

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Attorneys for the Debtors*  
One North Lexington Avenue  
White Plains, New York 10601  
(914) 681-0200  
Jonathan S. Pasternak, Esq.  
Dawn Kirby, Esq.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

RLE INDUSTRIES, LLC and  
NEI INDUSTRIES, INC.,

Chapter 11  
Lead Case No. 17-11748 (MEW)

(Jointly Administered)

Debtors.

-----X

**DISCLOSURE STATEMENT IN CONNECTION WITH DEBTORS' JOINT CHAPTER  
11 LIQUIDATING PLAN DATED DECEMBER 13, 2017**

**I. INTRODUCTION**

RLE Industries, LLC ("RLE") and NEI Industries, Inc. ("NEI"; collectively, the "Debtors") submit this Disclosure Statement pursuant to Section 1125(b) of Title 11, United States Code, 11 U.S.C. §§ et seq. (the "Bankruptcy Code") and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), in connection with the Debtors' Joint Chapter 11 Liquidating Plan dated December 12, 2017 (the "Plan") to all known holders of Claims against or Interests in the Debtors in order to adequately disclose information deemed to be material, important and necessary to make a reasonably informed judgment about the Plan, including, who is entitled to vote to accept or reject the Plan. A full copy of the Plan is attached to this Disclosure Statement as Exhibit "A". *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

During the course of the Debtor's Chapter 11 Case, the Debtors wound down their business affairs and sold its remaining assets. As a result of the Sale Proceeds and the Plan Funder Contribution defined in the Plan and described herein, the Debtors expect to have sufficient funds on hand on the Effective Date to satisfy all administrative, Secured (to the extent provided in the Plan), and Priority Claims and ultimately provide an approximate 10% distribution on a *pro rata* basis to allowed Class 3 general unsecured creditors.

Under Section 1126(b) of the Bankruptcy Code, only Classes<sup>1</sup> of Allowed Claims that are "impaired" under the Plan, as defined by Section 1124 of the Bankruptcy Code, are entitled to vote on the Plan. Generally, a Class is impaired if its legal, contractual or equitable rights are altered or reduced under the Plan. Under the Plan, Class 1 and 3 are Impaired and therefore entitled to vote to accept or reject the Plan. To be accepted by a Class, the Plan must be accepted by more than one half in number and two-thirds in dollar amount of the Allowed Claims actually voting in such Class.

#### **A. Purpose of This Document**

##### **This Disclosure Statement describes:**

- The Debtors and significant events during the bankruptcy cases,
- 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 and your claim is "allowed" within the meaning of the Plan),
- 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 Debtors believe 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, and
- The effect of confirmation of the Plan.

---

<sup>1</sup> Capitalized terms not defined herein have the same meaning ascribed to them in the Plan.

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

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

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

*1. Time and Place of the Hearing to Confirm the Plan*

The hearing at which the Court will determine whether to confirm the Plan will take place on February \_\_, 2018 at 10:00 a.m. before the Honorable Michael E. Wiles, U.S. Bankruptcy Judge, in Courtroom 617, at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408.

*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 to DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. or Julie Cvek Curley, Esq. See Section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by **February \_\_, 2018 at 4:00 p.m. (Eastern Time)** or it will not be counted.

*3. Deadline For Objecting to the Confirmation of the Plan*

Objections to the confirmation of the Plan must be filed with the Court and served upon DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtor, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. or Dawn Kirby, Esq by **February \_\_, 2018 at 5:00 p.m. (Eastern Time)**.

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

If you want additional information about the Plan, you should contact DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, Counsel for the Debtors, One North Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak, Esq. or Dawn Kirby, Esq. (914) 681-0200.

**C. Disclaimer**

*[The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted.]*

**II. BACKGROUND**

**A. Description of the Debtors and Events Leading to Bankruptcy**

RLE is a New York corporation formed in June of 2000. NEI is a corporation organized under the laws of New Jersey in July of 2000. The Debtors have substantially common ownership.

RLE is a manufacturer and fabricator of lighting fixtures and as of the Petition Date operated its business at 232 Madison Avenue, Third Floor, New York, NY 10016. NEI installs the fixtures manufactured and fabricated by NEI and operates at 35 Kulick Road, Fairfield, NJ.

The Debtors historically provided innovative, energy efficient lighting fixtures and services for commercial and industrial applications. Lighting is everywhere and almost every application requires professional interaction and insights from makers, specifiers and end-users. Today's responsive commercial lighting fixture makers must combine a complete offering along

with the qualified answers necessary to make the best decisions.

