

Fill in this information to identify the case:

Debtor Name: Timberview Veterinary Hospital, Inc. a/k/a Timber View Veterinary, P.C.

United States Bankruptcy Court for the Middle District of Pennsylvania

Case number: 1:16-bk-01442-RNO

X Check if this is an amended filing

## Official Form 425B

### Second Amended Disclosure Statement for Small Business Under Chapter 11

12/17

Timberview Veterinary Hospital's Second Amended Plan of Reorganization, Dated March 2, 2018.

#### I. Introduction

This is the Second Amended Disclosure Statement (the *Second Amended Disclosure Statement*) in the small business chapter 11 case of Timberview Veterinary Hospital, Inc. (the Debtor). This Second Amended Disclosure Statement provides information about the Debtor and the Second Amended Plan filed on February 16, 2018 (the *Second Amended Plan*) to help you decide how to vote.

A copy of the Second Amended Plan is attached as *Exhibit A*. **Your rights may be affected.** You should read the Second Amended Plan and this Second Amended Disclosure Statement carefully. You may wish to consult an attorney about your rights and your treatment under the Second Amended Plan.

The proposed distributions under the Second Amended Plan are discussed at pages 4-6 of this Second Amended Disclosure Statement. General unsecured creditors are classified in Class 4 and will receive a distribution of 5% of their allowed claims to be distributed in quarterly pro-rata payments to be paid not later than 72 months from the Effective Date.

#### A. Purpose of This Document

This Second Amended Disclosure Statement describes:

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

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

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

The Court has not yet confirmed the Second Amended Plan described in this Second Amended Disclosure Statement. A separate order has been entered setting the following information:

- Time and place of the hearing to finally approve this Second Amended Disclosure Statement and confirm the Second Amended Plan,
- Deadline for voting to accept or reject the Second Amended Plan, and
- Deadline for objecting to the adequacy of this Second Amended Disclosure Statement.

If you want additional information about the Second Amended Plan or the voting procedure, you should contact Lawrence V. Young, Esquire, CGA Law Firm, 135 North George Street, York, Pennsylvania 17401, telephone: 717-848-4900.

### C. Disclaimer

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

## II. Background

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

The Debtor was formed in 2004 for the purpose of purchasing and operating an existing veterinary clinic.

### B. Insiders of the Debtor

The Debtor corporation has a single shareholder, Sara E. Mummert, the veterinarian who runs the corporation. Her compensation is \$90,000 per year.

### C. Management of the Debtor During the Bankruptcy

List the name and position of all current officers, directors, managing members, or other persons in control (collectively the *Management*) who will **not** have a position post-confirmation that you list in III D 2.

Name	Position
NOT APPLICABLE	

### D. Events Leading to Chapter 11 Filing

The Debtor was formed in 2004 for the purpose of purchasing and operating an existing veterinary clinic with one location 2054 Old York Road, Dillsburg, Pennsylvania. Funding for the purchase was provided by M&T Bank (the "Purchase Money Loan"). The Debtor operated for most of the next six years without incident, until 2010 when the Debtor's principal, Sara Mummert, decided to purchase its current location at 106 West Cabin Hollow Road, Dillsburg, Pennsylvania (the "Real Estate"). A separate entity ("Cabin Hollow Enterprises, LLC") was formed to purchase the Real Estate and build a new veterinary clinic on it. A lease was established between Timberview Veterinary Hospital, Inc. and Cabin Hollow Enterprises, LLC to cover the mortgage debt. Revenues increased for Timberview Veterinary Hospital, Inc., but not enough to pay the increased rental obligations to Cabin Hollow Enterprises, LLC. The Debtor attempted to increase its revenues through advertising. Notwithstanding these efforts, the increased expense of the new location caused the Debtor to experience great difficulty meeting its obligations to pre-petition lenders and trade vendors. Faced with monthly obligations that were too high to maintain with its revenues, the Debtor filed voluntary petitions in Bankruptcy in the following fashion:

- Case No. 1:11-bk-06257 filed on September 12, 2011;
- Case No. 1:14-02535 filed on May 30, 2014; and
- Case No. 1:16-01442 filed on April 6, 2016

In addition, the corporate president, Sara Mummert, DVM, discovered that her husband, Duane Michael Mummert, had, without the consent of Sara Mummert, removed money from the business operations for his own purposes, which purposes were unrelated to the operation of the Debtor. It is believed that the amounts of money removed were in the neighborhood of \$200,000 - \$250,000. An analysis was performed as to the estimated of the amounts and the methods employed by Mr. Mummert, and that report was turned over to the Office of the United States Trustee. The Office of the U.S. Trustee still has it under advisement as to what actions they should take against Mr. Mummert.

