 of the Bankruptcy Code and the applicable Bankruptcy Rules.

1.2.30 “**DISPUTED**” means, with respect to any Claim or Claim on the claims register, a Claim that is not yet allowed.

1.2.31 “**DISPUTED CLAIM**” or “**DISPUTED INTEREST**” means a Claim or any portion thereof, or an Interest or any portion thereof, that is either an Allowed Claim nor a Disallowed Claim, nor an Allowed Interest nor a Disallowed Interest, as the case may be.

1.2.32 “**EFFECTIVE DATE**” means the twentieth (20th) Business Day after the occurrence or waiver by the Debtor of all Conditions Precedent.

1.2.33 “**ESTATE**” means the Estate of the Debtor in this Chapter 11 Case, or created pursuant to Section 541 of the Bankruptcy Code, and as the Estate may be augmented by Section 1115 of the Bankruptcy Code.

1.2.34 “**EXCULPATED CLAIM**” means any Claim related to any act or omission in connection with, relating to, or arising out of the Debtor, the filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or Plan, the filing of this Chapter 11 Case, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other agreement.

1.2.35 “**EXHIBIT**” means any document identified as an “exhibit” in this Plan, as modified, amended, or supplemented.

1.2.36 “**FACILITY**” means the Real Property and sports complex known as the Tri-City Sports Complex at the Real Property location.

1.2.37 “**FINAL DECREE**” means the decree contemplated under Bankruptcy Rule 3022.

1.2.38 “**FINAL ORDER**” means an order of the Bankruptcy Court as to which:

- (A) The time for appeal has expired and no appeal has been timely taken,
- (B) Any timely appeal has been finally determined or dismissed and the time for any successive appeal has expired and no successive appeal has been taken, or
- (C) In the discretion of the Reorganized Debtor an appeal has been timely taken but such order has not been stayed within ten (10) days after the filing of such appeal.

1.2.39 “**GAAP**” means generally accepted accounting principles.

1.2.40 “**GROUP**” means one or more similarly situated Creditors who hold or may allege claims against the Debtor whose Claims are not subject to classification pursuant to Section 1123(a)(1) of the Bankruptcy Code.

1.2.41 “**HOLDER**” means a Person holding a Claim, Interest, or Lien, as applicable.

1.2.42 “**IMPAIRED**” means, when used with reference to a Claim or Interest, that such Claim or Interest is impaired within the meaning of Section 1124 of the Bankruptcy Code.

1.2.43 “**INSIDER**” has the meaning as set forth in Section 101(31) of the Bankruptcy Code.

1.2.44 “**INTEREST**” means any equity interest in the Debtor, of any kind or nature, including without limitation any corporate share or company membership interests.

1.2.45 “**INTEREST RATE**” means, for each Claim, and except as expressly set forth in the Plan:

- (A) The prime rate of interest published in the Wall Street Journal on the Confirmation Date (or, if not prime rate of interest is published on the Confirmation Date, the most recent prime rate of interest published in the Wall Street Journal prior to the Confirmation Date),
- (B) With respect to a Claim for taxes, the interest rate applicable under non-bankruptcy determined at a time in accordance with Section 511(b) of the Bankruptcy Code, or
- (C) Such other interest rate as may be determined by a Final Order of the Bankruptcy Court.

1.2.46 “**LIEN**” means a charge against, or an interest in, property to secure payment of a debt or performance of an obligation.

1.2.47 “**NET CASH FLOW**” means, with respect to the Reorganized Debtor, as substantively consolidated, all revenue less:

- (A)
 - (i) All expenses of any kind whatsoever (including taxes) calculated using GAAP,
 - (ii) All payments relating to the restructuring, including all payments to Holders of Allowed Claims in any Group or Class, and
 - (iii) All capital expenditures (net of financing),plus
- (B) Depreciation (less any principal paid).

1.2.48 “**PERSON**” shall have the same meaning given to it under Section 101(41) of the Bankruptcy Code.

1.2.49 “**PETITION DATE**” means the date upon which the Debtor voluntarily filed for relief pursuant to Chapter 11 of the Bankruptcy Code, which is July 14, 2017.

1.2.50 “**PLAN**” means the Debtor’s Plan of Reorganization, as it may be altered, amended, supplemented, or modified from time to time.

1.2.51 “**PRIOR CHAPTER 11 CASE**” or “**PRIOR CASE**” means, unless specifically stated otherwise, the case previously pending before the Bankruptcy Court styled *In re Top Shelby Worldwide LLC*, Case No. 15-21770 (Bankr. E.D. Mich.) filed on August 31, 2015.

1.2.52 “**PRIORITY CLAIM**” means a Claim under or entitled to priority under the following of the of the Bankruptcy Code: §§ 507(a)(1), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7) and 507(a)(8).

1.2.53 “**PRIORITY CREDITOR**” means any Creditor holding a Priority Claim or a Priority Tax Claim.

1.2.54 “**PRIORITY TAX CLAIM**” means a Claim entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

1.2.55 “**PROFESSIONAL**” means any professional employed in these Chapter 11 Cases pursuant to Sections 327 or 1103 of the Bankruptcy Code seeking compensation or reimbursement of expenses in connection with this Chapter 11 Case pursuant to Section 503(b)(4) of the Bankruptcy Code.

1.2.56 “**PROFESSIONAL FEES**” means the fees and reimbursement for disbursements and expenses owed to Professionals.

1.2.57 “**PROOF OF CLAIM**” means a Claim properly filed by a Holder of a Claim before the Bar Date.

1.2.58 “**PRO-RATA**” means at any time, the proportion that the face amount of a Claim in a particular Class bears the aggregate face amount of all Claims (including disputed or Contested Claims) in such Class, unless the plan expressly provides otherwise.

1.2.59 “**REAL PROPERTY**” means those parcels of real property constituting the land and Facility known as the Tri-City Sports Complex and described as follows:

A Parcel of Land situated in the NW ¼ of the NW ¼ of Section 26, T14N-R3E, Williams Township, Bay County, Michigan, described as:

BEGINNING at a point on the West line of Section 26 that is S 00 deg. 00 min. 00 sec. W, 1,145.92 feet from the NW Section corner; Thence, S 89 deg. 45 min. 33 sec. E, 264.00 feet parallel with the North 1/8 line; Thence, N 00 deg. 00 min. 00 sec. E, 402.00 feet parallel with the West Section line; Thence, S 89 deg. 45

min. 33 sec. E, 332.00 feet parallel with the North 1/8 line; Thence, N 00 deg. 00 min. 00 sec. E, 232.00 feet parallel with the West Section line; Thence, S 89 deg. 45 min. 33 sec. E, 736.01 feet parallel with the North 1/8 line to the West 1/8 line; Thence, S 00 deg. 07 min. 33 sec. W, 798.93 feet along the West 1/8 line to the North 1/8 line; Thence, N 89 deg. 45 min. 33 sec. W, 1,330.25 feet along the North 1/8 line to the West Section line; Thence, N 00 deg. 00 min. 00 sec. E, 164.94 feet along the West Section line to the Point of Beginning. Containing 18.80 acres, and subject to the Right-of-Way for Garfield Road over the West 33 feet thereof.

Commonly known as 5117 Garfield Road, Auburn, Michigan 48611

Tax Parcel ID # of 09-140-026-100-025-08.

1.2.60 “**REORGANIZED DEBTOR**” means the Debtor, upon the occurrence of the Effective Date.

1.2.61 “**SCHEDULES**” means the schedules of assets and liabilities, the list of Holders of Interests, and the statement of financial affairs filed by the Debtor under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007 as such schedules and statements have been, or may be, supplemented or amended up through the Confirmation Date.

1.2.62 “**SECURED CLAIM**” means a Claim secured by a Lien on property in which the Estate has an interest but only to the extent of the value of the Creditor’s interest in such Estate’s interest in the property as of the Petition Date, or a Claim that is subject to setoff under section 553 of this title to the extent of the amount subject to setoff. A Claim is only a Secured Claim if such Secured Claim is Allowed.

1.2.63 “**TAXING AUTHORITIES**” means those governmental agencies having the power and authority to levy and collect any tax against the Debtor, including, without limitation, the Internal Revenue Service and the State of Michigan’s Department of Treasury, Unemployment Insurance Agency, and Department of Health and Human Services.

1.2.64 “**TOP SHELV**” means Top Shelv Worldwide, L.L.C.

1.2.65 “**TRI-CITY**” means Tri-City Sports Complex, L.L.C.

1.2.66 “**UNSECURED CLAIM**” means a Claim that is neither a Secured Claim, an Administrative Claim, a Priority Claim, nor a Priority Tax Claim.

1.2.67 “**UNSECURED CREDITOR**” means any Creditor that holds an Unsecured Claim.

1.2.68 “**VOTING DEADLINE**” means the date set by the Bankruptcy Court for the submission of Ballots as set forth in the order of the Bankruptcy Court granting preliminary approval of the Disclosure Statement.

1.3 **RULES OF INTERPRETATION.** For purposes of the Plan:

1.3.1 Any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially on such terms and conditions.

1.3.2 Any reference in the Plan or Disclosure Statement to an existing document or Exhibit filed or to be filed means such document or Exhibit as it may have been or may be amended, modified, or supplemented. Except as otherwise ordered by the Bankruptcy Court, all Exhibits, as amended, modified, or supplemented shall be incorporated by reference into this Plan and Disclosure Statement for all purposes.

1.3.3. The words “herein” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan unless expressly stated otherwise.

1.3.4 Captions and headings to Articles and sections are inserted for convenience of reference only and are not intended to be a part of or affect the interpretation of the Plan.

1.3.5 The rules of construction set forth in Section 102 of the Bankruptcy Code and the Bankruptcy Rules shall apply.

1.3.6 The Disclosure Statement may be used as an aid for interpretation of this Plan to the extent that any provision of this Plan is determined to be vague or ambiguous. However, to the extent that any statement in the Disclosure Statement conflicts with any provision of this Plan, this Plan controls.

1.4 **COMPUTATION OF TIME.** In computation any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) in effect on the Confirmation Date govern.

1.5 **GOVERNING LAW.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Michigan shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan.