The Debtors brought the experience of a company that has been serving the lighting profession for over 70 years. One with the willingness and versatility to make product modifications for short and mid-size runs that others just won't do

RLE and its operating divisions *Robert Lighting and Energy*, and *Lumenera* made a full line of energy efficient fluorescent, HID and LED fixtures in standard and custom configurations. Our Energy Services division performs lighting retrofit services to business and industrial customers that can save up to 50% on energy costs.

As a legacy fixture manufacturer RLE and the knowledgeable people that serve its customers used its decades of experience to consistently make and develop durable, high quality fixtures that meet the objectives of their users. With hundreds of models and custom versions of standard products, RLE could meet any reasonable request. Special colors, wiring modifications and extreme applications can all be accommodated through the flexibility of its staff and its processes.

RLE's energy services group successfully completed energy-efficient lighting systems for over 400 million square feet in retail, commercial, industrial and institutional facilities. And they guaranteed light level recovery, kilowatt reduction and system performance.

The Debtors were established in 2000 when they acquired the business assets from prior owners Louis Bani "Bani" and Morris Ashkenazy ("Ashkenazy"), who stayed on as employees and sales agents up through the commencement of the Chapter 11 Cases.

The Debtors' combined revenues had exceeded \$8,000,000 per annum over the last several years prior to Chapter 11.

The Debtors historically received financing from JP Morgan Chase Bank ("Chase"), who

provided the Debtors with a \$2 million loan facility in 2009 and an additional \$500,000 facility in 2016. As of the Petition Date, Chase was approximately \$1,400,000 in the aggregate.

In 2016 and early 2017, as the companies experienced cash flow issues, RLE obtained a series of merchant bank advances from Merchant Cash and Capital, LLC d/b/a Bizfi Funding (“Bizfi”), who as of the Petition Date was owed approximately \$360,000 in the aggregate.

Over the years, Scott Koenig and his father, Marvin Koenig, also helped capitalize and fund the companies. Unfortunately, Marvin Koenig, founder and chief executive officer of the Debtors passed away in April 2017, leaving the company short on management and capital.

As a result, the Debtors had severe difficulty in keeping up with its debt service and current payables to the trade leading up to the Chapter 11 Cases. In order to try and rehabilitate and reorganize their affairs at the “twelfth hour”, the Debtors retained a financial advisor, Foresight Advisors, and sought out bankruptcy counsel after determining that the debtors would be best served to either restructure or orderly wind down their affairs through Chapter 11, affording the company a breathing spell and give it a reasonable amount of time to restructure, economize operations, and seek out new capital and/or a strategic transaction which would benefit all of the creditors.

As a result of the Debtors’ inability to recapitalize or consummate a strategic transaction, the debtors filed for Chapter 11 relief on June 23, 2017 and their Chapter 11 Cases assigned to the United States Bankruptcy Court for the Southern District of New York (Wiles, J.)

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

On June 23, 2017 (the “Petition Date”), the Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (Manhattan Division) and continued in possession of their property and

management of their affairs as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The case was assigned to the Hon. Michael E. Wiles, United States Bankruptcy Judge, for joint administration under the Bankruptcy Code. The petitions were also accompanied by Local Rule 1007-2 Affidavits. An order authorizing the joint administration of the Chapter 11 Cases for procedural purposes only was entered on June 23, 2017.

*1. Retention of Professionals*

At the outset of this case the Debtor retained DelBello Donnellan Weingarten Wise & Wiederkehr, LLP as its Bankruptcy counsel and Foresight Advisors LLC as financial advisors to the Debtors to assist in the successful administration of the Debtors' bankruptcy cases. The retention of DelBello Donnellan Weingarten Wise & Wiederkehr, LLP was approved by an Order of the Bankruptcy Court dated July 18, 2017, and the retention of Foresight Advisors was approved by Order of the Bankruptcy Court dated July 20, 2017, both orders effective *nunc pro tunc* as of the Petition Date. Additionally, to assist with the sale of the Debtor RLE's hard assets, the Debtors sought to retain A.J. Wilner Auctions LLC as auctioneer in connection with the sale of RLE's hard assets, which was approved by an Order of the Bankruptcy Court dated October 13, 2017. The Debtors have also recently sought to retain the firm of Davis, Ward & Hochman LLP as accountants to the Debtors. An order authorizing its retention is currently pending before the Bankruptcy Court.

