

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
CHARLES DONALD LEONARD & ) Case No. BK 15-82016  
MARGARET ROSE LEONARD, )  
Debtors & Debtors in Possession, ) Chapter 11

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**DISCLOSURE STATEMENT**

**IN SUPPORT OF**

**FIRST AMENDED PLAN OF REORGANIZATION**

**FOR**

**CHARLES DONALD LEONARD & MARGARET ROSE LEONARD**

**d/b/a**

**LEONARD CATTLE COMPANY,**

**DEBTORS IN POSSESSION**

**(Individuals)  
(Chapter 11)**

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Dated: October 26<sup>th</sup>, 2016

**DISCLOSURE STATEMENT PROVISIONS**

**DISCLAIMER**

The information contained in this Disclosure Statement is included herein for purposes of obtaining Bankruptcy Court approval to commence soliciting acceptances of the First Amended Plan (hereinafter “Plan”). The purpose of the Disclosure Statement is to provide information - believed to be accurate and truthful to the best of the Debtor’s knowledge, information and belief as of the date hereof – to determine how to vote on the Plan. No person may give any other information or make any other representations regarding the Plan or the solicitation of acceptances of the Plan.

This Disclosure Statement has been prepared in accordance with Section 1125 of the United States Bankruptcy Code, with Rule 3016 of the Federal Rules of Bankruptcy Procedure, and consistent with the disclosure requirements outlined in *In Re Metrocraft Publishing Services, Inc.*, 39 B.R. 567 (Bkrcty. N.D. Ga. 1984) and its progeny. It has NOT been prepared in accordance with securities laws or other non-bankruptcy law.

As to any and all contested matters, adversary proceedings, or other actions, whether now pending, or filed in the future, nothing contained in this Disclosure Statement shall constitute or be construed as an admission of any fact or liability, stipulation or waiver, but rather are to be considered as statements made in settlement negotiations. This Disclosure Statement shall not be admissible in any non-bankruptcy proceeding. Nothing contained in this Disclosure Statement is intended to be, nor should be construed as, conclusive advice on tax issues or consequences or any other legal effects of the Plan.

The Debtor will solicit acceptance or approval of the Plan only after the Court has approved the adequacy of the Disclosure Statement. This Plan is submitted in good faith and the Debtor reserves the right to modify its Plan in the future as provided by 11 U.S.C. Sections 1127.

### **PRE-FILING HISTORY**

Principal Debtor in Possession, Mr. Charles D. Leonard (“Leonard”) has been in the cattle business, buying, selling and feeding for more than twenty years. Many of the creditors and parties in interest in this case were individuals, businesses and banks with whom Leonard had engaged in numerous transactions over the years. It was quite a successful business until the bottom dropped out of the cattle market during the 2015-2016 tailspin of the agricultural (“ag”) economy. Cattle would be bought at an agreed price based on the existing market, but then before a buyer could be found, the existing market price would drop meaning any sale would be at a loss. Likewise, this wild market fluctuation also had a deleterious impact on the cattle feeding aspect of Leonard’s business operation.

For many years, the price fluctuations would just be part of the ordinary business. Periodic losses could be absorbed by frequent market upswings, distributing risk at an acceptable and sustainable level. Banks engaged in ag lending were well aware that price fluctuations existed but were typically of short duration and not dramatic. Significant profit could be made on the upswing fluctuations.

In 2014, the price of cattle increased steadily, resulting in a strong and profitable year for Mr. Leonard. In the spring and early summer of 2015, the prices continued to climb and Mr. Leonard purchased cattle on contract at market prices to take delivery in the fall. He had a line of credit with Pinnacle Bank which was used on occasion, but given the level of business

activity, Mr. Leonard thought the line of credit was inadequate, so in the spring he began requesting an increase in the credit line. Pinnacle Bank continued to tell Mr. Leonard that they were “working on it.” Mr. Leonard also set up a loan to add an expansion to his office in Springfield which Pinnacle Bank approved in July of 2015. Mr. Leonard was also placing some cattle into feedlots to try to take advantage of additional profits from finishing cattle for his own account. The feedlots would make loans on the cattle in an amount based on current market prices less an amount held back as his “equity” in the cattle. The lots financed feeding costs, intending to settle up when the cattle were fattened and sold.