Since the discovery of the missing funds, Mr. Mummert has been removed from all signing capacity for all of the banking and business operations of the Debtor. He has been forbidden from setting foot in the business premises. He has absolutely no further involvement in the operation of the veterinary clinic. Since his dismissal, the business has operated on a much more firm footing, and as reported by the Monthly Operating Reports, has disclosed a profitability that would permit it to complete the Plan.

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

**Restructured Workforce**

Significant events that occurred during this bankruptcy case include the decision to remove a full time veterinarian and other staff members from the payroll. This decision has allowed the principal of the Debtor, Sara E. Mummert to become more involved in the operations of the clinic and supervision of its employees. It has also significantly reduced the payroll obligations that will allow it to operate without a loss for the first time since before the date of the Petition. Additionally, Michael Mummert has been dismissed as the office manager. He is no longer involved with the company, he is no longer drawing a paycheck, and is not allowed upon the premises.

**Negotiations with Primary Creditors**

Since filing the Petition, the Debtor has been in close communication and negotiation with its largest creditor, the Internal Revenue Service. These negotiations have allowed the Debtor to secure certain agreements with the IRS for the continued use of cash collateral, which terms are incorporated into the Plan. These agreements will allow the Debtor to continue operations and service its debt at a reasonable monthly rate, thereby increasing its monthly cash flow and alleviating the circumstance that caused it to file its Petition on April 6, 2016.

**Applications to Employ**

The Debtor filed an application to employ Mette, Evans & Woodside as its bankruptcy counsel on April 6, 2016. The Court granted that application on April 28, 2016. With the elevation of Henry Van Eck to the Bench, the Debtor filed an application to employ CGA Law Firm as its bankruptcy counsel on March 9, 2017. The Court granted that application on March 17, 2017. The Debtor filed an application to employ Alex Everhart as business consultant on April 6, 2016. The Court granted that application on April 28, 2016. The Debtor filed an application to employ John P. Weidman, CPA as its accountant on May 4, 2016. The Court granted that application on May 12, 2016. John P. Weidman has served as accountant to the Debtor since the date of the filing of the petition. Arlene Steiner of Trout, Ebersole and Groff, LLC will be employed as Debtor's accountant.

**Claims Bar Date**

A Motion to Set a Claims Bar Date was filed by the Debtor on May 2, 2016. On May 3, 2016, the Court entered an Order granting the motion to set a claims bar date and establishing July 11, 2016 as the final day upon which non-governmental entities were entitled to file a proof of claim, and August 10, 2016 as the final day upon which governmental entities were entitled to file a proof of claim.

**F. Projected Recovery of Avoidable Transfers**

Check one box

<input checked="" type="checkbox"/>	The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.
<input type="checkbox"/>	The Debtor estimates that up to \$_____ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed
<b>NOT APPLICABLE</b>		

<input type="checkbox"/>	The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.
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**G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. Disputed claims are treated in Article 5 of the Second Amended Plan.

**H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in *Exhibit B*. (Debtor's Schedule A/B)

The Debtor's Monthly Operating Report for the period ending October 31, 2017 is set forth in *Exhibit C*.

**III. Summary of the Second Amended Plan of Reorganization and Treatment of Claims and Equity Interest****A. What Is the Purpose of the Second Amended Plan of Reorganization?**

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

**B. Unclassified Claims**

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

**1. Administrative expenses, involuntary gap claims, and quarterly and Court fees**

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 503(b) of the Code. Administrative expenses include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition, and compensation for services and reimbursement of expenses awarded by the court under § 330(a) of the Code. The Code requires that all administrative expenses be paid on the effective date of the Second Amended Plan, unless a particular claimant agrees to a different treatment. Involuntary gap claims allowed under § 502(f) of the Code are entitled to the same treatment as administrative expense claims. The Code also requires that fees owed under section 1930 of title 28, including quarterly and court fees, have been paid or will be paid on the effective date of the Second Amended Plan.

