

**THE UNITED STATES BANKRUPTCY COURT  
IN THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	§	
	§	<b>CASE NO. 16-31941</b>
<b>U.S. ENERGY MANAGEMENT, INC.</b>	§	
	§	<b>CHAPTER 11</b>
<b>Debtor.</b>	§	

**FIRST AMENDED DISCLOSURE STATEMENT FOR DEBTOR'S  
PLAN OF REORGANIZATION**

TO ALL PARTIES IN INTEREST:

US Energy Management, Inc. hereinafter, (the “Debtor”), the Debtor-In-Possession in the above referenced case, files this Debtor’s First Amended Disclosure Statement (the “Disclosure Statement”).

**I.**

**INTRODUCTION**

**Identity of the Debtor**

U.S. Energy Management Company, Inc. (“Debtor”) filed its voluntary Chapter 11 case in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (“Court”) on May 12, 2016. Debtor is a business whose main assets are the lighting design and installation services it provides to other retail, commercial, and residential owners. Debtor specializes in energy efficient lighting design and implementation services for industrial, commercial, manufacturing, warehousing, retail, office and parking garages. Debtor’s designs lower electricity consumption and improve facility conditions through energy efficient lighting design and installation. Debtor proposes to pay its current indebtedness by restructuring certain indebtedness by increasing its sales and resolving pending litigation.

**Purpose of Disclosure Statement: Source of Information**

Debtor submits this First Amended Disclosure Statement (“Disclosure Statement”) pursuant to Section 1125 of the Bankruptcy Code (“Code”) to all known Claimants of Debtor for the purpose of disclosing that information which the Court has determined is material, important, and necessary for Creditors of Debtor in order to arrive at an intelligent, reasonably informed decision in exercising the right to vote for acceptance or rejection of the Debtor’s First Amended Plan of Reorganization dated November 9, 2016 (“Plan”). This Disclosure Statement describes the operations of the Debtor contemplated under the Plan. You are urged to study the Plan in full and consult with your counsel about the Plan and its impact on your legal rights. Any accounting information contained herein has been provided by the Debtor.

**Explanation of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Code. Pursuant to Chapter 11, a Debtor is authorized to reorganize its business for its own benefit and that of the creditors and equity holders. Formation of a Plan is the principal purpose of a Chapter 11 reorganization case. A Plan sets forth the means for satisfying claims against and interests in the Debtor. After a Plan has been filed, it must be accepted by holders of claims against, or interests in, the Debtor. Section 1125 of the Code requires full disclosure before solicitation of acceptances of a Plan. This Disclosure Statement is presented to Claimants to satisfy the requirements of Section 1125 of the Code.

**Explanation of the Process of Confirmation**

Even if all Classes of Claims accept the Plan, its confirmation may be refused by the Court. Section 1129 of the Code sets forth the requirements for confirmation and among other things, requires that a Plan of reorganization be in the best interests of Claimants. It generally requires that

the value distributed to Claimants may not be less than such parties would receive if the Debtor were liquidated under Chapter 7 of the Code.

Acceptance of the Plan by the Creditors and Equity Holders is important. In order for the Plan to be accepted by each class of claims, the creditors that hold at least two thirds ( $2/3$ ) in amount and more than one-half ( $1/2$ ) in number of the allowed claims actually voting on the Plan in such class must vote for the plan and the equity holders that hold at least two-thirds ( $2/3$ ) in amount of the allowed interests actually voting on the Plan in such class must vote for the Plan. Chapter 11 of the Code does not require that each holder of a claim against, or an interest in, the Debtor vote in favor of the Plan in order for it to be confirmed by the Court. The Plan, however, must be accepted by: (i) at least the holder of one (1) class of claims by a majority in number and two-thirds ( $2/3$ ) in amount of those claims of such class actually voting; or (ii) at least the holders of one (1) of allowed interests by two-thirds ( $2/3$ ) in amount of the allowed interests of such class actually voting.

The Court may confirm the Plan even though less than all of the classes of claims and interests accept it. The requirements for confirmation of a Plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Code.

Confirmation of the Plan discharges the Debtor from all of their pre-confirmation debts and liabilities except as expressly provided for in the Plan in Section 1141(d) of the Code. Confirmation makes the Plan binding upon the Debtor and all claimants, equity holders and other parties-in-interest, regardless of whether or not they have accepted the Plan.

