

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

In re:	)	
	)	
BOWLIN FUNERAL HOME, INC.,	)	Case No. 17-20965-drd11
	)	
Debtor-in-Possession.	)	Small Business Case under Chapter 11
	)	Submitted by the Debtor

**COMBINED PLAN AND DISCLOSURE STATEMENT DATED JANUARY 15, 2018**

**Table of Contents**

I. INTRODUCTION .....	3
A. Purpose of This Document.....	3
B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing .....	4
II. BACKGROUND.....	4
A. Description and History of the Debtor's Business .....	4
B. Insiders of the Debtor .....	5
C. Management of the Debtor Before and During the Bankruptcy .....	5
D. Events Leading to the Debtor's Chapter 11 Filing .....	5
E. Significant Events During the Bankruptcy Case .....	5
F. Projected Recovery of Avoidable Transfers.....	6
G. Claims Objections .....	6
H. Current and Historical Financial Conditions .....	6
III. TREATMENT OF CLAIMS AND EQUITY INTERESTS .....	6
A. What is the Purpose of the Plan of Reorganization?.....	6
B. Explanation of Classes of Claims and Equity Interests.....	6
1. Classes of Secured Claims .....	6
2. Classes of Priority Unsecured Claims.....	6
3. Classes of General Unsecured Claims .....	6
4. Class of Equity Interest Holders .....	6
C. Overview - Treatment of Claims and Interests under Plan .....	7
D. Treatment of Unclassified Claims.....	8
1. Administrative Expenses .....	8
2. Priority Tax Claims.....	9

E. Treatment of Classified Claims and Interests.....	10
Class 1: Secured Claim of Commerce Bank.....	10
Class 2: Unsecured Portion of Commerce Bank Claim.....	10
Class 3: All Unsecured Claims Allowed Under Code § 502.....	10
Class 3: Equity Interests in the Debtor. ....	10
F. Treatment of U.S. Trustee Fees .....	10
IV. ALLOWANCE AND DISALLOWANCE OF CLAIMS .....	11
A. Disputed Claims .....	11
B. Settlement of Disputed Claims.....	11
V. PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	11
A. Assumed Executory Contracts and Unexpired Leases .....	11
B. Rejected Executory Contracts and Unexpired Leases.....	11
VI. GENERAL PROVISIONS .....	12
A. Definitions and Rules of Construction.....	12
B. Effective Date of Plan .....	12
C. Severability.....	12
D. Binding Effect .....	12
E. Captions.....	12
F. Corporate Governance .....	12
VII. OTHER PROVISIONS .....	12
VIII. MEANS OF IMPLEMENTING THE PLAN .....	12
A. Source of Payments.....	12
B. Post-Confirmation Management .....	13
C. Risk Factors.....	13
D. Tax Consequences of Plan .....	13
1. Tax consequences to the Debtor. ....	13
2. Tax consequences to creditors. ....	13
IX. CONFIRMATION REQUIREMENTS AND PROCEDURES .....	13
A. Overview of Requirements .....	13
B. Who May Vote or Object.....	13
C. What Is an Allowed Claim or an Allowed Equity Interest?.....	14
D. What Is an Impaired Claim or Impaired Equity Interest?.....	14
E. Who is Not Entitled to Vote .....	14
F. Who Can Vote in More Than One Class .....	14
G. Votes Necessary to Confirm the Plan .....	14

1. Votes Necessary for a Class to Accept the Plan .....	14
2. Treatment of Nonaccepting Classes.....	15
H. Liquidation Analysis .....	15
I. Feasibility Analysis .....	15
J. Cash Flow Analysis.....	15
K. Ability to Make Future Plan Payments And Operate Without Further Reorganization .....	15
X. EFFECT OF CONFIRMATION OF PLAN.....	16
A. Discharge .....	16
B. Modification of Plan.....	16
C. Final Decree .....	16
EXHIBITS .....	17
Exhibit A – Assets .....	17
Exhibit B – Liquidation Analysis .....	18
Exhibit C - Feasibility Analysis.....	19

## I. INTRODUCTION

This is the combined Plan and Disclosure Statement in the small business chapter 11 case of Bowlin Funeral Home, Inc. (the "Debtor"). For ease of reference, this Combined Plan and Disclosure Statement will be referred to hereafter as the "Plan." This Plan is filed under chapter 11 of the Bankruptcy Code (the "Code") and proposes to pay creditors of the Debtor from cash flow from operations and future income. This Plan provides for one class of secured claims; two classes of unsecured claims; and the debtor's equity security holder, Mark R. Elliott, Jr. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at 100 cents on the dollar. The proposed distributions are discussed at pages 7 - 9 of this Plan. This Plan also provides for the payment of administrative and priority claims.