The market forecasts were for a steady cattle market so this seemed to be a prudent business practice. However, beginning in August of 2015, the market began a steep decline in prices. Mr. Leonard was thus taking delivery of cattle on summer contracts and paying high prices. Mr. Leonard was unable to find buyers in the declining market so he was forced to place many of the cattle purchases on earlier contracts on feed with various feedlots, getting loans back that on partially covered the costs of cattle. Beginning in late August, 2015, Mr. Leonard would occasionally overdraft his account with Pinnacle Bank, but by selling cattle and putting cattle into feedlots he managed to keep operating until Pinnacle Bank, without warning, stopped honoring checks and on October 8<sup>th</sup>, 2015 decided to close his account and set-off all obligations. These matters are the subject of pending litigation in Leonard v. Pinnacle Bank, A16-08013.

When Pinnacle Bank decided to first dishonor overdraft checks and the close Mr. Leonard’s account, unhappy sellers filed lawsuits and bond companies honored debts causing Mr. Leonard, d/b/a/ Leonard Cattle Company to begin doing contract work for Cinch Cattle Company as a cattle buyer and trader which is his current source of income. Neither Mr. nor Mrs. Leonard have any ownership or equity interest in Cinch Cattle Company.

The cattle on feed were finished and sold at a loss as the cattle markets did not recover to a level that would allow Mr. Leonard to recoup losses. In most cases, the feedlots liquidated the cattle to packers and applied the proceeds to satisfy the loans secured by agisters' liens and other security interests. These transactions were approved by the Court in various contexts including Stipulations, Lift Stay Motions, and Motions to Incur Indebtedness. All of the feeder cattle have been liquidated and Mr. Leonard no longer owns cattle on feed.

The filing of the Chapter 11 was crucial to Leonard's business survival. Leonard needed to immediately stay the rapid and further deterioration of the business, halt the lawsuits, preserve and protect the assets while working out an equitable and orderly reorganization.

### **OVERVIEW OF THE REORGANIZATION CONCEPTS**

This reorganization has been structured to enhance long term viability of Mr. Leonard's ability to earn a living in the cattle business, returning to profitability, restructuring debt, while enabling Debtors to feasibly, efficiently and equitably pay the claims of their creditors.

This is being accomplished by Mr. Leonard retaining his business assets, entering into a contractual relationship with Cinch Cattle Company whereby he is able to continue his business of buying and selling cattle under the auspices of Cinch's cattle dealer license. Thus, Leonard is able to carry on his traditional business without his own dealer license.

Leonard will no longer engage in the cattle feeding niche of this business. He will continue the buying and selling of cattle.

Utilizing his experience, knowledge and contacts for the benefit of his new "contract employer", Cinch Cattle Company, Leonard is paid sufficient compensation to accomplish the

requirements of dedicating net post petition earnings from post petition personal services to his reorganization plan.

Additionally, by filing Chapter 11 and becoming a Debtor in Possession, Leonard was empowered as a Trustee to pursue asset recovery strategies and legal remedies that he would not otherwise have had. With Court permission, Leonard has obtained Special Counsel to pursue these asset recovery strategies and legal remedies by filing lawsuits against Pinnacle Bank and other third parties through the Bankruptcy Court and in state courts. Leonard expects that these lawsuits (“the Litigation”) will yield significant recoveries for the benefit of creditors.

As part of his Chapter 11 reorganization, Leonard is establishing a Litigation Trust to which these significant recoveries for the benefit of creditors will be assigned. A Court appointed Trustee will be in charge of administering and disbursing these funds to creditors in accordance with the priorities and requirements of Leonard’s Plan of Reorganization and federal Bankruptcy Law. Any recovery, whether by litigation victory or settlement, will enhance the bankruptcy estate and the creditors chance to realize on their claims.

Because of Leonard’s devotion of post petition income from post petition personal services and Leonard’s assignment of net litigation proceeds to the Litigation Trust, all creditors will be significantly better off as a result of this Chapter 11 reorganization than if Leonard proceeded under Chapter 7 bankruptcy and liquidated their limited, unencumbered, non-exempt assets, paying post liquidation net proceeds to creditors. Moreover, in a liquidation proceeding, Leonard would not be required to commit post petition income to creditor claims.