The following chart lists the Debtor's estimated administrative expenses, and quarterly and court fees, and their proposed treatment under the Second Amended Plan:

Type	Estimated Amount Owed	Proposed Treatment
Administrative expenses	\$18,000.00	Paid in full on the effective date of the Second Amended Plan, unless the holder of a particular claim has agreed to different treatment
Involuntary gap claims	\$0.00	Paid in full on the effective date of the Second Amended Plan, unless the holder of a particular claim has agreed to different treatment
Statutory Court fees	\$0.00	Paid in full on the effective date of the Second Amended Plan
Total	\$18,000.00	

**2. Priority tax claims**

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim pursuant to 11 U.S.C. § 511, in regular installments paid over a period not exceeding 5 years from the order of relief. The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Second Amended Plan:

Description	Estimated amount owed	Date of Assessment	Treatment
Internal Revenue Service	\$116,259.22	2012 - 2016	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth

			month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.
Pennsylvania Department of Revenue	\$14,768.65	2012 - 2015	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.
Pennsylvania Department of Labor and Industry	\$24,579.87	2013	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.
York Adams Tax Bureau	\$6,377.94	2016	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.
Dillsburg Area Authority	\$180.06	2016	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.

### C. Classes of Claims and Equity Interests

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

#### 1. Classes of secured claims

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

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Second Amended Plan:

Class #	Description	Amount	Impairment	Treatment
Class 2	Secured claim of Internal Revenue Service	\$135,478.25	Impaired	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.
Class 2	Secured claim of Commonwealth of Pennsylvania Department of Revenue	\$15,496.45	Impaired	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date.
Class 2	Secured claim of M&T Bank and leases with M&T Bank	\$28,615.00	Impaired	Payment in full, in cash, with interest at 3.25% in 56 equal monthly installments beginning on the fifth month after the Effective Date and ending on the 60 <sup>th</sup> month after the Effective Date. Certain leases will be accepted and paid pursuant to their terms. All other leases not specifically accepted will be deemed to be rejected.

#### 2. Classes of priority unsecured claims

The Code requires that, with respect to a class of claims of a kind referred to in §§ 507(a)(1), (4), (5), (6), and (7), each holder of such a claim receive cash on the effective date of the Second Amended Plan equal to the allowed amount of such claim, unless a particular claimant agrees to a different treatment or the class agrees to deferred cash payments.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (7) of the Code and their proposed treatment under the Second Amended Plan:

Description	Estimated amount owed	Impairment	Treatment
None			

**3. Classes of general unsecured claims**

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

The following chart identifies the Second Amended Plan’s proposed treatment of class 4, which contains general unsecured claims and claims against the Debtor:

Class #	Description	Impairment	Treatment
3	Non-priority, unsecured claims	Impaired	Payment equal to 5% of allowed claims payable in quarterly pro-rata cash distributions from future revenues beginning on the sixth month after the Effective Date as defined in Article VII and to be paid not later than 72 months from the Effective Date. In the event that the operation of the Debtor’s business proves to be more profitable than projected, the Debtor reserves the right to pay the 5% distribution in fewer than 72 months than the effective date.

**4. Classes of equity interest holders**

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

The following chart sets forth the Second Amended Plan’s proposed treatment of the classes of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition Debtor had issued multiple classes of stock.]

Class #	Description	Impairment	Treatment
4	Sara E. Mummert, President	Impaired	The equity security holder of the Debtor will receive the stock of the Debtor corporation in exchange for the sum of \$1,000.00.

**D. Means of implementing the Second Amended Plan**

**1. Source of payments**

Payments and distributions under the Second Amended Plan will be funded by the revenues and profits generated from the operation of reorganized Timberview Veterinary Hospital, Inc.