### **Voting Procedures**

**Impaired Class.** **Claimants in Class 1** (Allowed Secured Tax Claims) are unimpaired to the extent that there is no balance owing and due to Collin County for unpaid real and business

personal property taxes for the tax years 2015 (“Ad Valorem Taxes”) and shall be treated as secured claims.

**Class 2 Claimants** (Allowed Priority IRS Tax Claims) are impaired as defined by Section 1124 of the Code. The Debtor is seeking the acceptance of the Plan by Claimants in Class 2. Each holder of an Allowed Claim in Class 2 may vote on the Plan completing, dating and signing the ballot sent to each holder and filling the ballot as set forth below.

**Class 3 Claimants** (Allowed Priority Claims of Texas Comptroller) are impaired and shall be satisfied in full.

**Class 4 Claimants** (Allowed General Unsecured Claims) are impaired and shall be paid 100% of their allowed claims.

**Class 5 Claimants** (Subordinated and Penalty Claims) are impaired and will not be paid in this Plan.

**Class 6 Claimants** (Interests) are impaired and will not be paid in this Plan.

**Class 7 Claimants** (Allowed Administrative Claims of Professionals and US Trustee) are unimpaired and will be paid in full on the Effective Date of this Plan. Professional fees are subject to approval of the Court as reasonable. Debtor’s attorney’s attorney fees approved by this Court and payable to the law firm of Spigner & Associates, P.C. will be paid immediately following the later of confirmation or approval by the Court out of the available cash. This case will not be closed until all Allowed Administrative Claims are paid in full. Class 7 Creditor Allowed Claims are estimated as of the date of filing of this plan to not exceed \$20,000.00 including Section 1930 fees. Section 1930 fees shall be paid in full prior to the Effective Date by the Debtor. The Debtor is required to continue to make quarterly payments to the U.S. Trustee and may be required to file post-

confirmation operating reports until the case is closed. The Class 7 claimants are not impaired under this Plan.

Except to the extent permitted by the Bankruptcy Court pursuant to Rule 3018 of the Bankruptcy Rules, ballots that are received after the Voting Deadline will not be accepted or used by the Debtor in connection with the Debtor's request for confirmation of the Plan.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt) acceptance, revocation or withdrawal of the ballots or master ballots will be determined by the Debtor in its sole discretion, whose determination will be final and binding.

For all classes, the Ballot must be returned to Reedy Macque Spigner, 555 Republic, Suite 430, Plano, Texas 75074. In order to be counted, ballots must be **RECEIVED** no later than at the time and date stated on the ballot.

#### **Best Interests of Creditors Test**

Section 1129(a)(7) of the Code requires that each impaired class of claims or interests accept the Plan or receive or retain under the Plan on account of such claim or interest, property of a value as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. If the Section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class shall receive or retain under the Plan, on account of such claim, property of a value, as of the Effective Date of the Plan, that is not less than the value of such holder's interest in the estate's interests in the property that secures such claims. In order for the Plan to be confirmed, the Bankruptcy Court must determine that the Plan is in the best interests of the Debtor's Creditors. Accordingly, the proposed Plan must provide the Debtor's creditors with more than they would

receive in a Chapter 7 liquidation. It is anticipated that in a Chapter 7 liquidation, the Debtor's Creditors other than secured creditors and priority creditors, would receive nothing. Accordingly, since the plan proposes to pay a substantial dividend to all creditors, such creditors are receiving more than they would receive in a chapter 7 liquidation. Accordingly, the Plan satisfies the requirements of Section 1129(a)(7).

### **Cramdown**

The Court may confirm the Plan even though less than all of the classes of claims and interests accept it. The requirements for confirmation of a Plan over the objection of one or more classes or interests are set forth in section 1129(b) of the Code.

## **II**

### **REPRESENTATIONS**

The information contained in this Disclosure Statement has been derived from the Debtor, unless specifically stated to be from other sources.

All initially capitalized and bolded words in this Disclosure Statement have the same definitions provided for in Article I of the Plan.

NO REPRESENTATIONS CONCERNING THE DEBTOR IS AUTHORIZED BY THE DEBTOR OTHER THAN THOSE SET FORTH IN THIS DISCLOSURE STATEMENT. THE DEBTOR RECOMMENDS THAT ANY REPRESENTATION OR INDUCEMENT MADE TO SECURE YOUR ACCEPTANCE OR REJECTION OF THE PLAN WHICH IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN REACHING YOUR DECISION ON HOW TO VOTE ON THE PLAN. ANY REPRESENTATION OR INDUCEMENT MADE TO YOU NOT CONTAINED HEREIN

SHOULD BE REPORTED TO THE ATTORNEYS FOR DEBTOR WHO SHALL DELIVER SUCH INFORMATION TO THE COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.