Creditors should refer to Article III of this Plan for information regarding the precise treatment of their claims.

This Plan also provides detailed information regarding the terms for payment of the Debtor's creditors and other information designed to assist creditors in determining whether to accept the Plan. ***Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)***

### A. Purpose of This Document

This Plan describes:

- The Debtor and significant events during the bankruptcy case.
- Historical information regarding the Debtor and the events leading to its bankruptcy filing.

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

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

The Court has not yet confirmed the Plan. This section describes the procedures under which the Plan will or will not be confirmed.

### **1. Time and Place of the Hearing to Confirm the Plan/Approve Adequacy of Disclosure Statement**

The hearing at which the Court will consider confirmation of the Plan and determination of the adequacy of disclosure set forth in the Plan will take place on \_\_\_\_\_, at \_\_\_\_\_, in Courtroom B, at the Christopher S. Bond United States Courthouse, 80 Lafayette Street, Jefferson City, Missouri 65109.

### **2. Deadline For Voting to Accept or Reject the Plan**

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Debtor's counsel, Harry D. Boul, Attorney at Law, One East Broadway, Ste. B, Columbia, MO 65203. See section IX.B. below for a discussion of voting eligibility requirements.

Your ballot must be received by \_\_\_\_\_ or it will not be counted.

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

Objections to the adequacy of the disclosures stated in this Plan and to confirmation of the Plan must be filed with the Court by \_\_\_\_\_.

### **4. Identity of Person to Contact for More Information**

If you want additional information about the Plan, you should contact Debtor's counsel.

## **II. BACKGROUND**

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

The Debtor is a Missouri general business corporation. Since the date of incorporation, July 1, 1985, the Debtor has been in the business of providing funeral services. This funeral business has been in the family of Debtor's owner/manager, Mark R. Elliott, Jr., for approximately 99 years, and has been owned and operated by Mr. Elliott for approximately 11

years.

## **B. Insiders of the Debtor**

Under Code § 101(31), if the debtor is a corporation, the term "insider" includes any officer, director or person in control of the corporation, and any relative of such person. Mark R. Elliott, Jr., is the sole owner and manager of Bowlin Funeral Home, Inc. During the two years prior to the commencement of this bankruptcy case, Debtor paid \$100,800.00 in compensation and lease payments \$659.43 per month to Mr. Elliott and salary at the pre-filing rate during the pendency of this chapter 11 case.

## **C. Management of the Debtor Before and During the Bankruptcy**

During the two years before the Debtor's bankruptcy petition was filed, Mr. Elliott was the sole officer, director and manager of the debtor, and has continued to function in that capacity during the Debtor's chapter 11 case.

## **D. Events Leading to the Debtor's Chapter 11 Filing**

The main events leading to the commencement of Debtor's bankruptcy case were (a) the collapse of the company providing prepaid burial plans to Debtor's customers, resulting in a loss to the debtor of approximately \$350,000.00, (b) an expensive divorce settlement by virtue of which, the debtor corporation was required to pay an outgoing vice president \$150,000.00 and (c) an unusual reduction in the demand for funeral services during the first half of 2017, which management believes to be a temporary aberration.

## **E. Significant Events During the Bankruptcy Case**

- Debtor filed its petition for protection from creditors and reorganization under chapter 11 of the Bankruptcy Code on October 3, 2017.
- On October 4, 2017, the Court conducted a hearing on an emergency motion for relief from the automatic stay filed by Commerce Bank, and denied said motion.
- The law firm of Boul & Associates, P.C. has been approved by the Court to represent the Debtor in this case.
- Bert Doerhoff, CPA of Jefferson City, Missouri has been approved by the Court to provide accounting services to the debtor in this case.
- Mr. Elliott proposes to employ an assistant to monitor bookkeeping, preparation and filing of various reports, including, but not limited to, annual reports to the office of the Secretary of State and Wage and Contribution reports to the Missouri Department Labor and Industrial Relations and federal and state tax returns.
- On October 6, 2017, the Court conducted a hearing on Debtor's motion for an interim order authorizing the debtor to use cash collateral.
- On October 12, 2017, the Court entered an Interim Order Authorizing Use of Cash Collateral.
- On October 17, 2017, the Court entered a Final Order Authorizing Use of Cash Collateral.