Mr. and Mrs. Leonard will retain their household and business assets. To the extent that those retained assets are encumbered by liens or interests, the Plan calls for continuing debt service payments thereon. The retention of these assets will help generate income to pay their

living expenses, their necessary business overheads and to fund the reorganization plan for the benefit of unsecured claims of creditors.

As for the unsecured creditors, the Plan provides for the Debtors to make quarterly disbursements over a five year period of time (twenty quarters) commencing with the first business day of the quarter following the Effective Date of the Plan. Also, as aforesaid, a Litigation Trust is created and the assigned avails of litigation shall be distributed by a court appointed Trustee, with disbursements enhance the quarterly payments by Leonard.

## **BUSINESS OVERVIEW**

### **A. History.**

The Debtors in Possession in this Chapter 11 case are individuals engaged in business rather than being organized as a business entity, but have nevertheless filed as a Chapter 11 debtor, an option ratified in *Toibb v. Radloff*, 111 S. Ct. 2197 (1991). Federal Bankruptcy Law and applicable non-bankruptcy laws of the United States of American and the State of Nebraska shall be the applicable laws governing the implementation, interpretation and enforcement of this Plan.

Having filed chapter 11 as individuals subsequent to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Debtors are subject to those provisions, which entail, *inter alia*, the Debtors operating their Plan consistent with those BAPCPA requirements including Debtors’ post petition income from personal services being included as property of the estate, similar to a chapter 13 plan in terms of applying post petition income to pre-petition indebtedness, and also operating similar to a chapter 7 with respect to the bankruptcy estate existing as a separate taxable entity. The debts in this case are substantially

business debts; rather than consumer debts, voiding the applicability of the means test. Debtors in Possession are Charles and Margaret Leonard. They are husband and wife and frequently are jointly and severally referred to interchangeable hereinafter as “Debtor” and/or “Leonard”.

**B. Filing The Case.**

Facing expensive, equity draining litigation coupled with termination of his credit lines, and the unprecedented dishonor of his cattle purchase payments, and thus the concomitant cash flow shortages, Without filing bankruptcy, Debtor also lacked the ability to employ certain remedies to legally retrieve money he had paid to certain third parties. Debtor determined in their sound business judgment that a filing of a Petition under Chapter 11 was the only realistic option of reorganizing and paying creditors while protecting its property and business interests.

Thus, this case was filed on or about December 14<sup>th</sup>, 2015. The Debtors filed their proposed Plan of reorganization within their extended exclusivity period on June 10<sup>th</sup>, 2016 (ECF Doc. 209) and subsequently filed their First Amended Plan, which is now the Plan. This Disclosure Statement is submitted in support of Debtors’ proposed Plan. Debtor is the proponent of the Plan within the meaning of Title 11 of the United States Code.

**C. Operation.**

Co-Debtor, Mrs. Leonard was not active pre-petition in the business affairs and operations of Leonard Cattle Company and is not now, except that she was jointly on the business account and had pledged her certificates of deposit to support the business relationship with Pinnacle Bank. Co-Debtor, Mr. Leonard actively engaged full time in its operation and continues to do so. Currently, Mr. Leonard, d/b/a Leonard Cattle Company contracts with Cinch Cattle Company and thus is able to operate as a cattle dealer under Cinch’s bond. Debtors both

expect to continue operation of their cattle business under the auspices of Cinch Cattle Company. Neither Debtor has an ownership interest in Cinch Cattle Company. It is believed that this proposed operational structure will better protect each of the lenders and creditors regarding their respective collaterals and will minimize the degree of oversight and administration that each lender will have to perform in order to protect itself. Debtors have the ability and the experience to continue profitably with an extensive cattle operation which, although still experiencing a degree of volatility nationwide, is nevertheless improving along with the economy. Leonard Cattle Company does not intend to engage in the taking of ownership interests in purchased cattle, or to engage in any feeding or maintenance aspects of the business. Debtors determined that the risk of those particular facets of the cattle business were not prudent to their efforts to accomplishing an effective reorganization.