*2. Schedules and Statement of Financial Affairs*

On August 11, 2017, the Debtors filed their respective its Schedules of Assets and Liabilities and Statements of Financial Affairs. Pursuant to an Order of the Bankruptcy Court dated September 28, 2017 (the "Bar Date Order"), the Court established November 8, 2017 as the last date by which creditors may file proofs of claim in the Chapter 11 Cases, except as

otherwise provided in the Bar Date Order. Pursuant to the Bar Date Order, notice of entry of the Bar Date Order was mailed, by first class mail, to all known creditors of the Debtors.

*3. 341 Meeting and Case Status Conferences*

On July 25, 2017, the Debtors attended their Section 341(a) Meetings of Creditors. The Debtors also appeared at the initial case conference in this Bankruptcy proceeding before the Hon. Michael E. Wiles at the United States Bankruptcy Courthouse on August 15, 2017 and has appeared at all hearings and continued case conferences as scheduled by the Bankruptcy Court.

*4. Cash Collateral and Cash Management Authority Motions*

On the Petition Date, the Debtor filed motions for authority to, *inter alia*, (a) use cash collateral in which, at a minimum, Chase asserted a security interest and (b) continue their pre-petition consolidated cash management system.

After a series of interim orders, the Court entered a final order authorizing use of cash collateral on October 5, 2017 and final order authorizing the continued consolidated cash management system on September 5, 2017.

*5. Rejection of Lease for Business Premises*

As the Debtors determined during the Chapter 11 Cases that their operations were no longer viable, as part of their business decision to cease operations, the Debtors sought authority to reject its nonresidential commercial lease for its New Jersey premises effective October 31, 2017 in order to cut off the administrative liability of the Debtors. On September 20, 2017, the Bankruptcy Court entered an order authorizing the rejection of the New Jersey Lease. The Debtors successfully vacated the New Jersey premises on October 31, 2017.

*6. Sale of Assets*



From the onset of the Chapter 11 Cases, and even for some period prior thereto, the Debtors had been attempting to sell substantially all of their assets via a going concern sale. As such efforts continued throughout the Chapter 11 Cases and ultimately failed, the Debtors alternatively obtained a buyer for RLE's intangible assets including its domain, customer list, website and other intellectual property and goodwill and entered into an Asset Purchase Agreement with Vcom International Multimedia Corporation ("Vcom") for \$100,000, subject to higher and better offers. At the same time, the Debtors retained the Wilner firm as auctioneer and set up an auction sale process. The sales processes for each of the Sales were approved by the Court pursuant to orders respectively dated October 13, 2017 for the hard assets and November 6, 2017 for the intangible assets.

The auctions for the hard assets netted the Debtors, after payment of the auctioneer's commission, the sum of \$45,643.22, and the auction sale results were approved pursuant to an order entered by the Bankruptcy Court on November 3, 2017. The sale process with respect to the intangible assets yielded no higher and better offers, and on December \_\_, 2017, the Bankruptcy Court entered an order authorizing the sale of the intangible assets to Vcom.

The Sales have netted the Debtors' estates the total sum of \$145,643.22, which sums shall constitute a portion of the Plan Distribution Fund to be used to make the distributions required under the Plan as further described in detail below.

*7. Plan Funder Contribution.*

The Debtors have been in negotiation with Scott Koenig and the Estate of Marvin Koenig, current and former principals of the Debtors, (collectively, the "the Plan Funder") to assist in the funding of the amounts needed to confirm the Plan.

After arms' length negotiation, the Plan Funder has agreed to provide the following funding and other consideration to the Debtors under the Plan (the "Plan Funder Contribution"):

- a) the sum of \$325,000, in Cash, paid by the Plan Funder to the Disbursing Agent on behalf of the Estates on or before the Confirmation Date;
- b) the assumption and payment of (i) \$1,400,000 obligation owed by the Debtors and guaranteed by the Plan Funder to Chase as Class 1 Secured creditor, less \$100,000 payable by the Debtors to Chase under the Plan;
- c) the payment of \$220,000 to Bizfi in full and final satisfaction of all of Bizfi's Claims against the Debtors and the Plan Funder; and
- d) the waiver of any and all Claims of the Plan Funder against the Debtors, including but not limited to all Claims for loans made to the Debtors, or Claims for subrogation and/or indemnification arising out of the Plan Funder Contribution. The waiver of the loan Claims is believed to exceed \$1,000,000.

In consideration and exchange for the Plan Funder Contribution, the Debtors, upon and subject to confirmation of the Plan, shall be deemed to waived and released any and all Causes of Action against the Plan Funder. The Debtors believe that the consideration being given under the Plan Funder Contribution (in excess of \$2,800,000 in total consideration) far exceeds any potential Causes of Action that the Debtors may have asserted against the Plan Funder.