## **F. Projected Recovery of Avoidable Transfers**

There appear to be no avoidable preferences or fraudulent conveyances. Accordingly, Debtor does not plan to pursue any preference, fraudulent conveyance, or other avoidance actions.

## **G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are stated in Article IV of the Plan.

## **H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in **Exhibit A**. Periodic operating reports have been filed with the Court during the pendency of Debtor's bankruptcy case, and are available upon request to Debtor's counsel.

# **III. TREATMENT OF CLAIMS AND EQUITY INTERESTS**

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

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

## **B. Explanation of Classes of Claims and Equity Interests**

### **1. Classes of Secured Claims**

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to set off) to the extent allowed as secured claims under Code § 506. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

### **2. Classes of Priority Unsecured Claims**

Certain priority claims that are referred to in Code §§ 507(a)(1), (4), (5), (6), and (7) are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

### **3. Classes of General Unsecured Claims**

General unsecured claims are not secured by property of the estate and are not entitled to priority under Code § 507(a).

### **4. Class of Equity Interest Holders**

Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

### C. Overview - Treatment of Claims and Interests under Plan

Claims and interests are treated as follows under this Plan:

SUMMARY OF CLASSES AND TREATMENT OF CLAIMS		Restructured Terms		
	Balance <u>Owed</u>	Term (in yrs)	Int. Rate <u>Per Annum</u>	Monthly <u>Payment</u>
<b>Unclassified - Priority Taxes</b>	44,899.87	4.50	5.00%	930.25
<b>Class 1 - Commerce Bank (All Assets Lien)</b>	348,823.79	12	6.00%	3,404.00
Commerce Bank * [secured claim]				
<b>Class 2 - Commerce Deficiency Claim</b>	241,780.75	12	6.00%	2,359.42
<b>Class 3 - General Unsecured Creditors</b>				
Batesville Casket Co.	3,748.30	5	5.00%	70.74
Saline Vault Co.	9,409.94	5	5.00%	177.58
Wilbert Funeral Services, Inc.	15,367.00	5	5.00%	289.99
CenturyLink	3,366.23	5	5.00%	63.52
United Fire & Casualty (Ins. premiums)	3,012.00	5	5.00%	56.84
American Express (Credit card)	19,061.27	5	5.00%	359.71
Synchrony Bank (Credit card)	4,121.00	5	5.00%	77.77
IRS (Nonpriority tax claims)	9,319.63	5	5.00%	175.87
Subtotal	67,405.37			1,272.02
Total Debt 702,909.78		Total Monthly Pymts 7,965.69		
		Annual Debt Service 95,588.25		

Class	Impairment	Treatment
Class 1 – Secured Claim of Commerce Bank	Impaired	This debt to Commerce Bank is secured by a lien on Debtor's assets, and is guaranteed by the Small Business Administration. The secured portion of the debt is estimated at \$348,823.79, as of the date of filing. The bank shall retain its lien and be paid in full according to the original loan documents, except over a period of 12 years following the effective date of the plan. This secured claim shall earn interest at prime, plus 0.50% (currently 6.0 % per annum). Interest shall be adjusted according to original contract terms, principal and interest to be paid in equal monthly installments starting at an estimated \$3,404.00, commencing 45 days after the effective date of this plan.
Class 2 – SBA Guaranteed Deficiency claim of Commerce Bank	Impaired	(This debt is included within the above SBA guarantee.) This class includes the unsecured portion of Commerce Bank's claim, estimated at \$241,780.75. This claim shall be paid according to original contract terms, except over a period of 12 years following the effective date of the plan. The debt shall bear interest at prime, plus 0.50% (currently 6.0% per annum). Interest shall be adjusted according to original contract terms, principal and interest to be paid in equal monthly installments, estimated at \$2,359.42, commencing 45 days after the effective date of this plan.
Class 3 - General Unsecured Creditors	Impaired	This class includes Batesville Casket Co. (\$3,748.30); Saline Vault Co. (\$9,409.94); Wilbert Funeral Services, Inc. (\$15,367.00), CenturyLink (\$3,366.23), United Fire and Casualty (\$3,012.00, American Express (\$19,061.27), IRS (\$9,319.63) and Synchrony Bank (\$4,121.00). Members of this class shall be paid in full over a period of 5 years, with interest at 5% per annum, in equal monthly installments, commencing 45 days after the effective date of this plan.
Class 4 – Equity Security Holders of the Debtor	Unimpaired	Class 3 includes the debtor's sole owner, Mark R. Elliott, Jr., who shall retain his 100% ownership interest in the debtor.