**2. Post-confirmation Management**

The Post-Confirmation Management of the Debtor (including officers, directors, managing members, and other persons in control), and their compensation, shall be as follows:

Name	Position	Compensation
Sara E. Mummert	President	\$90,000 per year

**E. Risk Factors**

The proposed Second Amended Plan has the following risks:

The Plan proposes payments over a period of time not to exceed six years. There are risks inherent in doing business and such risks are always present in a Plan dependent upon a future stream of income. The risks include the probability of loss inherent in any organization’s operations and environment, such as competition and adverse economic conditions, that may impair its ability to provide returns on investment. Although the Plan has minimized these risks by eliminating unnecessary expenses and maximizing its potential for profitability, there is no guarantee against the veterinary/animal care profession suffering further constriction thereby limiting the future income stream of Timberview Veterinary Hospital, Inc. Since the main source of income is the practice of Sara E. Mummert, D.V.M., one risk is the continued ability of Sara E. Mummert to practice veterinary medicine.

This Debtor, the principal of the Debtor and Cabin Hollow Enterprises, LLC have filed numerous bankruptcy proceedings. They are as follows:

Case No. 1:11-bk-06257 filed by Timberview Veterinary Hospital, Inc. on September 12, 2011;  
Case No. 1:11-bk-05675 filed by Cabin Hollow Enterprises, LLC on August 15, 2011;  
Case No. 1:11-bk-05724 filed by Sara E. Mummert and Duane M. Mummert on August 17, 2011;  
Case No. 1:13-bk-06407 filed by Duane Michael Mummert and Sara Elizabeth Mummert on December 17, 2013;  
Case No. 1:14-bk-02535 filed by Timberview Veterinary Hospital, Inc. on May 30, 2014;  
Case No. 1:14-bk-04340 filed by Cabin Hollow Enterprises, LLC on September 19, 2014; and  
Case No. 1:16-bk-01870 filed by Sara Elizabeth Mummert on April 29, 2016.

Additionally, its affiliated company, Cabin Hollow Enterprises, LLC, which owns the real estate and building has also filed for Chapter 11.

Cabin Hollow Enterprises, LLC has had its Chapter 11 Plan confirmed and has been making all payments since July, 2016.

Additionally, it is believed that with the removal of Mr. Mummert from the operation and internal monetary handling, the veterinary practice can operate on a sufficiently profitable basis to perform the Plan as proposed.

With the removal of Mr. Mummert from this business, it is the opinion of a retained business consultant, Alex Everhart, that the Plan is feasible with the continued involvement of Sara Mummert and the continued total ininvolvement of Mr. Mummert.

#### **F. Executory Contracts and Unexpired Leases**

The Second Amended Plan in Article 6 lists all executory contracts and unexpired leases that the Debtor will assume, and if applicable assign, under the Second Amended Plan. *Assumption* means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any. Article 6 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption, and if applicable the assignment, of your unexpired lease or executory contract under the Second Amended Plan, the proposed cure of any defaults, the adequacy of assurance of performance, you must file and serve your objection to the Second Amended Plan within the deadline for objecting to the confirmation of the Second Amended Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Article 6 or have not previously been assumed, and if applicable assigned, or are not the subject of a pending motion to assume, and if applicable assign, will be rejected under the Second Amended Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Second Amended Plan within the deadline for objecting to the confirmation of the Second Amended Plan.

The single largest Executory Contract that this Debtor has is for the lease of the building owned by Cabin Hollow Enterprises, Inc., a company related in that Sara E. Mummert is the sole shareholder of each. An independent real estate consultant was engaged to determine the fair rental value of the property. Numerous factors were taken into consideration, including the square footage and the cost of constructing another building with similar amenities. There was also some analysis done regarding the unavailability of anything similar in this market, thus making the property unique to the Debtor's business operation in this geographical location (the Dillsburg, York County area). Accordingly, and in weighing all of the factors, it is believed that a fair, market rate rental is being charged by Cabin Hollow Enterprises, LLC and paid by Timberview Veterinary Hospital, Inc.