1.6 **EXHIBITS.** All Exhibits are incorporated into and are part of this Plan and Disclosure Statement as if set forth in full herein and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court. To the extent this Plan identifies or references a specific exhibit, and such exhibit is not attached hereto, such exhibit shall be filed before 14 days before the Confirmation Hearing and served on the mailing matrix in this case. Upon its filing, the Exhibit may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours or at the Bankruptcy Court’s website for a fee at <https://ecf.mieb.uscourts.gov>. The Exhibits may also be requested in writing from the Debtor’s counsel. **All Exhibits may be revised prior to the Effective Date by the filing of the revised Exhibits with the Bankruptcy Court, so long as the revised Exhibits are substantially in conformance with the terms of this Plan.** The Exhibits are an integral part of the Plan, and entry of the Confirmation Order by the Bankruptcy Court shall constitute an approval of the Exhibits and be binding in the same manner under § 1141(a) of the Bankruptcy Code.

1.7 **ESTIMATES OF CLAIMS.** Unless expressly stated otherwise, nothing herein shall

be deemed to be an admission by the Debtor or to otherwise prejudice Debtor in any claims objection or Cause of Action. All estimates of Causes of Action and Claim amounts listed in this Plan, the Disclosure Statement, and Exhibits are current estimates only. All Claim amounts and classification remain subject to the claims objection process as set forth in Article XI.

ARTICLE II

**TREATMENT OF CLAIMANTS NOT SUBJECT TO CLASSIFICATION
OR OTHERWISE NOT REQUIRED TO VOTE FOR OR AGAINST THE PLAN**

2.1 **GROUP I - ADMINISTRATIVE CLAIMS.** The Claims of Group I shall consist of all Allowed Administrative Claims, including any taxes that qualify as Administrative Claims. These claims may include the Claims of the following:

<u>Potential Administrative Creditor</u>	<u>Estimated Amount of Administrative Claim</u>
Gudeman & Associates, P.C.	\$100,000.00
Schlaupitz & Madhavan, P.L.L.C.	\$18,000.00
Cook, Pray, Rexroth & Associates	\$10,000.00
United States Trustee	\$2,000.00

2.1.1 Claims included in this Group shall retain their priority status notwithstanding the confirmation of this Plan including, but not limited to: (i) the occurrence of the Effective Date, and (ii) the filing by the Reorganized Debtor of any subsequent proceeding under any Chapter of the Bankruptcy Code. The Reorganized Debtor shall remain responsible for every Claim in this Group.

2.1.2 After payment in full of all Claims entitled to higher priority in accordance with Section 507 of the Bankruptcy Code, each claimant in this Group shall be paid the full amount of its Claim on such date as may be mutually agreed upon between the Debtor or the Reorganized Debtor and the particular claimant, or, if no such date is agreed upon, the latest of: (i) the Effective Date, (ii) the date by which payment would be due in the ordinary course of business between the Debtor and such Administrative Creditor, or (iii) the date upon which the Bankruptcy Court enters its Final Order, if necessary, allowing and approving the payment of such Administrative Claim.

2.1.3 Except with respect to taxes for which no return is yet due, or any cost report not yet due, the Bar Date for asserting any Administrative Claim against the Reorganized Debtor shall be thirty (30) days after the Effective Date. Except as otherwise provided by order of the Bankruptcy Court, any Administrative Claim first asserted after this Bar Date will not be

Allowed and shall not be entitled to payment as an Administrative Claim.

2.2 **GROUP II – PRIORITY TAX CLAIMS.** The Claims of Group II shall consist of the Allowed Claims that are entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

2.2.1 After payment in full of all Claims entitled to higher priority in accordance with Section 507 of the Bankruptcy Code, the Claimants of this Group shall receive on account of such Priority Tax Claim sixty (60) equal monthly cash payments equal in the aggregate, to the amount of each Allowed Priority Tax Claim, plus interest calculated at the applicable statutory rate, or, if no statutory rate applies, at a rate equal to the yield on a five-year United States Treasury Bill as of the Confirmation Date. The first monthly payment shall be made on the Effective Date.

2.2.2 To the extent that any taxing authority has any valid Lien on any of a Debtor's assets, such Lien shall be unaffected. Absent agreement by the parties, the value of any Lien shall be determined by the Bankruptcy Court in accordance with Section 506 of the Bankruptcy Code. Upon payment of such amount, the Lien shall be released and terminated and such taxing authorities shall be, and hereby are, required to cooperate with the Debtor or the Reorganized Debtor to execute all documents reasonably requested by the Debtor or the Reorganized Debtor to effectuate such release and termination.

2.3 **GROUP III – OTHER PRIORITY CLAIMS.** The Claims of Group III shall consist of all other Priority Creditors entitled to receive priority for their Allowed Claim under section 507(a) of the Bankruptcy Code other than the Group II Claims. Unless otherwise agreed between the particular claimant and the applicable Debtor or Reorganized Debtor, the Priority Claims of this Group will be paid upon the latest of (i) the Effective Date, (ii) the date by which payment would be due in the ordinary course of business between the applicable Debtor and such Priority Creditor, or (iii) the date upon which the Bankruptcy Court enters its order, if necessary, allowing and approving payment of such Priority Claim and such order becomes a Final Order.

2.4 **DETERMINATION OF PRIORITY CLAIMS.** The Debtor or Reorganized Debtor shall have the right to challenge any Priority Claim through the claims objection process set forth in Article XI of this Plan, which challenge may include, but need not be limited to, a challenge to any penalty portion of such Claim, the amount and the value of the property which forms the basis for any assessment of taxes and the computation of the tax. The right to challenge these Claims shall include, without limitation, an objection to the assessment of any Debtor's real or personal property that may or may not have been made by the respective taxing authority.

ARTICLE III

SPECIFICATION OF TREATMENT OF CLASSES OF CLAIMS OR INTERESTS NOT IMPAIRED UNDER THE PLAN AND THOSE IMPAIRED UNDER THE PLAN

3.0 The Plan divides Claims and Interests of Top Shelf into two (2) Classes and treats them as follows:

3.1 **CLASS I – THE ANDERSON CLAIM:** Class I consists of the Holders of the Claim of Robert and Nancy Anderson (Proof of Claim # 10) in the amount of \$225,630.05. The Class I Claim consists of a note and mortgage secured by the Real Property. The mortgage was recorded on October 16, 2013. This Class I Claim is a Secured Claim and is fully secured by the value of the Real Property.

3.1.1 Interest on this Class I Claim shall be paid at 5.5%.

3.1.2 Class I shall be paid 120 monthly payments of \$2,448.68 per month commencing on the 1st of the month after the month of the Effective Date.

3.1.3 **This Class is impaired.**

3.2 **CLASS II – FARLEY GROUP / FOUR COURTS CLAIM:** Class II consists of the Holders of the Four Courts / Farley Group Allowed Secured Claim (Proof of Claim # 12). The Four Courts Claim is based on a note dated October 18, 2013, and is secured both against the Real Property by a mortgage recorded October 22, 2013, and by an additional security agreement against the “goods” that were contained within the scope of work that went into making up the Facility. Class II is junior to the Claim of Class I. Class II is secured to the amount of \$74,369.95.

3.2.1 Interest on this Class II Claim shall be paid at 5.5%.

3.2.2 Class II shall be paid 120 monthly payments of \$807.11 per month commencing on the 1st of the month after the month of the Effective Date.

3.2.3 **This Class is impaired.**

3.3 **CLASS III – CAPITAL STACK / ACH CAPITAL CLAIM:** Class III consists of the Holders of the Capital Stack / ACH Capital Allowed Secured Claim. The Capital Stack / ACH Capital Claim is based on a note and is secured by a UCC filing against the assets of the Debtor which would include deposit accounts. The Claim of Capital Stack / ACH Capital is for \$32,833.58. Class III is secured to the amount of \$7,250.00.

3.3.1 Interest on this Class III Claim shall be paid at 5.5%.

3.3.2 Class III shall be paid 36 monthly payments of \$218.92 per month commencing on the 1st of the month after the month of the Effective Date.

3.3.3 **This Class is impaired.**

3.4 **CLASS IV – BAY COUNTY TREASURER CLAIM:** Class IV consists of the Holders of the Bay County Treasurer Claim (Proof of Claim # 2). The Bay County Treasurer has a statutory lien for the payment of property taxes. The Bay County Treasurer has filed a Proof of Claim for 2015 property taxes of \$46,417.00, 2016 property taxes of \$43,375.04, with accrued pre-petition interest for both years of \$21,807.77. The total Claim for property taxes and interest is \$108,593.81.

3.4.1 Interest on this Class IV Claim shall be paid at the statutorily required rate for each particular tax year on the tax portion of the claim in accordance with 11 U.S.C. § 511 and M.C.L. §§ 211.78a(3) and .78g(3)(b). No interest shall be paid on the interest portion of the claim, Michigan law requiring that interest is noncompounding per the cited statutes.

3.4.2 Based on the foregoing, Class IV shall be paid 60 monthly payments of (approximately) \$2507.004 per month commencing on the 1st of the month after the month of the Effective Date.

3.4.3 **This Class is impaired.**

3.5 **CLASS V – UNSECURED CLAIMS:** Class V consists of the Holders of Allowed Unsecured Claims against Top Shelf. The total estimated amount of the non-Priority Unsecured Claims is \$464,954.02¹ exclusive of Deficiency Claims. Potential Deficiency Claims of Four Courts (\$1,699,295.98), Northern Concrete Pipe, Inc. (\$34,058.41), Valley Electrical Contractors, Inc. (\$124,079.52), Sugar Construction, Inc. (\$182,353.11), Anthony Gushow & Sons, Inc. (\$675,103.16), and Capital Stack (\$28,583.58) would add an estimated \$2,740,473.76.

3.5.1 Neither pre-confirmation interest nor post-confirmation interest on Allowed Class V Claims shall be paid.

3.5.2 Holders of Allowed Class V Claims shall receive, in full satisfaction of their Allowed Class V Claims, annual distributions equal to 50% of the Reorganized Debtor's Net Cash Flow, commencing on the first (1st) day of the second month after the end of the Reorganized Debtor's first full fiscal year after the Effective Date. Such payments shall continue to be made on the same date each year until the earlier to occur of (i) the Claims are paid in full, or (ii) the Fifth Anniversary of the Effective Date.