#### **SUMMARY OF THE CHAPTER 11 CASE**

The case was commenced on December 14<sup>th</sup>, 2015 with the filing of the voluntary petition. Since that time Debtor has filed all of their monthly operating reports with the Office of the United States Trustee and has paid all quarterly fees. Debtor attended and completed the U.S. Trustee's IDI and the required 341 creditor meeting on or about January 13<sup>th</sup>, 2016. Schedules, Statement of Financial Affairs and Amended Schedules have been prepared and filed.

A number of adversary proceedings have been filed regarding the relative priority of interested parties in the proceeds of cattle sales. One adversary complaint has been lodged against the Debtors alleging non-dischargeability. Debtors dispute the allegations contained in this complaint, are defending against them and the matter is proceeding. Debtor filed a couple of adversary complaints as well disputing title to cattle and status of claim and alleging various preferences and setoffs etc. A more detailed discussion of the various adversary proceedings is

set forth later herein. A Litigation Trust is being established to receive proceeds from successful outcomes in these various litigations and a Trustee appointed to distribute recoveries to creditors.

Debtor has continued ordinary course of business operation of the cattle business interests during the pendency of this case and has expectations of operating profitably. The Debtor will receive income for post petition services and the disposable income therefrom will be dedicated to this Plan, in addition to distributions from the Litigation Trust.

All post petition DSOs are current (**as there are none**) and all post petition tax returns have been filed. There is no known issue of cash collateral in this case.

The Court has approved the retention of Blackman and Associates, C.P.A., P.C. as the accounting professionals in this case. This Disclosure Statement is submitted for the purpose of explaining the Plan and upon Court approval of same will be utilized to solicit votes in favor of accepting the Plan.

### **INCOME TAX CONSEQUENCES OF THE PLAN**

The description of tax consequences below is for informational purposes only. Only the principal consequences of the Plan for the Debtor and for Holders of Claims who are entitled to vote to accept or reject the Plan are described in generalities below. No opinion of counsel or CPA has been sought or obtained with respect to any tax consequences of the Plan to parties in interest other than the Debtor. No rulings or determinations of the Internal Revenue Service (“the IRS”) or any other tax authorities have been sought or obtained with respect to the tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. The Debtor is not making any representations regarding any particular tax consequences of the confirmation of the Plan and/or its subsequent consummation, as to any Claim holder, and is not rendering any form of legal opinion as to such tax consequences. Each

holder of a Claim is strongly urged and encouraged to consult its tax advisor regarding any and all tax consequences of the transactions described in this Disclosure Statement, in the Plan, and/or in the Confirmation Order.

Certain tax consequences to the Debtor of various transactions proposed in the Plan are generally described at various places in the Plan and/or Disclosure Statement, financial feasibility projections, analysis of tax entity claims, budget matters and issues of tax compliance were generally accomplished with input and assistance from the Court approved CPA. The financial projections are referred to in more detail below and are attached as Exhibit "C".

**A. Federal Income Tax Consequences to the Debtor.**

The primary impact of tax issues on the Debtor will be due to the BAPCPA amendments to the Bankruptcy Code wherein new Bankruptcy Code Section 1115 intersects with Internal Revenue Code Section 1398. Accordingly, chapter 11 debtors that are individuals rather than corporate entities – such as in this case – now have bankruptcy estates that are separate taxable entities.

(i) ***IRS Notice 2006-83.*** Because the Debtors in this chapter 11 case filed their voluntary petition subsequent to October 17<sup>th</sup>, 2005 as an individual(s), and hereby provides notice that they have complied with Sec. 1115 of the Bankruptcy Code and Sec. 1398 of the Internal Revenue Code generally in accordance with the guidance provided by IRS Notice 2006-83 and the office of the U.S. Trustee.

(ii) ***Miscellaneous.*** There is no tax avoidance agenda in the proposed Plan, nor was there any such motive in seeking relief under Title 11. The Debtor will pay post petition tax liabilities on a regularly scheduled basis, pursuant to the same tax accounting method as was his usual and ordinary custom and practice prior to filing this case

under Title 11. All pre- petition tax debts owed by this Debtors, and any other tax debts with which an agreement is reached with the IRS will be paid in full through the Plan as required by 11 U.S.C. Sec. 1129(a)9)C).

Cancellation of Debt (“COD”) income will not be an issue in this case because this Chapter 11 proceeding would be subject to the insolvency exception of COD income. Moreover, no new entities are being created in the Plan and the bankruptcy estate is not acquiring any new assets by merger, acquisition or otherwise.