Absent the Plan Funder Contribution, the Debtors cannot confirm the Plan and the Chapter 11 Cases would likely be converted to Chapter 7 cases, under which scenario, it is unlikely that the Class 3 Creditors would receive any distribution. ACCORDINGLY, THE DEBTORS STRONGLY RECOMMEND ACCEPTANCE OF THE PLAN AS A SIGNIFICANTLY BETTER ALTERNATIVE TO A CHAPTER 7 SCENARIO.

### **III. THE PLAN OF REORGANIZATION**

The following is a brief summary of the Plan. The Plan represents a proposed legally binding agreement and creditors are urged to consult with their counsel in order to fully understand the Plan and to make an intelligent judgment concerning it. The Plan governs over any discrepancy in this summary.

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

#### **A. Treatment of Unclassified Claims Under the Plan**

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

##### *1. Allowed Administrative Claims other than Claims of Professionals*

Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Cases, including, without limitation, any actual, necessary costs and expenses of preserving the Debtors' estate, and are substantially comprised of post-petition outstanding payables. The term Administrative Claim does not include Fee Claims and Statutory Fees, which are treated separately in this Plan. These Allowed Claims shall be paid in Cash on the Effective Date. The Debtors estimate that the Allowed Administrative Claims other than Claims of Professionals outstanding on the Effective Date are \$75,000.00.

*2. Allowed Administrative Claims of Professionals*

These are Claims by any Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Debtors have two Professionals who are seeking allowance of Fee Claims: (i) the Debtors' bankruptcy counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP ("DDWW"); and (ii) Davis, Ward & Hochman, LLP as accountants to the Debtors (collectively, the "Professionals"). The Allowed Administrative Fee Claims of the Professionals shall be paid in full, in Cash, upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, or (ii) the Effective Date. The Debtors estimate that the total net unpaid fee claims on the Effective Date total approximately \$145,000, representing net unpaid professional fees incurred through the Effective Date.

*3. Statutory Fees*

These are claims for United States Trustee statutory fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtors shall pay outstanding Statutory Fees in full, in Cash, on the Effective Date. Such fees shall be paid in full, in Cash, in such amount as incurred in the administration of the Plan by the Disbursing Agent from the Post-Confirmation Reserve. The Debtors shall be responsible to effectuate payment of Statutory Fees through the entry of a final decree closing the Chapter 11 Cases.

*4. Allowed Priority Tax Claims*

Priority tax Claims are unsecured income, employment, sales, and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtors shall pay all Allowed Priority Tax claims in full, in Cash, on the Effective Date. The Debtors estimate these Claims to not exceed approximately \$0.

**B. Classes of Claims**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

*1. Class 1: Allowed Secured Claim of Chase*

The Allowed Class 1 Secured Claims of Chase shall be paid in full, with interest thereon at the contract rate, as follows: (a) the sum of \$100,000 payable from the Cash portion of the Plan Distribution Fund and (b) the balance by the Plan Funder (approximately \$1,300,000) within 90 days after the Effective Date. Class 1 Claims are Impaired and are entitled to vote on the Plan.

2. *Class 2: Allowed non-tax Priority Claims*

Class 2 Claims consist of Claims entitled to priority under Section 507(4)(2)-(7) of the Bankruptcy Code. Class 2 claims, if any, shall be paid in full, in Cash, from the Plan Distribution Fund on the Effective Date. The Debtors estimate these Claims to not exceed approximately \$75,000. Class 2 Claims are unimpaired and deemed to accept the Plan.

3. *Class 3: Allowed General Unsecured Claims*

Class 3 consists of the holders of Allowed General Unsecured Claims. General Unsecured Claims are claims which are not either an Administrative Claim, Secured Claim, Priority Claim, or Interest that arose prior to the Petition Date and includes, without limitation, Claims based upon pre-petition trade accounts payable or Claims based upon the rejection of an executory contract during the pendency of the Chapter 11 Cases.

Class 3 Claim holders, other than Bizfi, who has agreed to waive its right to distribution, but not its right to vote, on account of its \$120,000 Class 3 Claim, shall share in a distribution on a Pro Rata basis of the remaining monies in the Plan Distribution Fund, up to 100%, after payment of all unclassified and Class 1 (to the extent provided in the Plan) and Class 2 Claims and the Post Confirmation Date Reserve, in full and final satisfaction of its Class 3 Claims as against the Debtors. The Debtors estimate Class 3 Claims to total approximately \$750,000, with an estimated, approximate 10% Pro Rata distribution. Class 3 Claims are Impaired under the Plan and are allowed to vote on the Plan.