3.5.3 **This Class is impaired.**

3.6 **CLASS VI – INTEREST HOLDERS:** Class VI consists of the Interest Holders Top Shelf which shall be treated in one of three alternative methods:

- A. If Class V votes to accept the Plan, then the rights of the Interest Holders shall remain the same and **this Class shall not be Impaired.**
- B. If Class V votes to reject the Plan, and the Court determines that, as a result of such rejection, the Plan but for this paragraph does not comply with the absolute priority rule, the Interest Holders shall contribute \$50,000.00 in money or money's worth to the Debtor which shall be used to pay Administrative Claims.
- C. If Class V votes to reject the Plan, and the Court determines that the new value contributed by the Interest Holders in paragraph (B) above is insufficient to satisfy the absolute priority rule, then the Interests of the Debtors shall be sold at

¹ Disputed Claims of Apex Engineers P.L.C., Katz & Associates, and ShindelRock did not timely file Proofs of Claims and the values of those claims were subtracted from the Schedule F total. Unscheduled claimant United Rentals filed a Proof of Claim that was added to the Scheduled amount.

the equity auction as set forth in Section 4.1 of this Plan. The successful purchaser at the equity auction (defined in Section 4.1.2 shall be required to use all of the proceeds of the Top Shelf Equity Auction to satisfy the Allowed Claims set forth in this Plan in the order of their priority, and all payments shall be subject to the terms of, and payments shall be made in accordance with, the Plan. During the interim period, if any, between the Effective Date and the consummation of a sale pursuant to Section 4.1 hereof, Auburn Holdco shall hold the Interests in Top Shelf. **This Class shall be Impaired.**

3.6.1 The Interest Holders or the successful purchaser of such Interests at the Top Shelf Equity Auction reserves the right, in their business judgment, to either (i) consolidate the Reorganized Debtor into a single entity or (ii) transfer the assets and operations of the Reorganized Debtor to a new entity. Notwithstanding such transfer, the succeeding entity shall be responsible for and shall assume all the obligations of the Reorganized Debtor under this Plan.

3.6.2 Auburn Holdco is the sole member of Class VI because it owns all of the outstanding equity Interest in Top Shelf.

3.7 **PRESUMED ACCEPTANCE OF THE PLAN.** Except for Class III Interest Holders, there are no Classes that are unimpaired under the Plan. Class III Interest Holders shall be conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code.

3.8 **PRESUMED REJECTION OF THE PLAN.** There are no Classes that are conclusively presumed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code.

3.9 **VOTING CLASSES; DEEMED ACCEPTANCE IF NO VOTES AS CAST.** Classes I and II are Impaired under the Plan, and Holders of Claims in such Classes shall be entitled to vote to accept or reject the Plan, provided however, if no Holders of Claims eligible to vote in a particular Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the Holders of such Claims in such Class.

3.10 **ELIMINATION OF VACANT CLASSES.** Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

ARTICLE IV

EXECUTION AND IMPLEMENTATION OF THE PLAN

4.1 **TOP SHELV EQUITY SALE.** In the event that Class IV fails to accept this Plan under 3.6(A), or that the absolute priority rule cannot be met under 3.6(B), Top Shelv shall sell all of its Interests.

4.1.1 Top Shelv shall sell its equity Interests in accordance with the following procedures:

4.1.2 Top Shelv shall conduct an auction sale (the “Top Shelv Equity Auction”) at 9:00 a.m. on the fourteenth (14th) day following the Confirmation Date at the office of Debtor’s counsel. Any party interested in attending and/or bidding at the Top Shelv Equity Auction may obtain additional details regarding the time, place and process of the Top Shelv Equity Auction by contacting Debtor’s counsel. Unless the Court expressly ordered otherwise, this Section 4.1.1.1 shall be deemed sufficient notice of the Top Shelv Equity Auction and no further or additional notice shall be provided.

4.1.3 The successful purchaser will be required at the Top Shelv Equity Auction to execute the equity purchase agreement, to be filed in accordance with section 1.6 as Exhibit 4.1.3, (“Top Shelv EPA”) as modified by the results of the Top Shelv Equity Auction.

4.1.4 Top Shelv may establish procedures designed to maximize value from the sale of Top Shelv’s Interests or to ensure in the discretion of Top Shelv the orderly conduct of the Top Shelv Equity Auction without further notice to Creditors, provided that the Top Shelv Equity Auction procedures are announced at the beginning of the Top Shelv Equity Auction.

4.1.5 Bid increments of \$10,000 are approved and shall be utilized during the Top Shelv Equity Auction.

4.1.6 The Holders of Class VI Interests shall be the stalking horse bidder and on or before the Confirmation Date, shall provide a cash deposit in actual funds of \$50,000 (the “Deposit”), which shall not be refundable in the event that Holders of Class VI Interests are the successful purchaser and fail to close the transaction for a reason not attributable to Top Shelv.

4.1.7 To qualify as a bidder (a “Qualified Bidder”), a Person must provide in writing to counsel for the Debtor no later than three (3) Business Days after the Confirmation Date each of the following: (A) a cash deposit in actual funds of \$60,000, which is equal to the Deposit plus the next bid increment (the “Qualified Bidder Deposit”), which shall not be refundable in the event that such Person is the successful purchaser and fails to close the transaction for a reason not attributable to Top Shelv; (B) financial and such other information that will reasonably allow Top Shelv to make a determination as to the Qualifying Bidder’s financial and other capabilities to consummate the transactions contemplated by the Plan, which information is satisfactory to Top Shelv, in its sole discretion; (C) the identity of each Person seeking to be a Qualified Bidder and the identity of its ownership, if it is an Entity; and (D) a representation and warranty from the Person seeking to be a Qualified Bidder that its ability to consummate the purchase under this

Section 4.1 and ability to consummate the transactions under the Plan are not subject to any diligence or financing contingency. The stalking horse bidder shall be deemed to be a Qualified Bidder.

4.1.8 If no Person becomes a Qualified Bidder other than the Holders of Class VI Interests, then Top Shelv shall not be required to hold the Top Shelv Equity Auction and may sell its equity interests to the Holders of Class VI Interests.

4.1.9 The sale of Interests pursuant to the Top Shelv Equity Auction shall not become effective until the Effective Date of the Plan. If the Effective Date does not occur within 120 days after the Top Shelv Equity Auction, the sale of Interests shall be null and void.

4.1.10 Notwithstanding anything to the contrary contained herein, the successful bidder at the Top Shelv Equity Auction is bound by all the terms and provision of this Plan, the Confirmation Order, and the Top Shelv EPA.

4.1.11 The Closing must take place no later than two (2) Business Days after the Top Shelv Equity Auction and all funds must be deposited in Cash in the client trust account of the Debtor's counsel prior to Closing.

4.1.12 If the successful purchaser does not close, the successful purchaser shall forfeit the Deposit or Qualified Bidder Deposit and Top Shelv shall sell its Interests to the next highest bidder, who shall have two (2) Business Days to close.

4.1.13 Unsuccessful Bidder's Deposit or Qualified Bidder Deposit, if any, shall be returned to the Person that paid such Deposit or Qualified Bidder Deposit with seven (7) Business Days after Closing. The Top Shelv Equity Auction winner's Deposit or Qualified Bidder Deposit shall be retained and applied toward the payment of Administrative Claims.

4.2 **AVOIDANCE ACTIONS.** Upon the Effective Date, the Reorganized Debtor shall have standing to pursue any and all Avoidance Actions. The Debtor had not yet investigated any Avoidance Actions. Potential Avoidance Actions are described in the Disclosure Statement, and may include avoidance of pre-petition payments to Insiders within one year of the Petition Date, avoidance of other pre-petition payments within 90 days of the Petition Date, avoidance or challenge to any Liens asserted against property of the Debtor or the Reorganized Debtor, avoidance of any unauthorized payment made after the Petition Date, and avoidance of any fraudulent conveyance that may have been made within six years of the Petition Date. All causes of action, including Avoidance Actions, are specifically reserved, whether or not specifically listed in the Plan or Disclosure Statement. Unless any cause of action against a Person is expressly waived, released, compromised or settled in the Plan or a Final Order, the Reorganized Debtor specifically reserves all causes of action for later adjudication, and, therefore, no preclusion doctrine, res judicata, estoppel (judicial, equitable or otherwise) or laches shall apply to any of the causes of action upon, after or as a consequence of the confirmation of the Plan, entry of the Confirmation Order, the Effective Date or consummation of the Plan.

4.3 **PROFESSIONAL FEES.** All services performed or expenses incurred by any Professional on behalf of the Debtor or the Reorganized Debtor with respect to these Chapter 11 Cases after the Effective Date, shall be Administrative Claims and shall not be subject to the prior review and approval of the Bankruptcy Court. Notwithstanding any provision of the Bankruptcy Code or Rules, including, without limitation, Bankruptcy Rule 2016, after the Effective Date, no Professional shall be required to disclose payments from the Debtor or the Reorganized Debtor to the Bankruptcy Court or the United States Trustee. All fees and expenses of the Debtor and the Reorganized Debtor arising after the Effective Date shall be billed directly to the Reorganized Debtor and the Bankruptcy Court shall only review that portion to which the Reorganized Debtor objects. The Reorganized Debtor shall pay the portion not objected to in accordance with the terms of the invoice.

4.4 **CHANGE OF ADDRESS.** In order to ensure that it receives its distribution, each Creditor holding a Claim treated under Articles II or III must advise the Reorganized Debtor of any change in address. Absent any such notification, the Reorganized Debtor shall send payments to the address listed on the Matrix on file with the Bankruptcy Court. If the payment is not negotiated within three (3) months after being mailed, it shall be void and the Reorganized Debtor shall have no further obligation to such Creditor.