#### **D. Treatment of Unclassified Claims**

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

##### **1. Administrative Expenses**

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under Code § 507(a)(2). Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days



before the date of the bankruptcy petition. The Code requires that each administrative expense claim be paid on the effective date of the Plan, unless the holder of the claim agrees to a different treatment. As reflected below, each holder of an administrative expense claim allowed under Code § 503 will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

The following chart lists the Debtor's estimated administrative expenses and their treatment under this Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$ 0.00	Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date	\$ 0.00	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court	\$ 12,000.00	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees	\$ 0.00	Paid in full on the effective date of the Plan
Other administrative expenses	\$ 0.00	Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	\$ 0.00	Paid in full on the effective date of the Plan
<b>TOTAL</b>	<b>\$12,000.00</b>	

## 2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by Code § 507(a)(8). Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their

proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
Federal income tax	\$ 44,899.87		Pmt interval = monthly Payment amount = \$930.25 Begin date: 45 days post confirmation End date: 54 mos. post confirmation Interest Rate % = 5% per annum Total Payout Amount = \$50,233.50

#### **E. Treatment of Classified Claims and Interests.**

Priority claims include allowed claims entitled to priority under Code § 507 (except administrative expense claims under § 507(a)(2), and priority tax claims under Code § 507(a)(8)).

##### **Class 1: Secured Claim of Commerce Bank.**

The claim of Commerce Bank, to the extent allowed as a secured claim under Code § 506 will be paid as follows. This class shall be paid in full over a period of 12 years, with interest at prime, plus 6.0 %, to be adjusted according to original contract terms, principal and interest to be paid in equal monthly installments starting at approximately \$3, 404.00, commencing 45 days after the effective date of this plan.

##### **Class 2: Unsecured Portion of Commerce Bank Claim.**

This class includes the unsecured portion of Commerce Bank's claim, estimated at \$241,780.75. This claim shall be paid according to original contract terms, except over a period of 12 years from confirmation. The debt shall bear interest at prime, plus 0.50% (currently 6.0% per annum). Interest shall be adjusted according to original contract terms, principal and interest to be paid in equal monthly installments, estimated at \$2,359.42, commencing 45 days after the effective date of this plan.

##### **Class 3: All Unsecured Claims Allowed Under Code § 502.**

This class includes Batesville Casket Co. (\$3,748.30); Saline Vault Co. (\$9,409.94); Wilbert Funeral Services, Inc. (\$15,367.00), CenturyLink (\$3,366.23), United Fire and Casualty (\$3,012.00), American Express (\$19,061.27), IRS (\$9,319.63) and Synchrony Bank (\$4,121.00). Members of this class shall be paid in full over a period of 5 years, with interest at 5% per annum, in equal monthly installments, commencing 45 days after the effective date of this plan.

##### **Class 3: Equity Interests in the Debtor.**

Class 3 includes the debtor's sole owner, Mark R. Elliott, Jr., who shall retain his 100% ownership interest in the debtor.

#### **F. Treatment of U.S. Trustee Fees**

All fees required to be paid by 28 U.S.C. § 1930(a)(6) (U.S. Trustee Fees) will accrue

and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

#### **IV. ALLOWANCE AND DISALLOWANCE OF CLAIMS**

##### **A. Disputed Claims**

A disputed claim is a claim that has not been allowed or disallowed, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated. As of the date of this plan, the Debtor has not scheduled any such claim as disputed, contingent or unliquidated, except the claim filed by Jo Ann Cantriel is now listed as disputed.

No distribution will be made on account of a disputed claim unless such claim is allowed.

##### **B. Settlement of Disputed Claims**

The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

#### **V. PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **A. Assumed Executory Contracts and Unexpired Leases**

The Debtor assumes the following executory contracts and/or unexpired leases effective upon the date of the entry of the order confirming this Plan: Month-to-month Lease of funeral vehicle shop, 500 East South Street, California, Missouri for \$809.36 per month, payable to Mark R. Elliott, Jr., Lessor.