4. *Class 4: Interests*

Interests are holder of an equity security of or membership interest in the Debtors, within the meaning of Bankruptcy Code sections 101(16), (17), represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present

ownership or membership interest in the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, including a partnership, limited liability company or similar interest.

Class 4 consists of the Claims of holders of Interests in the Debtors. Class 4 Interests in RLE consist of Scott Koenig (26.667%), the Estate of Marvin Koenig (26.667%), Louis Bani (20%) and Alice Koenig (26.667%). Class 4 Interests in NEI consist of Scott Koenig (33.33%), the Estate of Marvin Koenig (33.33%), and Alice Koenig (33.33%). Class 4 Interests shall not receive any distribution under the Plan on account of Class 4 Interests. Class 4 Interests are Impaired and deemed to reject the Plan.

### **C. Resolution of Disputed Claims & Reserves**

#### *1. Objections.*

An objection to either the allowance of a Claim or an amendment to the Debtors' Schedules shall be in writing and may either be filed with the Bankruptcy Court or pursued and resolved by other means by the Debtors, at any time on or before the Effective Date, or for a period of 30 days thereafter, or within such other time period as may be fixed by the Bankruptcy Court. Except as otherwise set forth in this Plan, any Claim not filed with the Bankruptcy Court by November 8, 2017, unless specifically scheduled by the Debtors as nondisputed, noncontingent and liquidated is hereby deemed invalid for all purposes. The Debtors will object to and settle any Claims and shall settle, compromise or prosecute all Claims objections.

#### *2. Amendment of Claims.*

A Claim may be amended prior to the Effective Date only as agreed upon by the Debtors and the holder of such Claim and as approved by the Bankruptcy Court or as otherwise permitted by the Bankruptcy Code and Bankruptcy Rules. After the Effective Date, a Claim may be

amended as agreed upon by the holder thereof and the Debtor to decrease, but not increase, the face amount thereof.

*3. Reserve for Disputed Claims.*

The Disbursing Agent shall reserve for account of each holder of a Disputed Claim that property which would otherwise be distributable to such holder on such date were such Disputed Claim an Allowed Claim on the Effective Date, or such other property as the holder of such Disputed Claim and the Debtors may agree upon. The property so reserved for the holder, to the extent such Disputed Claim is allowed, and only after such Disputed Claim becomes a subsequently Allowed Claim, shall thereafter be distributed to such holder.

*4. Distributions to Holders of Subsequently Allowed Claims.*

Unless another date is agreed on by the Debtors and the holder of a particular subsequently Allowed Claim, the Debtors shall, on the first Business Day to occur after the fourteenth (14th) day after the Allowed amount of such theretofore Disputed Claim is determined, distribute to such holder with respect to such subsequently Allowed Claim the amount of distribution required under the Plan at that time, in Cash. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed amount of its Claim, regardless of when distribution thereon is made to or received by such holder.



#### **D. Plan Funding and Means of Implementing the Plan**

##### *1. Plan Funding.*

The Plan shall be funded with the Sale Proceeds, the Plan Funder Contribution and net recoveries from Causes of Action. These funds are expected to total on the Effective Date approximately \$495,000. Such assets shall collectively constitute the Plan Distribution Fund, which shall be held pursuant to Section 345 of the Bankruptcy Code and ultimately distributed by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (the “Disbursing Agent”) in accordance with the terms of the Plan. Except as otherwise provided in the Plan, including without limitation Article IX of the Plan, the Cash required to be distributed to holders of Allowed Claims under the Plan shall be distributed by the Disbursing Agent on the later of the following dates: (i) on, or shortly after, the Effective Date to the extent the Claim has been Allowed or (ii) to the extent that a Claim becomes an Allowed Claim after the later of the Effective Date or the Sale Closing Date, within ten (10) days after the order allowing such Claim becomes a Final Order.