ANY BENEFITS OFFERED TO THE CREDITORS ACORDING TO THE PLAN WHICH MAY CONSTITUTE "SECURITIES" HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL SECURITIES AND EXCHANGE COMMISSION ("SEC"), THE TEXAS SECURITIES BOARD, OR ANY OTHER RELEVANT GOVERNMENTAL AUTHORITY IN ANY STATE OF THE UNITED STATES. IN ADDITION, NEITHER THE SEC, NOR ANY OTHER GOVERNMENTAL AUTHORITY HAS PASSED UPON THE ACURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATIONS TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. FOR THE FOREGOING REASON, AS WELL AS BECAUSE OF THE IMPOSSIBILTY OF MAKING ASSUMPTIONS, ESTIMATES, AND PROJECTIONS INTO THE FURTRE WITH ACCURACY, THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS COMPLETELY ACCURATE, ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO ENSURE THAT SUCH INFORMATION IS ACURATE. THE APPROVAL BY THE COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE COURT OF THE PLAN OR GUARANTEE THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

THE DEBTOR BELIEVES THAT THE PLAN WILL PROVIDE CLAIMANTS WITH AN OPPROTUNITY ULTIMATELY TO RECEIVE MORE THAN THEY WOULD RECEIVE

IN A LIQUIDATION OF THE DEBTOR'S ASSETS, AND SHOULD BE ACCEPTED. CONSEQUENTLY, THE DEBTOR URGES THAT CLAIMANTS VOTE FOR THE PLAN.

DEBTOR DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS CORRECT, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THE PLAN WHICH ACCOMPANIES THE DISCLOSURE STATEMENT IS AN INTEGRAL PART OF THE DISCLOSURE STATEMENT, AND EACH CREDITOR AND INTEREST HOLDER IS URGED TO CAREFULLY REVIEW THE PLAN PRIOR TO VOTING ON IT.

### III

#### **FINANCIAL PICTURE OF THE DEBTOR**

##### **History and Background of the Debtor**

The Debtor is a non-public corporation. Since 2009, the Debtor has been in the business of lighting design. US Energy Management is an energy management company established in April 2009. Debtor specializes in energy efficient lighting design and implementation services for industrial, commercial, manufacturing, warehousing, retail, office and parking garages. Debtor's designs lower electricity consumption and improve facility conditions through energy efficient lighting design and installation.

Debtor is owned and operated by Brad Hitchcock who owns a 50% share of the stock and Holly Hitchcock who owns the remaining 50% stock interest in Debtor. Debtor receives approximately \$45,000.00 in gross (net) monthly income from contracts for lighting and lighting design of commercial and residential properties. Prior to the commencement of this case and at



the beginning of this case, Debtor's average monthly income is approximately \$119,492.13, and expenses of approximately \$114,564.66 per month as shown on the Cash Flow Statement on file with the Court. Debtor's latest filed monthly operating report shows that Debtor received \$359,169.35 in income and incurred \$291,704.84 in expenses for a profit of \$67,464.38<sup>1</sup>. Thus, Debtor is operating at a profit and continues to operate at or better than the rate shown at the commencement of the case.

The Debtor filed this bankruptcy to restructure its obligations and debt into a payment schedule which will allow it to continue to operate his business.

### **Events Leading to Bankruptcy**

Creditor, JRB International and Robert Brewer obtained a judgment from a state court lawsuit for a breach of contract claim in case no. 416-04161-2015 in the 416<sup>th</sup> Judicial District Court, Collin County, Texas ("Judgment"). In attempting to collect on the judgment, a receiver was appointed. Receiver filed a writ on Debtor's bank account and seized all of the operating money in operating bank accounts pursuant to the Judgment. The interruption in Debtor's cash flow and operational funds due to the actions of Creditor JRB International and Robert Brewer resulted in the necessity of filing for relief under the provisions of the Bankruptcy Code. Debtor was forced to file for Chapter 11 relief to enable it to continue operating its business, pay employees and vendors, and earn money. This State Court judgment is presently on appeal to the 5<sup>th</sup> District Court of Appeals, Dallas, Texas.

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<sup>1</sup> Debtor's income and expenses vary according to the jobs and the material required for those contracted jobs as the Debtor maintains little inventory. As Debtor has greatly increased the number of jobs over the past few months, the income and expenses have varied, but the profitability of the company has significantly increased.