Assumption means that the Debtor has elected to continue to perform the obligations under such executory contracts and unexpired leases. There are no defaults of the type that must be cured under the Code.

##### **B. Rejected Executory Contracts and Unexpired Leases**

Debtor's principal, Mark Elliott, Jr., is not aware of any other executory contracts or unexpired leases. The Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases that (a) are not expressly assumed under section V.A. of this Plan or (b) were not assumed under a separate motion before the effective date of this Plan. A proof of a claim arising from the rejection of an executory contract or unexpired lease under section V.A. of this Plan must be filed no later than thirty days after the effective date of this Plan. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

All executory contracts and unexpired leases that are not listed as being assumed will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases. If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of

the Plan.

## **VI. GENERAL PROVISIONS**

### **A. Definitions and Rules of Construction**

The definitions and rules of construction stated in Code §§ 101 and 102 apply when terms defined or construed in the Code are used in this Plan.

### **B. Effective Date of Plan**

The effective date of this Plan is the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, unless the confirmation order has been vacated.

### **C. Severability**

If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

### **D. Binding Effect**

The rights and obligations of any entity named or referred to in this Plan will be binding upon and will inure to the benefit of the successors or assigns of such entity.

### **E. Captions**

The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

### **F. Corporate Governance**

The Debtor is wholly-owned and governed by a single director/shareholder, and there is only one class of stock. However, since the debtor is a corporation, Code § 1123(a)(6) requires that the following provision be included in this plan: Debtor's charter shall include a provision prohibiting the issuance of nonvoting equity securities, and provide, as to classes possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends.

## **VII. OTHER PROVISIONS**

[None applicable at the time this plan is filed.]

## **VIII. MEANS OF IMPLEMENTING THE PLAN**

### **A. Source of Payments**

Payments and distributions under the Plan will be funded by income generated from operation of Debtor's funeral home business, and any discretionary capital contributions that may

from time-to-time be made by Debtor's owner or owners.

## **B. Post-Confirmation Management**

Mark R. Elliott, Jr. President and CEO of the Debtor corporation, shall be the Post-Confirmation Manager of the Debtor, and shall be compensated at the rate of \$2,722.98 semi-monthly, with reasonable and normal cost-of-living increases to take effect when affordable to the Debtor, and within the discretion of Mr. Elliott.

## **C. Risk Factors**

The proposed Plan has the normal risks associated with the operation of a funeral home business, such as market fluctuations, competition and the possibility of losses that might result from the owner/manager suffering a disabling injury or illness. No such risk or illness exists or is foreseeable to management at this time.

## **D. Tax Consequences of Plan**

Creditors and equity interest holders concerned with how the Plan may affect their tax liability should consult with their accountants, attorneys, or advisors. The following are the anticipated tax consequences of the Plan:

### **1. Tax consequences to the Debtor.**

The Debtor is a "Subchapter S" corporation. Therefore, income and expenses are passed through to the owner/shareholder, and there are no tax consequences of this Plan to the Debtor corporation.

### **2. Tax consequences to creditors.**

Since creditors are being paid in full through this Plan, there should be no tax consequences of receipt of payments after confirmation, except to the extent that income will be received over, and attributable to, different taxable years or periods.

# **IX. CONFIRMATION REQUIREMENTS AND PROCEDURES**

## **A. Overview of Requirements**

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

## **B. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met. Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

### **C. What Is an Allowed Claim or an Allowed Equity Interest?**

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

At this time, Debtor's manager is not aware of any dispute regarding the amount owed to creditors, and has not requested that the Court enter an order requiring creditors to file claims.

### **D. What Is an Impaired Claim or Impaired Equity Interest?**

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

### **E. Who is Not Entitled to Vote**

The following types of creditors and equity interest holders are not entitled to vote:

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

Even if you are not entitled to vote on the plan, you have a right to object to the confirmation of the plan.

### **F. Who Can Vote in More Than One Class**

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

### **G. Votes Necessary to Confirm the Plan**

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

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

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

vote, cast their votes to accept the Plan.