ARTICLE V

EFFECT OF CONFIRMATION

5.1 **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE:** Except as otherwise set forth in the Confirmation Order or as expressly waived by the applicable Debtor in writing, the following conditions must be met before the occurrence of the Effective Date:

5.1.1 The Bankruptcy Court shall have entered a Confirmation Order confirming the Plan in the Debtor's Case without any material modifications of or additions to the terms, conditions and Debtor's liabilities as set forth in this Plan, and no request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.

5.1.2 There shall be no pending appeal of the Confirmation Order.

5.1.3 There shall be no pending motion to dismiss or convert the Debtor's Case or to appoint a chapter 11 trustee or examiner.

5.1.4 The Debtor has sufficient Cash, in the Debtor's reasonable discretion, to pay all Allowed Administrative Claims and Allowed Priority Claims required to be paid by this Plan as of the Effective Date.

5.2 **FAILURE OF A CONDITION PRECEDENT:**

5.2.1 If the Conditions Precedent are neither met nor waived within one hundred and eighty (180) days after entry of the Confirmation Order, the Confirmation Order and this Plan shall be null and void, unless the Debtor files a motion before such date requesting that the Court extend the one hundred and eighty (180) day period.

5.2.2 The Debtor may seek to withdraw this Plan at any time prior to the Effective Date by filing an appropriate motion with the Bankruptcy Court. If the Debtor withdraws this Plan, it shall be null and void for all purposes.

5.3 **RELEASE OF INTRA-DEBTOR CLAIMS:** Upon the Effective Date, all intra-Debtor claims shall be released, extinguished and of no further force or effect.

5.4 **RELINQUISHMENT OF CLAIMS.** Except as provided in this Plan, the occurrence of the Effective Date shall also act as a merger and relinquishment of any and all Claims that Creditors have, or may have, against the Debtors and the Reorganized Debtor as provided in the treatment of the Creditors in Articles II and III. The forgoing notwithstanding, this paragraph shall not affect the rights of any taxing authority against any other entity or Person who may be liable or responsible for the taxes of the Debtors or Reorganized Debtor.

5.5 **WAIVER OF CLAIMS.** Except as to any taxing authority, on the Effective Date, confirmation shall also constitute a waiver by Creditors of any right that they may have (i) regarding the Exculpated Claims and (ii) unless supported by a written guarantee (or similar document), to seek to enforce their Claims against the Interest Holders, whether pursuant to an “alter ego” claim, a claim for “piercing” the Debtor’s or the Reorganized Debtor’s corporate existence, or other similar Claim.

5.6 **SUBORDINATED CLAIMS.** Pursuant to Section 510 of the Bankruptcy Code, the Reorganized Debtor reserves the right to re-classify (or request that the Bankruptcy Court re-classify) any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

5.7 **EXCULPATION.** Except as otherwise provided in the Plan, no Person that is acting or has acted for or on behalf of the Debtor or Reorganized Debtor shall have or incur, and is hereby released and exculpated from, any Claim, obligation, Cause of Action, or liability for any Exculpated Claim, except for gross negligence or willful misconduct. The Debtor and the Reorganized Debtor (and each of their respective affiliates, agents, directors, members, managers, partners, officers, employees, advisors, and attorneys) have, and on the Confirmation Date shall be deemed to have, participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the distributions made pursuant to the Plan, and therefore are not, and on account of such distributions, shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

5.8 **PROTECTIONS AGAINST DISCRIMINATORY TREATMENT.** Consistent with Section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Persons, including governmental units, shall not discriminate against the Reorganized Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter,

franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtor or other Person with whom such Reorganized Debtor has been associated, solely because the Debtors have been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases, or has not paid a debt that is dischargeable in the Chapter 11 Cases.

5.9 **POST-EFFECTIVE DATE OPERATIONS.** On and after the Effective Date, the Reorganized Debtor shall operate its business under the terms of this Plan and the Sale Order and applicable non-bankruptcy law. The rules, restrictions, reports and other requirements of the Bankruptcy Code, Bankruptcy Rules and orders entered by the Bankruptcy Court (specifically including, but not limited to, the requirements of 11 U.S.C. § 333 and any order directing appointment of patient care ombudsman) shall continue to apply pending entry of a Final Decree only to the extent that such rules, restrictions, reports and other requirements expressly apply, by their terms, after confirmation and the occurrence of the Effective Date.

5.10 **SETOFFS.** Except as otherwise expressly provided for in the Plan, the Reorganized Debtor pursuant to the Bankruptcy Code (including Section 553 of the Bankruptcy Code), applicable to non-bankruptcy law, or as may be agreed by the Holder of a Claim, may setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that the Debtor or Reorganized Debtor may hold against the Holder of such Allowed Claim (or against the predecessor in interest to Holder to the extent that the Holder takes such Allowed Claim subject to setoffs and defenses that may be asserted against the predecessor in interest), to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Reorganized of any Claims, rights, setoff rights and Causes of Action that the Reorganized Debtor may possess against such Holder. The Reorganized Debtor shall not be required to make any distributions to the Holder of any Allowed Claim to the extent that the Reorganized Debtor asserts setoff rights against such Holder until after entry of a Final Order resolving such setoff rights. Except as provided in Article III of this Plan, or with respect to any taxing authorities, whose setoff rights under applicable law will not be impaired, in no event shall any Holder of Claims be entitled to setoff any Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor unless such Holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to Section 553 of the Bankruptcy Code or otherwise.

5.11 **RECOUPMENT.** Except as otherwise permitted under this Plan, in no event shall any Holder of a Claim or Interest be entitled to recoup any Claim or Interest against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtor on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

5.12 **RELEASE OF LIENS.** Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Articles II and III of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall be null and void.

ARTICLE VI

MODIFICATION OF THE PLAN

6.1 **AMENDMENTS TO PLAN:** The Debtor may, from time to time, propose amendments or modifications of this Plan prior to its confirmation, without leave of the Court. After confirmation, the Reorganized Debtor may, with leave of the Bankruptcy Court, and upon notice and opportunity for hearing to the affected Creditor(s) only, remedy any defect or omission, reconcile any inconsistencies in the Plan or in the Confirmation Order or otherwise modify the Plan.

6.2 **REVOCATION OR WITHDRAWAL OF THE PLAN:** The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent chapter 11 plan(s). If the Debtor revokes or withdraw the Plan, or if confirmation or consummation does not occur, then:

- (A) The Plan shall be null and void in all respects;
- (B) Any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption, assignment, or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and
- (C) Nothing contained in the Plan shall:
 - (i) Constitute a waiver or release of any Claims, Interests, or Causes of Action;
 - (ii) Prejudice in any manner the right of the Debtors or any other Person; or
 - (iii) Constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Person.

ARTICLE VII

Jurisdiction of the Court

7.1 This Court shall retain jurisdiction in this matter until the Plan has been fully consummated including, but not limited to, the following reasons and purposes:

A. The classification of the Claim of any Creditor, including, without limitation, assessment of Claims under Section 506 of the Bankruptcy Code, and the re-examination of Claims that have been Allowed for purposes of voting, and the determination of such objections as may be filed to Claims of Creditors. The failure by the Debtor or the Reorganized Debtor to object to, or to examine, any Claim for the purposes of voting, shall not be deemed to be a waiver of any right to object to, or re-examine, the Claim in whole or in part. Furthermore, the fact that this Plan has provided a treatment for the benefit of a particular Creditor shall not in any way be deemed to be a waiver of any right to object to or re-examine the Claim or any secured interest whether by mortgage or otherwise which secures such Claim, in whole or in part.

B. The determination of all questions and disputes regarding title to the assets of the Estates, and all Causes of Action, controversies, disputes, or conflicts, whether or not subject to action pending as of the Confirmation Date, between the Debtor or the Reorganized Debtor or any other party.

C. The correction of any defect, the curing of any omission or the reconciliation of any inconsistency in this Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of this Plan.

D. The modification of this Plan after confirmation pursuant to the Bankruptcy Rules and the Bankruptcy Code and as provided in Article VII of the Plan.

E. The enforcement and interpretation of the terms and conditions of this Plan and the entry of orders in aid of confirmation of this Plan.

F. The entry of any order, including injunctions, necessary to enforce the title, rights, and powers of the Debtor, the Reorganized Debtor or any party-in-interest, and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as this Court may deem necessary, to accomplish its obligations under the Plan.

G. The review and approval of all Professional Fee applications for services rendered prior to the Effective Date and the review of any Professional Fees for services rendered in connection with the Plan after the Effective Date, to the extent that the Debtor or the Reorganized Debtor disputes all or a portion thereof.

H. The assumption or rejection of executory contracts under Article X of this Plan.

I. The litigation of any Avoidance Actions or Causes of Action.

J. The entry of an order determining the extent and/or validity of any Lien.

K. The entry of an order concluding and terminating this Chapter 11 Case.

ARTICLE VIII

TITLE TO PROPERTY

8.1 **VESTING OF PROPERTY.** Except as provided in Articles III and IV, title to any property of the Debtor (including all Causes of Action and Avoidance Actions) existing on the Effective Date shall vest in the Reorganized Debtor upon the Effective Date of the Plan. The Reorganized Debtor shall be discharged from its status as the Debtors-in-Possession. As of and following the Effective Date, the Reorganized Debtor may operate its business, if any, and use, acquire, and dispose of property and settle and compromise Claims or Interests without the supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order.

ARTICLE IX

UNITED STATES TRUSTEE FEES

9.1 **U.S. TRUSTEE FEES.** After the Effective Date, the Reorganized Debtor shall pay to the United States Trustee the appropriate sums required pursuant to 28 U.S.C. § 1930(a)(6) and shall provide the relevant information as required by the Office of the United States Trustee until the Chapter 11 Cases are administratively closed.

ARTICLE X

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

10.1 **REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** Upon the occurrence of the Effective Date, all executory contracts and unexpired leases shall be rejected, except for executory contracts and unexpired leases that are specifically assumed by the Reorganized Debtor.

10.2 **ASSUMPTION AND CURE PAYMENTS.** All assumed contracts and leases shall be Cured by the Reorganized Debtor pursuant to Section 10.3, unless other provisions have been agreed to by the counter-party. As long as the Reorganized Debtor complies with this provision, all contract and lease counterparties must fulfill all contract and lease obligations and are enjoined from declaring a default for non-performance due to the bankruptcy or pre-assumption default.