The Debtor assumes the following executory contracts and/or unexpired leases effective upon the Effective Date of this Plan as provided in Article IX:

1. March 24, 2010 Lease Agreement with US Bancorp for a 15 Watt Medical Laser, and all amendments thereto. Lease is not currently in default. However, any subsequently identified Default will be cured on the Effective Date.
2. Lease between Debtor and Cabin Hollow Enterprises, LLC for the lease to the premises from which the Debtor's veterinary operations take place.
3. The Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 7.1(a)(1) above, or before the date of the order confirming this Plan, upon the Effective Date of this Plan. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than twenty-eight (28) days after the date of the order confirming this Plan.

**The deadline for filing a Proof of Claim based on a claim arising from the rejection of a lease or contract is 90 days after the Effective Date.**

#### **G. Tax Consequences of Second Amended Plan**

**Creditors and equity interest holders concerned with how the Second Amended Plan may affect their tax liability should consult with their own accountants, attorneys, and/or advisors.**

To the extent that the Debtor will continue its operations, it is believed that there are no adverse tax consequences that will be realized from continued operations assuming the Debtor pays all post-petition taxes in a timely fashion.

#### Recent amendments to the Internal Revenue Code.

Other than the hype that pass-through entities such as the Debtor will recognize a reduction in its tax obligations, no specific analysis has been performed to assign a dollar value to the alleged improvements to the Debtor's tax situation.

No specific advice is given to any creditor that is unable to collect the full amount due and owing to it. Any creditor that has concerns about the ability to write off certain losses or how it would have to report the income received through the Plan should consult their individual tax professional.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE PLAN AND THE OWNERSHIP AND DISPOSITION OF PROCEEDS FROM CLAIMS INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN (NON-US) TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

The following discussion addresses certain United States Federal income tax consequences of the consummation of the Plan. This discussion is based upon the United States Tax Code, as Second Amended, existing and proposed regulations thereunder, current administrative rulings, and judicial decisions as in effect on the date hereof, all of which are subject to change, possibly retroactively. No rulings or determinations by the Internal Revenue Service have been obtained or sought by the Plan Proponent with respect to the Plan. An opinion of counsel has not been obtained with respect to the tax aspects of the Plan. This discussion does not purport to address the federal income tax consequences of the Plan to particular classes of taxpayers (such as foreign persons, s corporations, mutual funds, small business investment companies, regulated investment companies, broker-dealers, insurance companies, tax-exempt organizations and financial institutions) or the state, local or foreign income and other tax consequences of the Plan.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED TO OR WRITTEN TO BE USED, AND CANNOT BE USED, BY SUCH HOLDERS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE PLAN; AND (C) SUCH HOLDERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

#### **1. Federal Income Tax Consequences to Holders of Claims and Interests**

A Holder of an Allowed Claim or Equity Interest will generally recognize ordinary income to the extent that the amount of cash or property received (or to be received) under the Plan is attributable to interest that accrued on a claim but was not previously paid by the Debtor or included in income by the Holder of the allowed claim or interest. A Holder of an Allowed Claim or Equity Interest will generally recognize gain or loss equal to the difference between the Holder's adjusted basis in its claim and the amount realized by the Holder upon consummation of the Plan that is not attributable to accrued but unpaid interest. The amount realized will equal the sum of cash and the fair market value of other consideration received (or to be received).

The character of any gain or loss that is recognized will depend upon a number of factors, including the status of the Holder, the nature of the Claim or Equity Interest in its hands, whether the Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Claim, and the Holder's holding period of the Claim or Equity Interest. If the Claim or Equity Interest in the Holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Holder held such Claim or Equity Interest for longer than one year or short-term capital gain or loss if the Holder held such Claim or Equity Interest for one year or less. If the Holder realizes a capital loss, the Holder's deduction of the loss may be subject to limitation.



A Holder of an Allowed Claim or Equity Interest who receives, in respect of its claim, an amount that is less than its tax basis in such claim or equity interest may be entitled to a bad debt deduction under section 166(a) of the Tax Code or a worthless securities deduction under section 165(g) of the Tax Code. The rules governing the character, timing, and amount of these deductions depend upon the facts and circumstances of the Holder, the obligor, and the instrument with respect to which a deduction is claimed. Accordingly, Holders are urged to consult their tax advisors with respect to their ability to take such a deduction if either: (1) the Holder is a corporation; or (2) the Claim or Equity Interest constituted (a) a debt created or acquired (as the case may be) in connection with a trade or business of the Holder or (b) a debt the loss from the worthlessness of which is incurred in the Holder's trade or business. A Holder that has previously recognized a loss or deduction in respect of its claim or equity interest may be required to include in its gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Claim or Equity Interest.