### **Post-Petition Operations**

Since the filing of the Bankruptcy, the Debtor has worked to increase the number of contracts for lighting designs with commercial operations, and restructure day-to-day procedures to more efficiently operate the business. The increase income will allow the Debtor to fund the proposed plan of reorganization.

Since the Petition Date, Debtor has continued its normal course of operation without interruption and has remained current on all post-petition obligations. Debtor has 2 full time employees and variable full and part-time hourly contract employees as necessary to complete contracted installations. Mr. Hitchcock continues to manage the daily operations of the business and will continue in such capacity after confirmation of the Plan. Mrs. Hitchcock works in the business with her husband.

### **Future Income and Expense Under the Plan**

Under the terms of the Plan, the Creditors will be paid from the ongoing operations of the Debtor from increased numbers of contracts, and more efficient and effective management of resources and persons.

### **Post-Confirmation Management**

Upon Confirmation of Debtor's Plan, U.S. Energy Management, Inc. will remain in control of its assets.

## **IV**

### **ANALYSIS AND VALUATION OF PROPERTY**

The Debtor's primary asset is the ability of Debtor's officer to generate business. Debtor does own some equipment valued at approximately \$46,205.70. However, much of the value of

the Debtor's business is in the receivables and the owner/operator Brad Hitchcock's ability to obtain additional contracts and continue to build customer base and business.

A liquidation analysis of the Debtor's assets is attached hereto as Exhibit "B"

## V

### **SUMMARY OF PLAN OF REORGANIZATION**

The Debtor's Plan will break the existing claims into 4 categories of Claimants. The Creditors will receive payments beginning on the Effective Date.

#### **Satisfaction of Claims and Debts:**

The treatment of and consideration to be received by holders of Allowed Claims or interests pursuant to this Articles V and VI of this Plan shall be the sole and exclusive means for full settlement, release and discharge of their respective Claims, Debts, or Interests. On the Confirmation Date, the Reorganized Debtor shall assume all duties responsibilities and obligations for the implementation of this Plan. Any class of Claimants failing to vote on this Plan shall be deemed to have accepted this plan in its present form or as modified as permit herein.

**Class 1 Claimants** (Allowed Secured Tax Claims) are unimpaired to the extent that there is no balance owing and due to Collin County for unpaid real and business personal property taxes for the tax years 2015 and 2016 ("Ad Valorem Taxes") and shall be treated as secured claims.

**Class 2 Claimants** (Allowed Priority IRS Tax Claims) are impaired as defined by Section 1124 of the Code. The Debtor is seeking the acceptance of the Plan by Claimants in Class 2. Each holder of an Allowed Claim in Class 2 may vote on the Plan completing, dating and signing the ballot sent to each holder and filling the ballot as set forth below.

**Class 3 Claimants** (Allowed Priority Claims of Texas Comptroller) are impaired and shall be satisfied in full.

**Class 4 Claimants** (Allowed General Unsecured Claims) are impaired and shall be paid 100% of their allowed claims. Further, the Claim that is on appeal will be addressed once those numbers are determined.

**Class 5 Claimants** (Subordinated and Penalty Claims) are impaired and will not be paid in this Plan.

**Class 6 Claimants** (Interests) are impaired and will not be paid in this Plan.

**Class 7 Claimants** (Allowed Administrative Claims of Professionals and US Trustee) are unimpaired and will be paid in cash in full on the Effective Date of this Plan. Professional fees are subject to approval of the Court as reasonable. Debtor's attorney's attorney fees approved by this Court and payable to the law firm of Spigner & Associates, P.C. will be paid immediately following the later of confirmation or approval by the Court out of the available cash. This case will not be closed until all Allowed Administrative Claims are paid in full. Class 7 Creditor Allowed Claims are estimated as of the date of filing of this plan to not exceed \$20,000.00 including Section 1930 fees. Section 1930 fees shall be paid in full prior to the Effective Date by the Debtor. The Debtor is required to continue to make quarterly payments to the U.S. Trustee and may be required to file post-confirmation operating reports until the case is closed. The Class 7 claimants are not impaired under this Plan.

## VI

### **MECHANICS/IMPLEMENTATION OF PLAN**

Debtor anticipates the continued operation and ownership of the business to fund the Plan. All payments under the Plan shall be made through the Disbursing Agent,

As specified in Section 1125(e) of the Bankruptcy Code, persons that solicit acceptances or rejections of this Plan and/or that participate in the offer, issuance, sale or purchase of securities

offered or sold under this Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, are not liable on account of such solicitation or participation for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejection of this Plan or the offer, issuance, sale or purchase of securities.