##### *2. Means for Implementation.*

The Plan Distribution Fund has already been funded by the Sale Proceeds, with the Plan Funder Contribution to be funded on the Effective Date. The Debtors estimate the following minimum distributions under the Plan from the Plan Distribution Fund:

PLAN DISTRIBUTION FUND:	\$495,632.72
Professional Fees:	\$145,000.00
Chase Class 11 Claim	\$100,000 (balance paid by Plan Funder)
Administrative Claims	\$75,000.00
Priority Claims	\$75,000.00
Post-Conf Fee/UST Fee Reserve	\$25,000.00
Unsecured Creditor Distribution	\$75,000.00 (approx. 10% distribution)

#### **E. Executory Contracts and Leases**

The Plan, in Section 7.1, states that any written lease or contract that is executory, in whole or in part, to which either of the Debtors is a party and which has not been assumed on or prior to the Confirmation Date pursuant to Sections 365 and 1123 of the Bankruptcy Code during the pendency of the Chapter 11 Cases, or assumed pursuant to this Plan, shall be deemed rejected. Any person or entity whose Claim arises from rejection of an executory contract shall, to the extent such Claim becomes an Allowed Claim, have the rights of a holder of an Unsecured Claim in Class 3 with respect thereto. **Any person or entity that has a Claim against the Debtors by virtue of rejection of an executory contract may file a Claim with the Clerk of the Court, and serve such claim upon counsel for the Debtor no later than twenty-five (25) days after notice of the occurrence of the Confirmation Date. If such Claim is not filed within such specified time, it shall forever be barred from assertion against the Debtor and its estate.**

The Debtor RLE rejected the lease for its New Jersey premises pursuant to an Order of the Bankruptcy Court dated September 20, 2017 [ECF Doc. No. 68]., effective October 31, 2017.

#### **F. Tax Consequence of the Plan**

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

Confirmation may have federal income tax consequences for the Debtors and Creditors. The Debtors have not obtained, and does not intend to request, a ruling from the Internal Revenue Service (the "IRS"), nor have the Debtors obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are

governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each holder of a Claim is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of cash and/or stock under this Plan.

*1. Tax Consequences to the Debtors*

The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

*2. Tax Consequences to Unsecured Creditors*

An unsecured creditor that receives cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the creditor's hands. A creditor may also

recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the creditor's Claim is a capital asset in its hands.

**G. Avoidance and Recovery Actions**

The Debtors' estate will pursue all Causes of Action under Sections 544, 547, 548, 550 and 553 of the Bankruptcy Code that should be pursued. The Debtors shall file such actions no later than 120 days after the Effective Date. The proceeds from any recoveries from Causes of Action shall be used to first pay any outstanding professional fees and expenses incurred in connection with the prosecution of Causes of Action, with the balance to be paid to Class 3 Unsecured Claim holders in accordance with this Plan.

**IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Bankruptcy Code. 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 at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in §1129, and they are not the only requirements for confirmation.

**A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes 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 has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Debtors believe that classes 1 and 3 are Impaired under the Plan and that the holder of the claims in these classes are entitled to vote to accept or reject the Plan. The Debtors believe that class 2 is unimpaired and that holders of claims in this class, therefore, do not have the right to vote to accept or reject the Plan.

*1. What Is an Allowed Claim?*

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim 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, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was November 8, 2017.***

*2. What Is an Impaired Claim?*

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

Class 1 and 3 Claims are impaired under the Plan and entitled to vote.

Each Holder of a Claim in Classes 1 and 3 has been sent a ballot together with this Disclosure Statement. The ballot is to be used for voting to accept or reject the Plan.

The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be mailed or delivered by hand or courier so that they are ACTUALLY RECEIVED no later than 4:00 p.m. (Eastern Standard Time) on February \_\_, 2018 at the following address:

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attn: Jonathan S. Pasternak, Esq.  
Dawn Kirby, Esq.

Each Holder of an Allowed Claims in Classes 1 and 3 shall be entitled to vote to accept or reject the Plan as provided for in the order approving the Disclosure Statement. A vote may be disregarded if the Bankruptcy Court determines that such vote was not solicited or procured in good faith and in accordance with the Bankruptcy Code.

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

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

- holders of claims that have been disallowed by an order of the Court;
- holders of other claims that are not “allowed claims” (as discussed above), unless they have been “allowed” for voting purposes;
- holders of claims in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code; and
- administrative expenses.

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

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

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

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

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

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

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

*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 § 1129(b) of the Bankruptcy Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Bankruptcy Code allows the Plan to bind nonaccepting classes of claims if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Bankruptcy Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

*You should consult your own attorney if a “cramdown” confirmation will affect your claim as the variations on this general rule are numerous and complex.*

### **C. Feasibility and Best Interests Test**

The Bankruptcy Code requires that in order to confirm the Plan, the Bankruptcy Court must find that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor (the “Feasibility Test”).