10.3 **RESOLUTION OF CURE CLAIM DISPUTES.** For each executory contract or unexpired lease to be assumed under this Article X, within thirty (30) days after the Confirmation Date, the Reorganized Debtor shall deliver a written proposal to the contract counter-party describing the method, timing and amount of any proposed Cure. The Reorganized Debtor's proposal shall be binding unless the contract counter-party delivers to the Reorganized Debtor's counsel, within fifteen (15) days after receipt of the proposal, a written objection detailing all reasons for the counter-party's objection and setting forth a counter-proposal. In the event that the dispute cannot be resolved, either party may petition the Bankruptcy Court to resolve the dispute through the filing of a properly noticed motion. In the

event that the Bankruptcy Court sets a Cure amount greater than the Cure amount proposed by the Reorganized Debtor, the Reorganized Debtor shall have ten (10) Business Days to Cure or reject the contract or lease.

10.4 **REJECTION CLAIMS.** Any Creditor who has a Claim as a result of the rejection of an executory contract or unexpired lease shall have thirty (30) days after the later of (i) the Confirmation Date or (ii) receipt of the notice of rejection of its contract or lease to file a Proof of Claim, failing which such Claim shall be disallowed in its entirety.

10.5 **OBJECTIONS TO REJECTION CLAIMS.** The Reorganized Debtor may file an objection to any Proof of Claim filed in accordance with Section 11.4 on or before the later of (i) sixty (60) days after the filing of the Proof of Claim or (ii) the time set for the filing of objections in Section 11.1 (including any extensions). The objection will be resolved in accordance with Article XI.

ARTICLE XI

OBJECTIONS TO CLAIMS

11.1 **TIMING OF OBJECTIONS.** The Debtor and/or Reorganized Debtor may object to the allowance and priority of any Claim, or the extent, validity and enforcement of any security interest, whether listed on the Schedules or filed by any Creditor, on or before the later of (a) sixty (60) days from the date of filing of any Proof of Claim or (b) eight (8) months after the Effective Date. The Reorganized Debtor may petition the Bankruptcy Court for an extension of this time by filing an appropriate motion. The service of the motion through the Court's electronic court filing system shall be sufficient notice of any such request. Any Claim not the subject of a timely objection shall be an Allowed Claim.

11.2 **EXTENT OF OBJECTIONS.** As part of the objection process set forth in Section 11.1 above, and without limiting same, the Debtor and Reorganized Debtor shall have the right to object to the any Lien asserted against property of the Debtor.

11.3 **CLAIM DISPUTE RESOLUTION PROCEDURES.** The Reorganized Debtor shall be authorized to resolve all Disputed Claims by withdrawing or settling objections thereto, or by litigating to judgment in the Bankruptcy Court, or such other court having competent jurisdiction, the validity, nature and/or amount thereof. If the Reorganized Debtor agrees with the Holder of a Disputed Claim to compromise, settle and/or resolve a Disputed Claim by granting such Holder an Allowed Claim, then the Reorganized Debtor may compromise, settle and/or resolve such Disputed Claim without Bankruptcy Court approval.

11.4 **CLAIMS BAR DATE.** Except as provided herein or otherwise agreed, any and all Proofs of Claim filed after the applicable Bar Date shall be deemed to be a Disallowed Claim and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless on or before the Confirmation Date such late Claim has been deemed timely filed by a Final Order.

ARTICLE XII

PROVISIONS GOVERNING DISTRIBUTIONS

12.1 **DISPUTED PAYMENTS.** Notwithstanding anything in this Plan to the contrary, the Debtors or Reorganized Debtor, as applicable, shall not be obligated to make any payments towards the Disputed portion of any Disputed Claim. The Reorganized Debtor shall withhold any such payments, and, if the dispute is resolved in favor of the Claim Holder, the Reorganized Debtor shall make any missed distributions within fourteen (14) days after entry of a Final Order determining the Claim.

12.2 **EFFECT OF ASSUMPTION AND CURE.** These distribution procedures shall not apply to any Claim resulting from an executory contract or unexpired lease assumed by the Debtors. The Cure provisions of Section 10.2 and any agreement with the counter-party shall exclusively apply to distributions on such Claims.

12.3 **DELIVERY OF DISTRIBUTIONS IN GENERAL.** Except as otherwise provided in the Plan, and notwithstanding any authority to the contrary, distributions to Holders of Allowed Claims and Allowed Interests shall be made by the Reorganized Debtor, in order of preference, (a) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtor, after the date of any related Proof of Claim, (b) at the addresses set forth on the Proofs of Claim filed by such Holders of Claims, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Reorganized Debtor has not received a written notice of a change of address, or (d) on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Except as set forth herein, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Reorganized Debtor shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct.

12.4 **ALLOCATION OF PAYMENTS.** All distributions shall be allocated first to principle until the principle amount of the Claim is paid in full, next to interest if interest is Allowed in relation to the Claim and finally, to fees, costs and expenses if such are Allowed.

12.5 **COMPLIANCE WITH TAX REQUIREMENTS AND ALLOCATIONS.** In connection with the Plan, to the extent applicable, the Reorganized Debtor shall be authorized to take all actions necessary or appropriate to comply with all tax withholding and reporting requirements imposed on them by any governmental unit, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtor reserves the right, in its sole discretion, to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, other spousal awards, Liens, and encumbrances.

12.6 **UNDELIVERABLE DISTRIBUTIONS AND NON-NEGOTIATED CHECKS.** If any distribution to a Holder of a Claim is returned as undeliverable, no further distributions to such

Holder of such Claim shall be made unless and until the Reorganized Debtor is notified of the then-current address of such Holder of the Claim, after which time future distributions shall be made to such Holder of the Claim without interest at such address. If checks issued by the Reorganized Debtor on account of Claims are not negotiated within one hundred and twenty (120) days after the issuance of such check, the check shall be null and void. Amounts in respect to undeliverable distributions and non-negotiated checks shall be held by the Reorganized Debtor until (i) such distributions are claimed or (ii) ninety (90) days after the check is returned or voided due to non-negotiation, after which date all such undistributed and non-negotiated amounts shall revert to the Reorganized Debtor free of any restrictions thereon and the Claim of any Holder or successor to such Holder with respect to such distribution shall be discharged and forever barred, notwithstanding federal or state escheat laws to the contrary. Nothing contained herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

12.7 **FRACTIONAL PAYMENTS.** Notwithstanding any other provision of the Plan to the contrary, payments of fractions of dollars shall not be required. Payment of fractions of dollars that would otherwise be distributed under the Plan shall be rounded to the lower whole number of dollars.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 **FURTHER ASSURANCES.** The Debtors, Reorganized Debtor, and all parties-in-interest, including without limitation any Creditor, shall be required to execute any document reasonably requested by the other to memorialize and effectuate the terms and conditions of this Plan. This shall include without limitation any execution by the Debtors and/or Reorganized Debtor of Uniform Commercial Code ("UCC") financing statements and the execution by Creditors of any UCC or mortgage discharges, releases or terminations.

13.2 **SETOFFS AND COUNTERCLAIMS.** Except as provided in Article III, no Creditor (including without limitation a Person or entity that becomes a Creditor as a result of a rejection of a contract) shall be allowed to setoff a Claim against an obligation to a Debtor or the Reorganized Debtor arising in connection with a different contract. Unless expressly asserted in the Chapter 11 Cases through the filing of a motion with the Bankruptcy Court or otherwise provided under Article III, all setoffs and counterclaims are waived pursuant to Article V of this Plan notwithstanding any assertion in any Proof of Claim. The terms of this paragraph shall not apply to any taxing authority.

13.3 **COMPROMISE OF LITIGATION.** The Reorganized Debtor shall have the right to commence, continue, amend or compromise all Causes of Action (including without limitation any Avoidance Action and any action described in the Debtor's Disclosure Statement) available to the Debtor, its Estate, the Debtor-in-Possession, or the Reorganized Debtor, whether or not those Causes of Action were the subject of a suit as of the Confirmation Date.

13.4 **NOTICES.** Any notice to the Debtor or Reorganized Debtor required under this Plan shall be addressed to the Debtor and delivered by (i) U.S. certified mail, return receipt requested, (ii) reputable overnight courier service with tracking, or (iii) hand-delivery:

Top Shelf Worldwide LLC
5117 Garfield Rd.,
Auburn, MI 48611

with a copy to:

Gudeman and Associates, P.C.
Edward J. Gudeman, Esq.
1026 W. Eleven Mile Rd.
Royal Oak, MI 48067

Failure to comply with this Section 13.4 shall render any notice to the Debtor or Reorganized Debtor to be invalid for purposes of this Plan.

13.5 **SUCCESSORS AND ASSIGNS.** This Plan and the Confirmation Order shall inure to the benefit of, and be binding upon, all parties-in-interest and their respective successors and assigns.

13.6 **TRANSFER OF CLAIMS.** In the event the holder of any Claim shall transfer such Claim after the Confirmation Date, it shall immediately advise the Debtor and Debtor's Counsel, in writing, of such transfer and the aforementioned parties shall be entitled to assume that no transfer of any Claim has been made by any holder unless and until it shall have received written notice of such transfer. Each transferee of any claim shall take such claim subject to the provisions of the Plan and any requests made, waiver or consent given or other action taken hereunder and, except as otherwise expressly provided in the notice, the Debtor shall be entitled to assume conclusively that the transferee named in such notice shall thereafter be vested with all rights and powers of the transferor under the Plan.

ARTICLE XIV
MANDATORY RETIREE PROVISIONS

14.1 Debtor has no retiree benefit plans which must comport with 11 U.S.C. § 1129(13).

DISCLOSURE STATEMENT

I. INTRODUCTION AND OVERVIEW.

A. PURPOSE OF DISCLOSURE STATEMENT.

All capitalized terms unless defined in this Disclosure Statement shall have the meaning ascribed to them in the Debtor's Plan of Reorganization (the "Plan"), unless the context indicates a different meaning.