**B. Federal Income Tax Consequences to Claim Holders.**

The income tax consequences of the transactions contemplated by the Plan to a Claim Holder will depend upon a variety of factors, including but not necessarily limited to the characterization and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan; the manner in which a holder acquired a claim; the length of time the Claim has been held; whether the Claim Holder has taken a bad debt deduction with respect to any portion of the Claim; the method of tax accounting of the Claim Holder; whether the Claim is an installment obligation for federal tax purposes; and other factors. For these and other reasons, **Claim Holders should consult their tax advisors for information that may be relevant to their particular situation and circumstances and seek independent professional tax advice as to the particular tax consequences to them of the transactions contemplated by the Plan.**

**SUMMARY OF THE PROPOSED PLAN**

Debtors filed their Plan (ECF Doc. 209) as provided in 11 U.S.C. Section 1121 and related provisions of the United States Bankruptcy Code pursuant to their Petition filed on December 14<sup>th</sup>, 2015 (ECF Doc. 1) and the Court Order extending Debtors’ exclusivity period

entered on April 19<sup>th</sup>, 2016 (ECF Doc. 191). On October 28th, 2016 an Amended Plan (now the Plan) was filed at (ECF Doc. 261). A copy of the Plan is attached hereto as Exhibit “A” for informational purposes.

Debtors are the Plan proponents and individuals as opposed to an entity and accordingly, pursuant to 11 U.S.C. Sec. 1123(a)(8), their Plan provides for the payment to creditors under all or such portion of earnings from personal services performed by the Debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of this Plan. Earnings from Debtors’ post petition services are committed to the Plan as defined by 11 U.S.C. Sec. 1325(b)(2). Accordingly, the Plan provides for payments in an amount sufficient to comply with the requirements of 11 U.S.C. Sec. 1129(a)(7).

Additionally, the Plan established a Litigation Trust, a copy of which is attached hereto as Exhibit “B”.

The Plan provides that the various claims against the Debtors’ and/or their bankruptcy estate are separated and provided for in seven classes. Classes Two and Three are unimpaired and will accordingly continue to be paid as provided between the parties. Class Two consists of the legal services claim(s) of Special Counsel, Victor Covalt and his law firm. Class Three consists of claims secured by liens against Debtors’ property assets, whether or not such assets are related to the business of Leonard Cattle Company and not provided for elsewhere in the Plan. Claims in this class are held by lienholders Brian Witte, First National Bank of Omaha and Pinnacle Bank. The Pinnacle Bank claim in this class is the one secured by a lien against the Debtors’ business office building in Springfield, Nebraska.

Classes One, Four, Five, Six and Seven are impaired. Accordingly, claims in these classes will be entitled to vote on the Plan in accordance with terms and timetables which will be set by an Order of the Court.

Class One consists of claims secured by liens on Debtors' personal property such as furniture and household goods. The lienholder is Nebraska Furniture Mart. The Plan provides that this/these claim(s) will be paid in full, without post petition interest, in a lump sum cash payment on the first business day of the month following the Effective Date of the Plan.

Class Four consists of claims which are - or were - secured by liens on cattle or cattle proceeds. Upon sale of the cattle, whether by stipulation, agreement, court order or otherwise, the proceeds shall be paid consistent with the respective security interests of the allowed claims of the lienholders in this class, and the payment of which extinguishes all liens thereon. Any claims in this Class with remaining balances due and owing following sale of the cattle are unsecured claims and will be part of Class 7.

Class Four contains claims held by (i) Farm Credit Services of America ("Farm Credit" and Sweetwater ("Sweetwater")); (ii) Herb Albers Feedlot, Inc. ("Albers"); (iii) T & E Cattle Co. ("T & E"); (iv) Midwest Feeding Co., ("MFC"); (v) Dickinson Farms, Inc. ("Dickinson"); (vi) Dinsdale Brothers, Inc. and Rezac Livestock Commission Co. ("Rezac"); (vii) Weborg Feeding Co, LLC ("Weborg"); (viii) Feller & Company ("Feller"); (ix) South Pointe Cattle Co. ("SouthPointe"); (x) Holland Feed Lot ("Holland"); and (xi) James Korth/Ogallala Livestock Auction Market Co. ("Ogallala"); (xii) Leigh & Carol Murphy, d/b/a Murphy Cattle Co; and. (xiii) the South Pointe Cattle Company which funds are also being claimed by Pinnacle Bank and by Sweetwater Cattle Co. ("South Pointe Dispute Claimants"). Debtor expects that there will be insufficient proceeds from cattle sales to fully satisfy the balances of allowed claims in

this class. The South Pointe Dispute Claimants will resolve among themselves their respective priorities in the proceed funds.