For a plan to meet the Feasibility Test, the Bankruptcy Court must find that the Debtor will possess the resources to meet its obligations under the Plan. Since the Plan contemplates a liquidation of the Debtors’ assets, Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors or any successor to the Debtors under the Plan. Moreover, on the Effective Date, the Debtors will have sufficient funds on hand to fund the Plan. The Plan Distribution Schedule outlining all payments to be made under the Plan from, *inter alia*, the Sale Proceeds and the Plan Funder Contribution is attached to this Disclosure Statement as **Exhibit “B.”** *You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.*

In addition, the Bankruptcy Court must determine that the values of the distributions to be made under the Plan to each Class will equal or exceed the values which would be allocated to such Class in a liquidation under Chapter 7 of the Bankruptcy Code (the “Best Interest Test”).

The Best Interest Test with respect to each impaired Class requires that each holder of a Claim or Interest in such Class either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Because the Debtors have proposed a liquidating Plan which distributes all proceeds thereof to holders of



Allowed Claims in order of priority, no scenario exists, including but not limited to Chapter 7 liquidation, under which the creditors would be entitled to receive a distribution greater than that which the Debtors have proposed in the Plan. In fact, were the Debtors' assets liquidated in Chapter 7, the creditors of the estate would stand to receive far less as the Administrative costs associated with such a case would be significantly higher and the claims of the Plan Funders being waived under the Plan would be reinstated.

The Debtors therefore believe that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, including the "best interest" and feasibility requirements. The Plan is "fair and equitable" and "does not discriminate unfairly". The Plan complies with all other requirements of Chapter 11 of the Bankruptcy Code and the Plan has been proposed in good faith.

#### **D. Notices**

All notices and correspondence should be forwarded in writing to:

RLE Industries LLC  
NEI Industries, Inc.  
c/o DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attn: Jonathan S. Pasternak, Esq.  
Dawn Kirby, Esq.

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. Discharge of Debtors**

Since the Plan provides for a liquidation of the Debtors' assets, the Confirmation Order shall not operate as a discharge pursuant to Section 1141(d)(1) of the Bankruptcy Code.

***1. Exculpation.***

*Neither the Debtors, the Plan Funder nor any of their respective members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns (the "Released Parties") shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Chapter 11 Cases or the Plan and any related agreement except for bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Notwithstanding any other provision hereof, nothing in Sections 11.2 or 11.3 of the Plan shall (a) effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, nor shall anything in Sections 11.2 or 11.3 of the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against any of the Released Parties referred to herein*

*for any liability whatever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, New York State Tax Law, the environmental laws or any criminal laws of the United States or any state and local authority against the Parties referred to herein, or (b) limit the liability of the Debtor's professionals to the Debtor pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.*

**2. Plan Injunction**

*Upon the Confirmation Date, but subject to the occurrence of the Effective Date, all persons who have held, hold or may hold Claims or Interests are enjoined from taking any of the following actions against or affecting the Debtors or assets of the Debtors with respect to such Claims, Interests or Administrative Claims, except as otherwise set forth in the Plan, and other than actions brought to enforce any rights or obligations under the Plan or appeals, if any, from the Confirmation Order:*

*(i) Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind against the Debtors or the assets of the Debtors regarding the Claims or Interests;*

*(ii) Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors, the assets of the Debtors;*

*(iii) Creating, perfecting or otherwise enforcing in any manner, directly or indirectly,*

*any encumbrance of any kind against the Debtors or the assets of the Debtors;*

*(iv) Asserting any setoff, right of subrogation, or recoupment of any kind, directly or indirectly, against the Debtors or the assets of the Debtors; and*

*(v) Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.*

**3. Release of Plan Funder from Causes of Action.**

*In consideration of the Plan Funder Contribution, and subject to and conditioned upon the full performance of the Plan Funder with respect to the Plan Funder Contribution, as of the Effective Date, the Plan funder shall be deemed fully and forever released of any and all claims, interests, choses or causes of action belonging to the Estates, including but not limited to the Causes of Action.*

The Debtors believe that the consideration being given under the Plan Funder Contribution (in excess of \$2,800,000 in total consideration) far exceeds any potential Causes of Action that the Debtors may have asserted against the Plan Funder. Further, absent the releases, the Plan Funder would be unwilling to either (a) make the Plan Funder Contribution or (b) waive their significant Claims against the Debtors for, inter alia, pre-petition loans and subrogation indemnification claims arising out of their co-obligor status on the Chase and Bizfi Claims. ACCORDINGLY, THE DEBTORS STRONGLY RECOMMEND THAT CLASS 3 CREDITORS VOTE TO ACCEPT THE PLAN.