Debtor submits this Disclosure Statement (the "Disclosure Statement") pursuant to Section 1125 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., to all known Holders of a Claim against either of them. The Debtors filed the Plan with the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division- Detroit, a copy of which accompanies this Disclosure Statement.

Debtor provides this Disclosure Statement to its Creditors to disclose information material and necessary for Creditors to make a reasonably informed decision in exercising their right to vote for the acceptance of the Plan.

B. SOURCE OF INFORMATION.

The Disclosure Statement and the Plan have been prepared from information furnished primarily by the Debtor. Debtor's counsel has not conducted an independent investigation to verify such information.

Certain materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are summaries of other documents. While every effort has been made to retain the meaning of such documents or portions of documents that have been summarized, the Debtor urges that any reliance on the contents of such documents be dependent upon a thorough review of the documents themselves. In the event of a discrepancy between this Disclosure Statement and the actual terms of a document, the actual terms of such document shall govern and apply.

The statements contained in this Disclosure Statement are made as of the date hereof, unless another time is specified. Neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change of the facts set forth herein since the date of this Disclosure Statement.

NO PERSON OR ENTITY HAS BEEN AUTHORIZED BY THE DEBTOR OR THE COURT TO GIVE ANY INSTRUCTIONS OR MAKE ANY REPRESENTATIONS CONCERNING THE DEBTOR, ITS FINANCIAL AFFAIRS, OR THE VALUE OF ITS PROPERTY, OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS, PROMISES OR INDUCEMENTS, PARTICULARLY REGARDING THE DEBTOR'S PROPERTY OR FUTURE INCOME, MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN, WHICH ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE

STATEMENT, SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. SUCH REPRESENTATIONS, INDUCEMENTS AND/OR PROMISES, IF ANY, SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR WHO, IN TURN, SHALL DELIVER SUCH INFORMATION FOR SUCH ACTION AS THE COURT MAY DEEM APPROPRIATE.

C. **OVERVIEW OF CHAPTER 11.**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize or liquidate its business for the benefit of itself, its creditors and equity interest holders. In addition to permitting a rehabilitation or liquidation of a debtor, another goal of Chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that a debtor may continue to operate its business and remain in possession of its property as a debtor-in-possession.

The consummation of a plan of reorganization is the principal objective in a Chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the Bankruptcy Court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the confirmation order discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes the obligations specified under the confirmed plan.

After a plan of reorganization has been filed, the holders of claims against or interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, however, Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan.

The Debtor is submitting this Disclosure Statement to holders of Claims against, and equity Interests in, the Debtors to satisfy requirements of Section 1125 of the Bankruptcy Code.

II. **DESCRIPTION OF THE DEBTOR.**²

The Debtor, a Michigan limited liability company founded in January 2013 and headquartered in Auburn, Michigan, owns a climate-controlled, state-of-the-art, indoor sports and recreational dome facility at 5117 Garfield Road, Auburn, Michigan 48611 (the "Facility").

²To the extent that the Disclosure Statement related provisions of this document (*i.e.*, sections II through VI herein) conflict with any terms in the Plan, the terms of the Plan shall govern.

Debtor's non-debtor affiliate, Tri City Sports Complex, LLC, a Michigan limited liability company ("TCSC"), operates the "Tri City Sports Complex" business in the Facility. TCSC's customers rent the Facility for field sports such as soccer, lacrosse, football, baseball, parties, meetings, and other events.

Both Debtor and TCSC are wholly-owned subsidiaries of Auburn Holdco, LLC, a Michigan limited liability company ("Auburn Holdco"). Auburn Holdco is owned by Manojkumar B. Shaw, Stan Dulaney, and Ricken Shaw, each with a 33.33% membership interest.

A. **DESCRIBE THE PRINCIPALS.**

1. *Their background.*

a. Stan Dulaney

Mr. Dulaney is a 33.33% owner of Auburn Holdco – the owner of Top Shelv. Mr. Dulaney is intimately involved in all aspects of the management of the Debtor, including advertising and marketing, day-to-day operations, scheduling, etc. Mr. Dulaney has been involved in sports, and especially soccer, for most of his life.

b. Ricken Shaw

Mr. Ricken Shaw is a 33.33% owner of Auburn Holdco – the owner of Top Shelv. Mr. Ricken Shaw provided the initial source of funds to invest in the Debtor.

c. Manojkumar Shaw

Mr. Manojkumar Shaw is a 33.33% owner of Auburn Holdco – the owner of Top Shelv. Mr. Manoj Shaw, at one time, was managing the Facility, but no longer does.

2. *Their annual salary, compensation, draw or other remuneration, including fringe benefits.*

At this time, only Stanley Dulaney is involved in the day-to-day management of the Facility. Mr. Dulaney should be receiving \$70,000.00 as salary for his efforts subject to the Reorganized Debtor's financial ability to fund the salary subject to the Reorganized Debtor's financial ability to fund the salary. Manoj and Ricken Shaw are not being compensated. There are no fringe benefits being paid.

3. *Their legal relationships, if any, with the Debtors.*

a. Mr. Dulaney is the manager of Top Shelv and a 33.33% owner of Auburn Holdco.

b. Mr. Ricken Shaw is a 33.33% member of Auburn Holdco.

c. Mr. Manojkumar Shaw is a 33.33% member of Auburn Holdco.

D. DESCRIBE THE DEBTOR’S BUSINESS, THE INDUSTRY GROUP AND THE CAUSES FOR THE CHAPTER 11 FILING.

The Debtor entity was organized in January 2013 for the purpose of constructing and then leasing the Facility to its affiliate, Tri City. Top Shelf is the owner of the Real Property which consists of 18+ acres of land with a state-of-the-art inflatable dome on site. There is a clubhouse and parking lot adjacent to the dome. The Facility is located to the South of U.S. 10, and located in Auburn, Michigan, which is between Midland and Bay City, Michigan. It was contemplated that Tri City would rent the Facility for field sports such as soccer, lacrosse, football, baseball, parties, meetings, and other events.

Creditor Four Courts/Farley Group is a builder of inflated domes, supplying the materials which go into making the dome. Other construction contractors are called in to create the foundation, construct other buildings and amenities, provide electric, gas and plumbing service, etc. Four Courts/Farley Group was approached to construct the Tri-City Sports Complex.

Construction of the Facility began in 2013, and was plagued almost from the very outset with delays and cost overruns. Some of the delays, the Debtor has contended, were due to defective workmanship of its contractors—chiefly among them, Sugar Construction, Inc. (“Sugar”) and Hranec Sheet Metal, Inc. (“Hranec”). Other issues recently discovered have been with the electric work done by Valley Electrical Contractors. Disagreements between the Debtor and Sugar resulted in Sugar filing a foreclosure lawsuit (the “Circuit Court Litigation”) against the Debtor and other construction lien claimants under, inter alia, the Michigan Construction Lien Act, in July 2014. The Debtor responded by filing a series of counter-claims and cross-claims.

The business at the Facility is extremely seasonal. The “busy” season runs from November through May. Like all seasonal sports facilities of this kind, Tri City’s business model requires it to “stock-pile” income from the busier months in order to satisfy debt obligations, including lease payments, in the leaner months. The delays in finalizing construction on the Facility, combined with the resources redirected by the Debtor’s principals from building the Business to fighting in the Circuit Court Litigation, crippled Tri City’s ability to fund consistent lease payments to the Debtor. With little to no cash flow from Tri City, the Debtor was unable to pay even the utility bills as they come due. Finally, around August 2015, Consumers Energy informed the Debtor that it intended to shut off electrical service.

This would have put the Debtor and Tri City out of business instantly, and, possibly, have irreparably damaged the dome structure. The Debtor commenced the Prior Chapter 11 Case to prevent catastrophic physical damage to the dome, end the financial bleeding from the Circuit Court Litigation, and facilitate a reorganization of its operations.

On August 31, 2015, the Debtor filed the Prior Chapter 11 Case. There was substantial contentious litigation in that case, with the secured creditors in that case seeking to have that case dismissed. Eventually, that prior bankruptcy case resulted in a plan that proposed to pay all of the secured creditors in full over time, with a balloon payment at the end of a ten (10) year repayment period. The plan in that prior case appears to have been the result of overly optimistic

revenue projections. Mr. Dulaney also believes that the Facility's reputation was greatly hurt by the construction problems that plagued, and continue to plague, the Facility.

With revenue projections failing to meet expectations, and unable to meet its obligations under the prior confirmed chapter 11 plan due to changed circumstance, the Debtor filed the current Chapter 11 Case in order reorganize its business.

III. **POST-PETITION EVENTS OF SIGNIFICANCE.**

A. **DISCLOSE ALL POST-PETITION TRANSFERS OUTSIDE OF THE ORDINARY COURSE OF BUSINESS.**

There have been no post-petition transfers outside of the ordinary course of business during this Chapter 11 Case, except to the extent that the Court has authorized Debtor to make payments pursuant to motions and subsequent Bankruptcy Court orders. See Chapter 11 Case docket numbers 37 (utility / adequate assurance), 38 (cash collateral), 46 (application to employ Gudeman & Associates), 88 (application to employ Schlaupitz & Madhavan) and 97 (application to employ Cook, Pray, and Rexroth & Associates).

B. **PROVIDE SUMMARIES OF THE IMPORTANT DETAILS OF CASH COLLATERAL, POST-PETITION FINANCING AND ADEQUATE PROTECTION ORDERS.**

On July 21, 2017, the Debtor filed a motion to use cash collateral. Two creditors, Farley Group/Four Courts and TCP Investments, were identified as having security interests in cash collateral. Pursuant to the interim order that was entered by the Court on July 27, 2017, (DN 38) and which subsequently became a final order on August 18, 2017, creditor Four Courts/Farley Group was to be paid \$1,200.00 per month and TCP Investments was to be paid \$100.00 per month in adequate protection payments commencing August 1, 2017. All adequate protection payments have been paid to date.

There have been no other motions filed or orders entered seeking or granting post-petition financing or adequate protection.

C. **EXPLAIN ANY LITIGATION DURING THE CASE.**

1. There has been no litigation in this Chapter 11 Case to date. However, Debtor believes it has various claims against contractors for faulty construction and other issues, including Sugar Construction and Valley Electrical Contractors. The litigation over objections to claims has been reserved and would be prosecuted through the filing of objections to claims to reduce the amount of such claims.