Class Five consists of claims held by creditors which claims are – or were- secured by motor vehicles which are not in Debtors’ possession and which have been repossessed, or are subject to repossession by virtue of claimholder having obtained relief from the automatic stay. It is believed that the claim holder in this class is Hyundai Capital America, d/b/a Kia Motors Finance (“HCA”) and is/are impaired.

Class Six is populated solely by the Claim of BVI, which holds a second lien in the amount of \$41,934.59 on the Leonard Cattle Company business building in Springfield, Nebraska. The Plan proposes to fully pay this Claim in sixty monthly installments of \$750.00. Litigation has arisen between Debtors in Possession and the City of Springfield and may ultimately involve BVI. It that litigation changes the claim in this class, Debtors in Possession will amend the plan as provided in 11 U.S.C. Section 1127.

Class Seven consists of allowed unsecured claims. Valid claims in this class would be those wholly unsecured claims which are allowed as well as the unsecured portion of the allowed undersecured claim of those creditors in Class Four. The Plan provides that claimholders in this class will be paid from two sources: (i) directly from the Debtors’ net post petition projected disposable income from post petition personal services and (ii) distributions from a Litigation Trust.

**Earnings From Personal Services Performed by Debtor After Case Commencement.** The direct payment of projected disposable income will be paid by the Debtors in Possession on pro rata – based on the dollar amount of the respective claim as a percentage of the aggregate claims in this class – on a quarterly basis from quarterly distributions, each distribution in the aggregate amount of \$15,000.00. These distributions are to continue on a quarterly basis for a period of twenty quarters

(five years), resulting in a total payment to claimholders in this class of \$300,000.00 from the Debtors' post petition earnings from their post petition services all as provided in Bankruptcy Code Sections 1115(a), 1123(a)(8), 1129(15)(A) and 1325(b)(2).

Debtor expects to continue his business operations with the exception of the unprofitable cattle feeder segment. Thus, Debtor is now – and intends to continue into the future – to provide the post petition services of buying and selling cattle. While he no longer holds a cattle dealers license due to claims made by creditors on his bond, he continues to have the years of knowledge and experience in the business as well as necessary contacts and a history of business relationships.

Mr. Leonard brings these valuable assets to his contractual “employment” with a licensed cattle dealer known as Cinch Cattle Company (“Cinch”). Thus, in this independent contract status with Cinch, Debtor remains in the cattle business and continues to do such business as (d/b/a) Leonard Cattle Company. Debtor is not an equity owner in Cinch, but works there by contract to the mutual benefit of Cinch Cattle Company and Leonard Cattle Company. The income from these services will be utilized to pay Debtors' family living expenses, necessary and reasonable business overheads required to generate the income and the remaining net disposable income will fund the \$15,000.00 per quarter that Debtor is paying to Class 7 as part of the Plan. Income and expense projections are attached hereto as Exhibit “C”.

**Litigation Trust.** Debtors' Plan also establishes a Litigation Trust to be administered by a Court approved Litigation Trust Trustee. As Debtor is involved in multiple litigations as Plaintiff, the avails of each successful litigation together with net proceeds of each favorable settlement are assigned to the Litigation Trust and will likewise be devoted to the requirements of the Plan to pay the allowed claims of Class 7. A court approved Trustee will administer the Trust and the distributions therefrom. Debtors are nominating Richard D. Myers, a standing Chapter 7 Bankruptcy Trustee with over 35

years of experience, to serve as Litigation Trust Trustee. Mr. Myers has consented to serve in that capacity if acceptable to creditors and parties in interest and approved by the Court.

The litigation and cause of action settlement negotiation from which the trust funds will emanate is being handled by attorney Victor Covalt, who has extensive experience in debtor/creditor agricultural issues and has been approved by Bankruptcy Court Order as Special Counsel.