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

## **2. Treatment of Nonaccepting Classes**

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by Code § 1129(b). A Plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of Code § 1129(a)(8), does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan. You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

## **H. Liquidation Analysis**

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

## **I. Feasibility Analysis**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan. A Feasibility Analysis is attached to this Disclosure Statement as **Exhibit C**.

## **J. Cash Flow Analysis**

Although it is not possible to predict precise items of income and expense, based on past experience, the Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. This can be verified by reference to projections set forth on Exhibit C, which are based on three-year averages of amounts shown on income tax returns.

## **K. Ability to Make Future Plan Payments And Operate Without Further Reorganization**

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. The Plan Proponent has provided projected financial information. Those projections are contained in the Feasibility Analysis (Exhibit C), and are based on averages derived from Debtor's last three income tax returns.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses of \$126,566.00. The final Plan payment is expected to be paid at the end of 12 years following the effective date of the Plan, approximately April 30, 2030.

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.



## **X. EFFECT OF CONFIRMATION OF PLAN**

### **A. Discharge**

On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in Code § 1141(d)(1)(A), except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in Code § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in Code § 1141(d)(b)(8).

### **B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

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

### **C. Final Decree**

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

/s/ Mark R. Elliott, Jr.  
Mark E. Elliott, Jr, Plan Proponent

Boul & Associates, P.C.

/s/ Harry D. Boul  
Harry D. Boul, MoBar # 23181  
Shelley L. Forrest, MoBar # 46455  
One East Broadway, Ste. B  
Columbia, MO 65203  
(573) 443-7000  
(573) 449-6554 (fax)  
hboul@earthlink.net

ATTORNEYS FOR THE PROPONENT  
BOWLIN FUNERAL HOME, INC.



## EXHIBITS

### Exhibit A – Assets

<u>Assets</u>	<u>FMV</u>	<u>Source</u>	<u>Basis of Valuation</u>
Commercial Building 100 S. Oak St.	180,000	Purchased	Appraisal Blue
'04 Cadillac hearse	15,000	Purchased	Book Blue
'03 Cadillac sedan	5,500	Purchased	Book Blue
'04 Windstar minivan	1,500	Purchased	Book
Furniture and equipment	47,450	Purchased	Estimate
Receivables (collectible)	70,000	Sales	Actual
Central Bank of California Mo.	18,414	Deposits	Actual
Peoples Bank of Moniteau Co. ckng	200	Deposits	Actual
Inventory, furniture and equipment	47,450	Purchased	Estimate
Total	<u>385,514</u>		

## Exhibit B – Liquidation Analysis

<u>Assets</u>	<u>FMV</u>	Less 10%	<u>Liquidation Value</u>
		<u>Cost of Sale</u>	
Commercial Building 100 S. Oak St.	180,000	18,000	162,000
'04 Cadillac hearse	15,000	1,500	13,500
'03 Cadillac sedan	5,500	550	4,950
'04 Windstar minivan	1,500	150	1,350
Furniture and equipment	47,450	4,745	42,705
Receivables (collectible)	70,000	7,000	63,000
Central Bank of California Mo.	18,414	0	18,414
Peoples Bank of Moniteau Co. ckng	200	0	200
Inventory, furniture and equipment	47,450	4,745	42,705
	385,514	36,690	348,824
Less, Blanket Lien of Commerce Bank			522,683
Value to Unsecured creditors			0

### Exhibit C - Feasibility Analysis

**Projected Gross Receipts:** 686,893

**Projected Cash Expenses:**

Payroll	135,970
Monuments	36,000
Body preparation	30,000
Grave openings	30,000
Utilities	24,000
Embalming supplies	24,000
Caskets	24,000
Vaults	24,000
United Fire Group insurance	15,600
Gasoline	15,000
Obituaries	12,000
Telephone and internet	8,700
Cell phones	7,200
Supplies, linens and grave markers	6,600
Vehicle maintenance	6,000
Building maintenance	6,000
Honorariums (ministers, rabbi's, singers)	6,000
Register books	6,000
Death certificates	6,000
Accounting services	4,200
ASD	3,600
Cemetery charges	3,600
Licenses and miscellaneous	2,988
Janitorial supplies	2,400
Advertising	2,400
Flowers	2,400
Janitorial service	2,160
Projected income taxes	16,000
Waste disposal	1,920

Total Projected Expenses 464,738

Projected After Tax Net Income 222,155

Projected Debt Service 95,588

Projected Cash Flow 126,566