**4. Full and Final Satisfaction**

To the fullest extent permitted by Section 1141(a)-(c) of the Bankruptcy Code, all payments and all distributions pursuant to the Plan, shall be in full and final satisfaction, settlement and release of all Claims and Interests, except as otherwise provided in the Plan.

Nevertheless, under Section 1141(d) of the Bankruptcy Code, the Debtors will not receive a discharge because the Plan is a liquidating plan.

5. *Substantive Consolidation For Plan Distribution Purposes Only*

Confirmation of this Plan shall result in the substantive consolidation of the Debtors pursuant to Section 105 of the Bankruptcy Code for Plan distribution purposes only.

**B. Amendment, Modification, Withdrawal or Revocation of the Plan.**

The Debtors reserve the right, in accordance with the Section 1127 of the Bankruptcy Code, to amend or modify the Plan by Order of the Bankruptcy Court, as may be required.

The Debtor may withdraw or revoke the Plan prior to the Confirmation Date. If such a withdrawal or revocation occurs, or if Confirmation does not occur, the Plan will be null and void. In such event, nothing contained in the Plan will constitute a waiver or release of any Claim by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any other person in any further proceedings involving the Debtors.

**C. Unclaimed Property**

Except as otherwise provided herein, if after thirty (30) days additional attempted notice to the claimholder such distribution remains unclaimed or unnegotiated, then and in that event such holder's Claim shall thereupon be deemed canceled and any such holder shall not be entitled to any payments under the Plan, and such unclaimed distributions shall be distributed Pro Rata to Allowed Class 3 Creditors unless and until such unclaimed distributions total less than \$5,000, at such time will be deemed available for post-Effective Date Professional Fees.

**D. Retention of Jurisdiction**

The Bankruptcy Court shall retain jurisdiction of the Chapter 11 Cases:

- (a) To determine all controversies relating to or concerning the allowance of and/ or

distribution on account of such Claims or Interests upon objection thereto which may be filed by any party in interest;

(b) To determine requests for payment of Claims entitled to priority under Section 507(a)(2) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees

(c) To determine any and all applications, adversary proceedings, and contested or litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C Sections 157 and 1334;

(d) To determine all disputed, contingent or unliquidated Claims and all disputed Interests;

(e) To determine requests to modify the Plan pursuant to Section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in this Plan or Confirmation Order to the extent authorized by the Bankruptcy Code;

(f) To make such orders as are necessary or appropriate to carry out the provisions of the Plan;

(g) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of the Plan; and

(h) To enter a final decree closing the Chapter 11 Cases.

**E. Post-Confirmation Fees, Reserves and Final Decree**

The reasonable compensation and out-of-pocket expenses incurred post-Confirmation Date by the Debtors' professionals retained in the Chapter 11 Cases shall be paid by the Disbursing Agent within ten (10) days upon presentation of invoices for such professional

services. All disputes concerning post-confirmation fees and expenses shall be subject to Bankruptcy Court jurisdiction.

The Disbursing Agent shall reserve \$25,000 from the Plan Distribution Fund for the payment of Statutory Fees and post-Confirmation professional fees incurred by Debtors' counsel and the Disbursing Agent in the continued prosecution of Causes of Action, adjudication of Claims, and in connection with the carrying out of duties and responsibilities as the Disbursing Agent. The balance of such reserve, if any, shall be distributed in accordance with Article III of the Plan.

A final decree shall be entered as soon as practicable after initial distributions have commenced under the Plan.

**F. Continuation of Bankruptcy Stays**

All stays provided for in the Chapter 11 Cases under Section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**VI. RECOMMENDATION**

The Debtors strongly believe that Confirmation of the Plan is preferable to any of the alternatives described above. The Plan will provide greater recoveries than those available in liquidation to all holders of Claims. Any other alternative would cause significant delay and uncertainty, as well as substantial additional administrative costs and potential diminution of distribution.

Dated: New York, New York  
December 12, 2017

RLE INDUSTRIES, LLC

By: /s/ Scott Koenig  
Scott Koenig, Manager

NEI INDUSTRIES, INC.

By: /s/ Scott Koenig  
Scott Koenig, President

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
*Attorneys for the Debtor*  
One North Lexington Avenue  
White Plains, New York 10528  
(914) 681-0200

By: /s/ Jonathan S. Pasternak  
Jonathan S. Pasternak