**Administrative Claims.** There are two priority tax claims in the “Administrative Class”, aggregating approximately \$12,000.00 which the Plan proposes to pay in full, in a lump sum, on the Effective Date of the Plan. Additionally, Administrative Claims for professional fees will be filed by undersigned counsel for Debtor in Possession, by Special Counsel Victor Covalt, and CPA Dennis Blackman and Associates, P.C., all of whom have had their retention approved by Order of the Court. Trustee for the Litigating Trust will be paid pursuant to the formula and the procedures for compensation for Chapter 7 standing trustees upon Court approval.

**Review of the proposed Plan.**

The proposed First Amended Plan has been filed with the United States Bankruptcy Court for the District of Nebraska as ECF Doc. No. 261 in the case and can be reviewed on line via PACER. Moreover, copies of the proposed Plan are available from Debtor’s counsel upon request, for the purposes of information and review only and not for the purpose of soliciting its acceptance at this time. Copies of the proposed Plan are also provided with this Disclosure Statement, but again for information and review only; solicitation of the Plan’s acceptance will come only after the Court has approved the adequacy of the Disclosure Statement.

**FEASIBILITY OF THE PLAN & BEST INTERESTS OF CREDITORS**

**A. Feasibility of the Plan/Financial Projections**

In order for the Plan to be confirmed, the Bankruptcy Court will have to determine that the Plan is feasible pursuant to Section 1129(a)(11) of the Code. The Court will, accordingly, need to determine that the proposed reorganization under the Plan is likely to be successful and that subsequent reorganization or liquidation is not likely.

Debtor asserts that the Plan is feasible. In support of this assertion, Debtor offers relevant financial information. Debtor expects to continue receiving income from his business services to Cinch Cattle Company as set forth in the projections attached hereto as Exhibit "C".

Interested parties are also referred to the Debtors' Monthly Operating Reports filed with this Court. It is further expected that Debtor's Aggregate Income will be in an amount sufficient to feasibly pay household expenses, necessary and reasonable business overhead, plus fund the Plan. Debtors' monthly net disposable income will be the source of the lump sum payments on the Effective Date of the Plan, monthly debt service on the allowed claims in the secured classes under the plan and the quarterly distributions to the unsecured claims of the Class Seven claimants.

Moreover, the Debtor has filed Monthly Operating Reports with the Court and the Office of the U.S. Trustee since the inception of this case as required. Copies of those documents are on file with the Court and can be reviewed on PACER or are available from counsel for the Debtor upon request.

Additionally, Debtor has the means to carry out the quarterly installment terms of the Plan because Debtor is remaining in business and retaining assets which will be used for the production of income. The largest assets may be the claims and causes of action that Debtors in

Possession have against various third parties. Those proceeds will be disbursed through the Litigation Trust.

**B. Best Interests Test/Liquidation Analysis.**

Even if the Plan is accepted by creditors and deemed feasible, pursuant to Section 1129(a)(7), the Court still has to determine that the proposed Plan meets the “Best Interest of Creditors” test. If this test is met, the Court can confirm the Plan even if all creditors do not accept or vote in favor of the Plan. The “Best Interest” test means that creditors or claim holders will receive at least as much under this reorganization Plan as they would under a forced liquidation scenario, such as Chapter 7. **In this Plan, creditors are clearly paid more than what they would receive under a liquidation scenario.**

With the exception of potential litigation proceeds, Debtors assets are mostly encumbered or exempt. As demonstrated in Exhibit “D” hereto, this shows there would be little distribution to unsecured creditors unless the trustee was successful in litigation. The Chapter 11 Plan also provides that litigation recovery, but also makes quarterly distributions independent of litigation outcome or delay.

However, in a chapter 7, Debtors’ post petition income is not property of the estate and is not required to be distributed to creditors. In non-entity chapter 11s such as this one, 11 U.S.C. Section 1115 provides that “post petition earnings from personal services” are property of the estate, meaning it is available to pay toward allowed unsecured claims. Leonard is in fact proposing in his Plan to do exactly that; \$15,000.00 per quarter for twenty quarters, resulting in \$300,000.00 payout that would not be available in Chapter 7. Accordingly, this Plan is clearly a superior outcome for creditors than \$51,185.00 liquidation under chapter 7, which sum would first pay approximately 10.00% in liquidation costs. The Plan should therefore be supported with affirmative votes.