## **VII**

### **FEASIBILITY OF PLAN**

Based upon the projected cash flows from the properties which the Debtor shall keep under the Plan, the Debtor believes the Plan to be feasible. A cash flow of the Debtor's income projections is attached as Exhibit E1 and E2".

## **VIII**

### **RETENTION OF JURISDICTION**

The Bankruptcy Court's jurisdiction shall be retained under the Plan as set forth in Article XIV of the Plan.

This Plan shall be the sole and exclusive remedy for any Creditor of the Debtor dealt with herein, so long as the Debtor or Reorganized Debtor are not in default under the Plan.

## **IX**

### **ALTERNATIVES TO DEBTOR'S PLAN**

If the Debtor's Plan is not confirmed, the Debtor's bankruptcy case may be converted to a case under Chapter 7 of the Code in which a Trustee would be appointed to liquidate the assets of the Debtor for distribution to its Creditors in accordance with the priorities of the Code. Generally, a liquidation or forced sale yields a substantially lower amount for creditors.

**X**

**RISKS TO CREDITORS UNDER THE PLAN**

Claimants should be aware that there are a number of substantial risks involved in consummation of the Plan. The risk connected with this Plan is the Debtors ability to pay the Class 2-7 Claimants. The Plan contemplates that there will be excess funds to pay Creditor Claims.

**XI**

**TAX CONSEQUENCES TO THE DEBTOR**

Implementation of the Plan may result in federal income tax consequence to holders of Claims, Equity Interest Holders, and to the Debtor. Tax consequences to a particular Creditor or Equity Interest Holder may depend on the particular circumstances or facts regarding the Claim of the Creditor or the interests of the Equity Interest Holder. CLAIMANTS ARE URGED TO CONSULT THEIR OWN TAX ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO THEM UNDER FEDERAL APPLICABLE STATE AND LOCAL TAX LAWS.

Pursuant to the Plan, a significant portion of outstanding indebtedness of the Debtor is being satisfied at a discount. The debt forgiveness income resulting from the satisfaction of Claims at a discount should not constitute taxable income, although it will reduce tax attributes, such as net operating loss (“NOL”) carry-overs. The utilization of any NOL’s remaining after application of the attribute reduction rule may be subject to limitations imposed by section 382 of the Tax Code. In this case, however, the debtor does not currently have NOL’s which would be affected by the Plan.

**XII**

**PENDING OR ANTICIPATED LITIGATION**

The Debtor has evaluated potential claims which may be brought. Debtor is currently involved in pending litigation against a Creditor, JRB International and Robert Brewer out of a

breach of contract claim in case no. 416-04161-2015 in the 416<sup>th</sup> Judicial District Court, Collin County, Texas. The judgment from that case is on appeal to the 5<sup>th</sup> District Court of Appeals in Dallas, Texas.

The Debtor does not believe that any additional claims under the provision of the Bankruptcy Code exist which would be beneficial for the Debtor to pursue. There are no claims the Debtor is aware of which would provide a greater return to the creditors of the estate than is provided in the Plan.

Dated November 25, 2016

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Respectfully submitted,

/s/ Brad Hitchcok  
U.S. Energy Management, Inc.

and

/s/ Reedy Macque Spigner  
Reedy Macque Spigner  
State Bar No. 18934800  
Denise Turnbull  
State Bar No. 24067913  
555 Republic Drive, Suite 101  
Plano, Texas 75074  
972-881-0581  
972-424-1309 FAX  
Attorneys for Debtor,  
U.S. Energy Management, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on or before November 28, 2016, a true and correct copy of the above and foregoing documents shall be served via electronic means if available, to the following parties, affected parties on the attached list, and all parties requesting electronic notice:

Debtor, Brad Hitchcock –via email:

A. J. Lynn, attorney for Creditor Robert Brewer and JRB International-  
via email: [Ajlynn6367@sbcglobal.net](mailto:Ajlynn6367@sbcglobal.net)

Meredyth Kippes, UST -via email: [meredyth.a.kippes@usdoj.gov](mailto:meredyth.a.kippes@usdoj.gov)

And to all others on the attached service list

/s/ Reedy Macque Spigner  
Reedy Macque Spigner

**EXHIBITS**

Exhibit A	Debtor's Plan of Reorganization
Exhibit B	Balance Sheet
Exhibit C	Monthly Operating Report
Exhibit D	Projections
Exhibit E	Liquidation Analysis