Holders of Claims who were not previously required to include any accrued but unpaid interest in their gross income on a Claim may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. Holders previously required to include in their gross income any accrued but unpaid interest on a claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan. Under the Plan, to the extent that any Allowed Claim entitled to a Distribution is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the Distribution exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

A Holder of a Claim constituting any installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold or otherwise disposed of within the meaning of section 453b of the Tax Code.

Whether the Holder of Claims or Equity Interests will recognize a loss, a deduction for worthless securities or any other tax treatment will depend upon facts and circumstances that are specific to the nature of the Holder and its Claims or Equity Interests. Accordingly, Holders of Claims and Equity Interests should consult their own tax advisors.

Under backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder (i) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under these rules will be credited against the Holder's federal income tax liability. Holders of Claims may be required to establish an exemption from backup withholding or to make arrangements with regard to payment thereof.

## **2. Federal Income Tax Consequences to Debtor**

The Debtor may realize cancellation of debt income to the extent of any debt forgiveness. To the extent there is cancellation of debt income, the same will reduce the Federal tax attributes of the Debtor's operating loss carry-forwards and the tax bases of their assets; if cancellation of debt income exceeds these attributes, it will be exempt from tax. Pursuant to the Plan, all of the Debtor's remaining assets other than those sold or abandoned prior to the Effective Date will remain with the Debtor.

It is believed that the Debtor's retention of its assets pursuant to the Plan will not constitute a taxable disposition of such assets. It is not known at the present time whether the retention of the Debtor's assets will result in any gain to the Debtor. If such a retention results in gain, it is not known at the present time whether the Debtor will have sufficient losses or loss carry forwards to offset that gain. If the retention results in gain and the Debtor does not have losses or loss carry forwards to offset that gain, the retention of such assets will result in federal income tax liability.

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

## **IV. Confirmation Requirements and Procedures**

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To be confirmable, the Plan must meet the requirements listed in §1129 of the Code. These include the requirements that:

- the Plan must be proposed in good faith;
- if a class of claims is impaired under the Second Amended Plan, at least one impaired class of claims must accept the Second Amended Plan, without counting votes of insiders;

- the Second Amended Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Second Amended Plan; and
- the Second Amended 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 Second Amended 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 Second Amended Plan. Except as stated in Part IV.A.3 below, a creditor or equity interest holder has a right to vote for or against the Second Amended Plan only if that creditor or equity interest holder has a claim or equity interest that is both

- (1) allowed or allowed for voting purposes and
- (2) impaired.

In this case, the Debtor believes that classes 1, 2, 3 and 4 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Second Amended Plan. The Debtor believes that none of the classes are unimpaired, thereby not having the right to vote to accept or reject the Second Amended Plan.

##### 1. What is an allowed claim or an allowed equity interest?

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Second Amended Plan. Generally, a claim or equity interest is allowed if either

- (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or
- (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure. The deadline for filing a proof of claim in this case was July 11, 2016.

##### 2. What is an impaired claim or impaired equity interest?

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

##### 3. Who is not entitled to vote

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

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

**Even if you are not entitled to vote on the Second Amended Plan, you have a right to object to the confirmation of the Second Amended Plan [and to the adequacy of the Second Amended 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 Second Amended Plan in each capacity, and should cast one ballot for each claim.

## B. Votes Necessary to Confirm the Second Amended Plan

If impaired classes exist, the Court cannot confirm the Second Amended Plan unless:

- (1) all impaired classes have voted to accept the Second Amended Plan; or
- (2) at least one impaired class of creditors has accepted the Second Amended Plan without counting the votes of any insiders within that class, and the Second Amended Plan is eligible to be confirmed by “cram down” of the non-accepting classes, as discussed later in Section B.2.