This Debtor clearly qualifies for chapter 7 in that the vast majority of his debts are business debts; the means test would therefore not be applicable. Had he filed chapter 7, Debtor's non-exempt assets would be subject to liquidation and the proceeds distributed for the benefit of unsecured creditors. A brief liquidation analysis shows as set forth in the attached Liquidation Analysis as Exhibit "D".

### **SOLICITATION/VOTING PROCEDURES**

Under Section 1124 of the Bankruptcy Code, a class of claims or interest that is impaired (and deemed allowed) is entitled to vote to accept or reject the Plan. All Classes under the proposed Plan are impaired. If the impaired classes approve this Proposed Plan, then Confirmation and payments will follow. If said impaired classes reject the Plan, Debtor may seek to amend the Plan or seek to confirm it over objection, but either option would result in a delay of distribution to creditors.

Upon the Court's approval of the adequacy of this Disclosure Statement, the Debtor in Possession will solicit acceptance of the Plan.

*Ballots should be sent to David G. Hicks at Pollak, Hicks & Alhejaj, Burt Street Professional Building, 11717 Burt Street, Suite No. 106, Omaha, NE 68154* by close of business (5:00 p.m.) on \_\_\_\_\_, 2016. *(to be set by Court)* Ballots received after that time may not be counted.

### **INTERNET ACCESS TO BANKRUPTCY COURT DOCUMENTS**

Any and all documents filed with the Bankruptcy Court in this Chapter 11 case, as well as other bankruptcy documents and information may be found, downloaded and printed from the website for the United States Bankruptcy Court for the District of Nebraska, found at

*ecf.neb.uscourts.gov* or by logging on to Pacer, or by requesting same from David G. Hicks, counsel for the Debtors in Possession.

**RECOMMENDATION TO APPROVE**

For all of the reasons set forth in the Plan and in this Disclosure Statement, the Debtor believes that rapid confirmation, implementation and consummation of the proposed Plan is preferable to all other alternatives. Accordingly, Debtor urges all Creditors, to not object to the adequacy of this Disclosure Statement and to approve/vote in favor of the Plan. It is the Debtors' opinion that any claim objecting to the adequacy of the disclosure statement or any class not voting to approve the Plan is only obstructing the other creditors and parties in interest from receiving prompt distribution of their proposed payments. Such a delay could result in a conversion of Debtors' case to a chapter 7 proceeding under which unsecured creditors would not receive anything any distributions from Debtors' post petition income, instead of a five year payment plan (such payments not being available under Chapter 7).

Dated: October 28<sup>th</sup>, 2016

Charles Donald Leonard & Margaret Rose Leonard,  
Debtors and Debtors in Possession,

By: */s/ David G. Hicks*  
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Attorneys for Debtors in Possession

**NOTICE SETTING RESISTANCE DEADLINE**

PURSUANT TO Neb. R. Bankr. P. 9013, F.R. Bankr. P. 2002 and F.R. Bankr. P 9014, You are notified as follows:

1. David G. Hicks, attorney for the above captioned debtor, has filed A DISCLOSURE STATEMENT.
2. The last day to file a resistance to the Disclosure Statement is November 18, 2016. The resistance must be served upon the Court and on Debtor's counsel.
3. If the resistance period expires without the filing of any resistance, and declaration, the Court will consider entering an order granting relief sought without further notice or hearing.

*/s/ David G. Hicks*

David G. Hicks  
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(402) 345-1717 – telephone

**Certificate of Service**

The undersigned hereby certifies that the foregoing Disclosure Statement in Support of First Amended Plan of Reorganization of Charles and Margaret Leonard was served upon parties in interest by filing it with the Clerk of the United States Bankruptcy Court for the District of Nebraska utilizing its CM/ECF system on the 28<sup>th</sup> day of October, 2016, and also by serving a copy of the first amended plan for information purposes as part of the disclosure statement, upon all parties on the attached matrix by regular first class, U.S. mail, postage prepaid on the same date.

*/s/ David G. Hicks* \_\_\_\_\_

David G. Hicks