D. **OTHER NOTEWORTHY ACTIVITY.**

1. On July 25, 2017, creditor Four Courts / Farley Group filed a motion to dismiss this Chapter 11 Case. Concurrences to the motion were filed by Sugar Construction, Anthony Gushow & Sons, and Valley Electrical Contractors. The Bankruptcy Court heard testimony and

arguments on August 18, 2017, August 25, 2017, and August 28, 2017. On August 30, 2017, the Bankruptcy Court issued a bench opinion denying the motion to dismiss the Chapter 11 Case.

2. On July 28, 2017, the Debtor filed a motion for substantive consolidation with Tri-City for the purposes of this Chapter 11 Case. Substantive consolidation between these entities was also done in the Prior Chapter 11 Case. The purpose was to more easily value and administer the estate because, for practical purposes, the income and expenses of the entities are intertwined and this allowed for the extinguishment of inter-company claims and avoiding the necessity of objecting to inter-company claims. Initially, Four Courts/Farley Group objected to the motion for substantive consolidation. The objection was subsequently withdrawn. The order granting substantive consolidation was granted on September 6, 2017.

3. On December 1, 2017, the Debtor filed a motion to value the collateral, which would include the land, structure, goods, equipment, and other items making up the Facility, the club house, etc. Several values were given in the appraisal done by David Rexroth. Under the income approach, the value of the collateral is \$300,000.00. As of the date of this filing of this plan, no hearing on the motion has been set.

4. The firm of Schlaupitz & Madhavan was retained to be the accountants and consultants for the Debtor.

5. The firm of Cook, Pray, Rexroth & Associates was retained to appraise the collateral.

6. No Committee of Unsecured Creditors nor has any Trustee been appointed.

IV. **ASSETS AND LIABILITIES**

A. **LIQUIDATION ANALYSIS**

Assets & Collateral	Creditor Holding Lien	Market Value (M) / Forced Sale (FS) Value	Amount of Secured Claim	Amount Unsecured	Non-Exempt Equity for Market Value (M) / Forced Sale Value (FS)	Comments

Real Property / Goods / Fixtures / Equipment	Bay County Treasurer; Robert and Nancy Anderson; Four Courts/Farley Group; Sugar Construction; Valley Electrical Contractors; TCP Investments; Sequin Lumber Co.; Northern Concrete & Pipe; NES Equipment; Dewitt Lumber; Central Ceiling North; Capital Stack;	\$300,000.00 per appraisal by the income approach. Forced Sale value is \$180,000.00 per appraisal by the income approach.	Over \$2,500,000.00	Over \$2,200,000.00	\$0.00	
Cash in Bank	Capital Stack LLC (a/k/a ACH Capital) and TCP Investments	\$7,250.00	\$47,368.08	\$40,118.08	\$0.00	
Funds in Creditor Payback Account	n/a	\$1,878.44	n/a	\$0.00	\$1,878.44	
Claims against construction contractors	There are various claims against individual creditor relating to construction. Such claims would only offset and reduce what is owed to each creditor, but it is not believed that they would eliminate such claims so as generate any equity.					
Total Equity if Fair Market Value Used:						\$1,878.44

Administrative Costs (estimated): \$130,000.00

Net Available to Unsecured Creditors, in chapter 7 liquidation (FMV): \$0.00

B. RISKS, CONDITIONS AND ASSUMPTION REGARDING THE STATED VALUES.

1. All values stated in the Liquidation Analysis for assets, liabilities, costs, expenses and potential recoveries are based on good faith estimates using information currently available to the Debtor. The estimates have not been subject to audit, and Debtor's assets have not been appraised. The estimates shall in no way be construed to constitute binding guaranties, representations or warranties and are subject to revision at any time.

2. Except as otherwise noted herein or in the Plan, the values for Debtor's assets, as set forth in the applicable Bankruptcy Schedules filed in connection with its Bankruptcy Petition, reflect Debtor's best estimate of the market value of the assets, except where noted to

the contrary. In establishing the values, Debtor has considered the size, age, physical condition and location of the assets, in addition to the need for certain additional capital requirements.

C. **IDENTIFY ALL POTENTIAL CLAIMS AND CAUSES OF ACTION, INCLUDING CLAIMS AGAINST INSIDERS AND AVOIDANCE ACTIONS.**

1. The Debtor is not aware of any Causes of Action other than construction issues mentioned above in Article II.D of this Disclosure Statement which could result in the reduction of Creditor Claims.

2. The Debtor has not undertaken an analysis of available affirmative defenses with respect to Preference Actions.

3. Among other preserved Causes of Action, to the extent not released in the Plan, the Debtor reserves (i) all Causes of Action under Section 547 of the Bankruptcy Code against any and all Persons that received any transfer of property from the respective Debtor within 90 days before the applicable Petition Date, and any and all Insiders that received any transfer of property from the respective Debtor within one year before the applicable Petition Date, including, but not limited to, those Persons listed on such Debtors Statements of Financial Affairs as having received such transfers, and all subsequent transferees (the "Preference Actions"); (ii) all Causes of Action under Section 549 of the Bankruptcy Code against any and all Persons that received unauthorized transfers of property of each of the Debtor's Estate after the applicable Petition Date, (iii) all Causes of Action under Section 548 and/or 544 of the Bankruptcy Code and any applicable state law against any and all Persons that received property from the Debtor's Estate for less than reasonably equivalent value within six years of the Petition Date and while such Debtor was insolvent, and (iv) all Causes of Action arising before or after the applicable Petition Date in the ordinary course against any and all Persons with which a Debtor has contractual, trade or account relations, including all Causes of Action relating to breaches of contract, collection of accounts receivable and other actions against such Debtor's clientele that may owe money or other obligations to such Debtor, breach of warranties or representations, supply of non-conforming or deficient goods or services, overpayments, credits, setoffs, demands for turnover of property, and any other Causes of Action that the Debtor may have arising under applicable state or federal law against such Debtor's customers, trade suppliers and other business partners of any nature whatsoever. All such claims and Causes of Action, along with all rights, interests and defenses related thereto, shall vest with the Reorganized Debtor.

4. Under the Plan, the Debtor and the Reorganized Debtor retain discretion to litigate, settle or abandon any Causes of Action against the Insiders, including Avoidance Actions.

D. **LIST AND DESCRIBE THE PRIORITY CLAIMS INCLUDING ANTICIPATED ADMINISTRATIVE EXPENSE CLAIMS OF ALL TYPES.**

1. While it is impossible to accurately estimate administrative expenses as of the date of this Disclosure Statement, as such estimate depends on various unknown factors including the

total duration of the Chapter 11 Cases and the nature and extent of additional administrative expenses, including professional expenses, the Debtors anticipates the following Priority and Administrative Claims:

<u>Potential Administrative Creditor</u>	<u>Estimated Amount of Administrative Claim</u>
Gudeman & Associates, P.C.	\$100,000.00
Schlaupitz & Madhavan, P.L.L.C.	\$18,000.00
Cook, Pray, Rexroth & Associates	\$10,000.00
United States Trustee	\$2,000.00

<u>Potential Priority Creditor</u>	<u>Estimated Amount of Administrative Claim</u>
N/A	

2. Further information on Claims can be found by accessing the claims register or the Debtor's Schedules on the Bankruptcy Court's website in the Debtor's Case. Administrative expense claims for Professionals are subject to review and approval by the Bankruptcy Court.

E. PROVIDE A TOTAL OF ALL NON-PRIORITY UNSECURED CLAIMS, INCLUDING UNDER-SECURED CLAIMS.

1. The total estimated amount of the non-Priority Unsecured Claims, as identified in Section 3.5 of the Plan is \$464,954.02.

2. The undersecured claims include those Creditors identified in Section 3.5 of the Plan and total approximately \$2,740,473.76. Further information on Claims against the Debtor can be found by accessing the claims register or the Debtor's Schedules on the Bankruptcy Court's website in the Case. The Debtor reserves the right to contest the amount and priority of the Priority or non-Priority Unsecured Claims for any reason and nothing in the Plan or Disclosure Statement shall be deemed an admission by such Debtor.

F. INFORMATION REGARDING ANY DEBT GUARANTEED BY ANYONE OR IF ANYONE IS LIABLE WITH THE DEBTOR ON ANY DEBT.

The list below is for description purposes only and not an admission by either Debtor or any other person. The Debtor reserves the right to contest the amount of any Claim, and if applicable, any asserted security interest or Lien, or the priority or extent thereof.

1. Four Courts / Farley Group
 - a. *Nature:* Note with mortgage secured against the Real Property and a UCC filing for “goods” incorporated into the Facility.
 - b. *Amount:* Four Courts has asserted a claim of \$1,773,665.93. A portion of that claim involves the repayment of funds on account of Consumers Energy which Tri-City, Stan Dulaney, Manoj Shaw, and Ricken Shaw, may have guaranteed. See Proof of Claim # 12 and the documents attached thereto.
 - c. *Description of collateral securing the debt:* The Real Property and goods incorporated into the Facility is the security in this case for the debt.
 - d. *Value of collateral secured by the debt:*
 - i. Appraisal:
 - a. Real property: \$300,000.00
 - b. Personal property: n/a
 - c. Total: \$300,000.00
 - d. For liquidation values, please see the Liquidation Analysis above.
2. Capital Stack, L.L.C.
 - a. *Nature:* Note secured by various forms collateral with a UCC filing. Tri-City is listed as a co-debtor on the U.C.C. filing.
 - b. *Amount:* \$32,833.58.
 - c. *Description of collateral securing the debt:* Various forms of collateral, but most importantly a lien on deposit accounts.
 - d. *Value of collateral secured by the debt:*
 - i. Schedules:

- a. Real property: N/A
 - b. Personal property: \$7,250.00.
 - c. Total: \$7,250.00
 - d. For liquidation values, please see the Liquidation Analysis above.
3. TCP Investments, L.L.C.
- a. *Nature:* Note secured by various forms collateral with a UCC filing. Tri-City is listed as a co-debtor on the U.C.C. filing. The Claim was disputed in this Chapter 11 Case and no Proof of Claim was filed in this Chapter 11 Case.
 - b. *Amount:* \$14,534.50.
 - c. *Description of collateral securing the debt:* Various forms of collateral, but most importantly a lien on deposit accounts.
 - d. *Value of collateral secured by the debt:*
 - i. Schedules:
 - a. Real property: N/A
 - b. Personal property: \$7,250.00 (but second to Capital Stack / ACH Capital and ultimately unsecured).
 - c. Total: \$7,250.00
 - d. For liquidation values, please see the Liquidation Analysis above.
4. Apex Engineers, P.L.C.
- a. *Nature:* In the Prior Chapter 11 Case, Apex Engineers filed an unsecured proof of claim for engineering and surveying services in the amount of \$28,881.77. Several of the invoices attached to the proof of claim were billed to Tri-City. It is not clear that Tri-City ordered and had a contract for the services and that Tri-City was a co-debtor on the claim. The Claim was disputed in this

Chapter 11 Case and no Proof of Claim was filed in this Chapter 11 Case.