### 1. Votes necessary for a class to accept the Second Amended Plan

A class of claims accepts the Second Amended Plan if both of the following occur:

- (1) the holders of more than  $\frac{1}{2}$  of the allowed claims in the class, who vote, cast their votes to accept the Second Amended Plan, and
- (2) the holders of at least  $\frac{2}{3}$  in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Second Amended Plan.

A class of equity interests accepts the Second Amended Plan if the holders of at least  $\frac{2}{3}$  in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Second Amended Plan.

### 2. Treatment of non-accepting classes of secured claims, general unsecured claims, and interests

Even if one or more impaired classes reject the Second Amended Plan, the Court may nonetheless confirm the Second Amended Plan upon the request of the Debtor if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Code. A Plan that binds non-accepting classes is commonly referred to as a *cram down* Second Amended Plan. The Code allows the Second Amended Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not *discriminate unfairly*, and is *fair and equitable* toward each impaired class that has not voted to accept the Second Amended Plan.

**You should consult your own attorney if a *cram down* confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.**

## C. Liquidation Analysis

To confirm the Second Amended Plan, the Court must find that all creditors and equity interest holders who do not accept the Second Amended Plan will receive at least as much under the Second Amended Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is not attached to this Disclosure Statement as all of the assets of the debtor are subject to one secured creditor or another, leaving little or no equity for non-priority unsecured creditors.

## D. Feasibility

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

### 1. Ability to initially fund Second Amended Plan

The Debtor believes it will have enough cash on hand on the Effective Date of the Second Amended Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Second Amended Plan, and the sources of that cash are attached to this Second Amended Disclosure Statement as *Exhibit D*.

### 2. Ability to make future Second Amended Plan payments and operate without further reorganization

The Debtor must also show that it will have enough cash over the life of the Second Amended Plan to make the required Second Amended Plan payments and operate the debtor's business. The Debtor has provided projected financial information. Those projections are listed in *Exhibit E*.

The Debtor's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$10,435.00.

The Final Second Amended Plan payment is expected to be no later than 72 months after the Effective Date.

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

**V. Effect of Confirmation of Second Amended Plan**

**A. Discharge of Debtor**

Check one box

<input type="checkbox"/>	<b>Discharge if the Debtor is an individual and 11 U.S.C. § 1141(d)(3) is not applicable.</b> Confirmation of the Second Amended Plan does not discharge any debt provided for in the Second Amended Plan until the court grants a discharge on completion of all payments under the Second Amended Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.
<input type="checkbox"/>	<b>Discharge if the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable.</b> On the effective date of the Second Amended Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Second Amended Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Second Amended Plan. After the effective date of the Second Amended Plan your claims against the Debtor will be limited to the debts imposed by the Second Amended Plan.
<input checked="" type="checkbox"/>	<b>Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable.</b> On the effective date of the Second Amended Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Second Amended Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt:  (i) imposed by the Second Amended Plan, or (ii) to the extent provided in 11 U.S.C. § 1141(d)(6)
<input type="checkbox"/>	<b>No Discharge if § 1141(d)(3) is applicable.</b> In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**B. Modification of Second Amended Plan**

The Debtor may modify the Second Amended Plan at any time before confirmation of the Second Amended Plan. However, the Court may require a new Second Amended Disclosure Statement and/or re-voting on the Second Amended Plan.

**[If the Debtor is not an individual, add the following:**

The Debtor may also seek to modify the Second Amended Plan at any time after confirmation only if

- (1) the Second Amended Plan has not been substantially consummated and
- (2) the Court authorizes the proposed modifications after notice and a hearing.]

**C. Final Decree**

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

**VI. Other Second Amended Plan Provisions**

Nothing in the Second Amended Plan or Second Amended Disclosure Statement is intended to discharge Duane Michael Mummert from any liability or release any claims that the Bankruptcy Estate may have against Duane Michael Mummert.

/s/Sara E. Mummert, President  
(Signature of Plan Proponent)

Sara E. Mummert, President  
(Printed name)

/s/Lawrence V. Young, Esquire  
(Signature of Attorney for Plan Proponent)

Lawrence V. Young, Esquire  
(Printed name)