- b. *Amount:* \$28,881.77.
- c. *Description of collateral securing the debt:* N/A.
- d. *Value of collateral secured by the debt:* N/A.

5. Quick Reliable Printing, QRP Inc.

- a. *Nature:* In this Chapter 11 Case, Quick Reliable Printing filed a Proof of Claim of claim against Top Shelv (see Claim # 11). However, the invoices attached to that proof of claim were all in the name of Tri-City. It is not clear that Top Shelv is a co-debtor of Tri-City for this debt.
- b. *Amount:* In this Chapter 11 Case, Quick Reliable Printing asserted a claim of \$13,732.47
- c. *Description of collateral securing the debt:* N/A.
- d. *Value of collateral secured by the debt:* N/A

6. ShindelRock

- a. *Nature:* Potential Unsecured Claim for \$5,482.00 for accounting services. Tri-City may be a co-debtor for the work done to the Facility.
- b. *Amount:* \$5,482.00 – but this claim was disputed on Debtor’s Schedules and no Proof of Claim was filed.
- c. *Description of collateral securing the debt:* N/A.
- d. *Value of collateral secured by the debt:* N/A.

V. **DETAILS REGARDING IMPLEMENTATION OF THE PLAN.**

A. **PROVIDE MEANINGFUL SUMMARIES OF FINANCIAL INFORMATION IN A CONSISTENT FORMAT FOR AT LEAST THE FOLLOWING PERIOD:**

- 1. *Three years pre-Petition Date*

- a. Financials for Top Shelv are available for 2016 and 2017, and for Tri-City for 2015, 2016, and 2017. Those financials are attached as **Exhibit A**. Financials for 2015 for Top Shelv are being compiled by Debtor's retained accountant. Some of the Financial information for Top Shelv for 2015 can be found in Prior Chapter 11 Case, at Docket Number 132, and the exhibits attached to the First Amended Plan and Disclosure Statement in that case.

2. *Post-Petition Date*

- a. See the Debtor's monthly operating report(s), which are filed with the Court and appear on the Court's docket in the Case. For a copy of the Debtor's monthly operating report(s), please contact the Debtor's counsel.

3. *Projections for the period of payment proposed by the plan together with assumptions underlying those projections.*

- a. The Debtor anticipates reorganizing its business and assets and paying its creditors according to their priority pursuant to Article III of the Plan. A copy of the post-confirmation, 10-year projections is attached as **Exhibit B**.

b. Assumptions underlying projections-

- I. Confirmation of this Plan.
- II. Continuation of Debtor's business and assets as a going concern.
- III. Payments to be made according to the Plan.
- IV. Unsecured Claims consistent with Debtor's Schedules, but inclusive of any Deficiency Claims.
- V. Past performance is *not* indicative of future performance since the Debtor's changed circumstances immediately prior to the filing of the case will give the Debtor the ability to make plan payments. Also, the Debtor anticipates that it will begin to be able to look for (and obtain) financing to start the apiary business.

4. *Executory Contracts.*

- a. Debtor does not anticipate any executory contracts and/or leases. None were listed on Debtor's Schedules.

B. **STATE WHO WILL BE IN CHARGE AND THE COMPENSATION TO BE PAID TO EACH, INCLUDING FRINGE BENEFITS.**

1. After the Effective Date of the Plan, the Reorganized Debtor will, pursuant to the Plan, continue to operate consistent with their operations prior to and after the Petition Date. It is anticipated that Stanley Dulaney, who handles the management of the Facility, will be paid compensation of approximately \$70,000.00 per year.

C. **STATE THE TAX RAMIFICATIONS FOR THE CONTINUING ENTITY IF THE PLAN IS CONFIRMED.**

1. *To Debtor:* The Debtor believes that the forgiveness of indebtedness which may result from a discharge granted by the confirmation of the Plan will not result in a significant tax consequence to the Debtor. The forgiveness of indebtedness, pursuant to the Internal Revenue Code, can be applied either to the Debtor's basis in its assets or to its net operating loss carry forward. The Debtor cannot accurately determine the amount and extent of any forgiveness of indebtedness. First, the Debtor must determine if all of the Claims that have been filed, or deemed filed within this Case, are accurate. Also, depending on whether the Debtor achieve or exceed the projection in the current fiscal year, the Debtor may elect to apply any forgiveness of a debt directly to its basis. Despite the fact that the Debtor believes that it can either (a) apply such forgiveness of indebtedness to its net operating loss carry forward or (b) to its basis, it is not expected that the amount of forgiveness of debt will be totally offset by the foregoing. However, once these net operating losses are used by the Debtor to offset forgiveness of indebtedness, they cannot be used again. Taxes paid by the Debtor in the future years would, therefore, be impacted as a result of confirmation of the Plan.

The Debtor is a Michigan Limited Liability Company and as such is a pass through entity with no federal tax liability.

At this time, no post-petition tax liabilities have accrued.

2. *To Creditors:* The tax consequences to each Creditor resulting from confirmation of the Plan may vary depending upon each Creditor's particular circumstances. The Debtor recommends that Creditors or Holders of Claims obtain independent tax counsel to advise them as to the tax consequences of the Plan.

VI. **LEGAL REQUIREMENTS, AS FOLLOWS:**

B. **VOTING PROCEDURES**

Under the Bankruptcy Code, the only classes that are entitled to vote to accept or reject a plan are classes of claims or equity interests that are impaired under the plan. Accordingly, classes of claims or interests that are not impaired are not entitled to vote on the plan.

Creditors that hold Claims in more than one impaired class are entitled to vote separately in each class. Such a Creditor will receive a separate ballot for all of its Claims in each class (in accordance with the records of the Clerk of the Court) and should complete and sign each ballot separately. A Creditor who asserts a Claim in more than one class and who has not been provided with sufficient ballots may photocopy the ballot received and file multiple ballots.

Votes on the Plan will be counted only with respect to Claims: (a) that are listed on applicable Debtor's Schedules of Assets and Liabilities other than as disputed, contingent or unliquidated; or (b) for which a proof of claim was filed on or before the bar date set by the Court for the filing of proofs of claim (except for certain claims expressly excluded from that bar date or which are allowed by Court order). However, any vote by a Holder of a Claim will not be counted if such Claim has been disallowed or is the subject of an unresolved objection, absent an order of the Court allowing such Claim for voting purposes pursuant to 11 U.S.C. § 502 and Bankruptcy Rule 3018.

Voting on the Plan by each Holder of a Claim or Interest in an impaired class is important. After carefully reviewing the Plan and disclosure statement, each Holder of such a Claim or Interest should vote on the enclosed ballot either to accept or to reject the Plan, and then return the ballot by mail to the Debtor's attorney by the deadline previously established by the Court.

Any ballot that does not appropriately indicate acceptance or rejection of the Plan will not be counted.

A ballot that is not received by the deadline will not be counted.

If a ballot is damaged, lost, or missing, a replacement ballot may be obtained by sending a written request to the Debtor's attorney.

C. ACCEPTANCE

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots. The Bankruptcy Code defines acceptance of a plan by an impaired class of equity interests as acceptance by holders of at least two-thirds in number of the equity interests of that class that actually cast ballots. If no creditor or interest holder in an impaired class votes, then that class has not accepted the plan.

D. **CONFIRMATION**

11 U.S.C. § 1129(a) establishes conditions for the confirmation of a plan. These conditions are too numerous and detailed to be fully explained here. Parties are encouraged to seek independent legal counsel to answer any questions concerning the Chapter 11 process.

Among the several conditions for confirmation of a plan under 11 U.S.C. § 1129(a) are these:

1. Each class of impaired creditors and interests must accept the plan, as described in paragraph VI.B., above.
2. Either each holder of a claim or interest in a class must accept the plan, or the plan must provide at least as much value as would be received upon liquidation under Chapter 7 of the Bankruptcy Code.

E. **MODIFICATION**

The Debtors reserves the right to modify or withdraw the plan at any time before confirmation.

F. **EFFECT OF CONFIRMATION**

If the plan is confirmed by the Court:

1. Its terms are binding on the debtors, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the plan.
2. Except as provided in the plan and in 11 U.S.C. § 1141(d):
 - (a) In the case of a corporation that is reorganizing and continuing business:
 - (1) All claims and interests will be discharged.
 - (2) Creditors and shareholders will be prohibited from asserting their claims against or interest in the debtor or its assets.
 - (b) In the case of a corporation that is liquidating and not continuing its business:
 - (1) Claims and interests will not be discharged.
 - (2) Creditors and shareholders will not be prohibited from asserting their claims against or interests in the debtor or its assets.

- (c) In the case of an individual or husband and wife:
- (1) Claims will be discharged, except as provided in 11 U.S.C. §§ 523 and 727(a).
 - (2) Creditors will be prohibited from asserting their claims except as to those debts which are not discharged or dischargeable under 11 U.S.C. §§ 523 and 727(a).

See Part II-A of this Disclosure Statement to determine which of the above paragraphs applies in this case.

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December 15, 2017

On behalf of Debtor-in-Possession
Prepared by:

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