

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

DOMINION STEEL SPECIALTIES, INC.           §           Case No. 16-34107-H2-11  
Debtor   §   (Chapter 11)

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DISCLOSURE STATEMENT UNDER 11 U.S.C. § 1125 IN SUPPORT OF PLAN OF  
REORGANIZATION OF  
DOMINON STEEL SPECIALISTS, INC.

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THIS DISCLOSURE STATEMENT IS SUBMITTED TO ALL CREDITORS OF THE DEBTOR ENTITLED TO VOTE ON THE PLAN OF REORGANIZATION HEREIN DESCRIBED AND CONTAINS INFORMATION THAT MAY AFFECT YOUR DECISION TO ACCEPT OR REJECT THE DEBTOR'S PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT IS INTENDED TO PROVIDE ADEQUATE INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE AS TO THE DEBTOR'S PLAN OF REORGANIZATION. ALL CREDITORS AND INTEREST HOLDERS ARE URGED TO READ THE DISCLOSURE STATEMENT AND ATTACHMENTS WITH CARE AND IN THEIR ENTIRETY.

ON \_\_\_\_\_, 2016, THE BANKRUPTCY COURT APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE. SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN HEREIN DESCRIBED IS BEING SOUGHT FROM CREDITORS AND INTEREST HOLDERS WHOSE CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR ARE IMPAIRED UNDER THE PLAN. CREDITORS AND INTEREST HOLDERS ENTITLED TO VOTE ON THE PLAN ARE URGED TO VOTE IN FAVOR OF THE PLAN AND TO RETURN THE COMPLETED BALLOT INCLUDED WITH THIS DISCLOSURE STATEMENT IN THE ACCOMPANYING ENVELOPE ADDRESSED TO KIMBERLY A. BARTLEY, WALDRON & SCHNEIDER, 15150 MIDDLEBROOK DRIVE, HOUSTON, TEXAS 77058, NOT LATER THAN \_\_:00 \_\_.M. (CST) ON \_\_\_\_\_, 2017.

ARTICLE 1  
INTRODUCTION

1.1 Summary

Dominion Steel Specialists, Inc. ("Debtor") is proposing to pay in full all Allowed Claims over the 60 months following the Effective Date through a graduated payment plan for unsecured

creditors. To the extent the Debtor's net profits exceeds its current projections, the minimum payments in any given year may be supplemented by additional payments until all Allowed Claims are paid in full. The Debtor believes this proposal is the only realistic way the Debtor can repay its creditors in full, which makes the Debtor's proposed plan the best option for creditors and parties in interest. Under the Debtor's proposed plan, not only will the Debtor's creditors be paid in full, but they will have the opportunity to continue doing business with the Reorganized Debtor after confirmation. Accordingly, the Debtor requests that all creditors and parties in interest support this proposed plan.

## **1.2 General Information Concerning Disclosure Statement and Plan.**

The Debtor submits this Disclosure Statement, as may be amended from time to time, under 11 U.S.C. § 1125 and Fed. R. Bankr. P. 3016 to all of its known Creditors and Interest Holders entitled to vote on the proposed Plan of Reorganization ("Plan"). The purpose of this Disclosure Statement is to disclose information adequate to enable Creditors who are entitled to vote to arrive at a reasonably informed decision in exercising their rights to vote on the Plan of Reorganization ("Plan"). A copy of the Plan is attached as **Exhibit "A"**. Capitalized terms used but not defined in this Disclosure Statement shall have the meanings assigned to them in the Plan or in the Bankruptcy Code and Bankruptcy Rules. All section references in this Disclosure Statement are to the Bankruptcy Code unless otherwise indicated.

The Debtor has promulgated the Plan consistent with the provisions of the Bankruptcy Code. The purpose of the Plan is to provide an opportunity for the Debtor to remain in business. Once the Plan is completed, the Debtor will continue to operate as a going concern. The Debtor believes that the Plan provides for the maximum possible recovery available for all Classes of Claims and Equity Interests.

This Disclosure Statement contains information on the assets of the Debtor, the total amount of debt owed by the Debtor from the claims filed by the Debtor's creditors, and information on the Debtor's current financial condition from the financial records maintained by the Debtor. This Disclosure Statement is not intended to replace a careful review and analysis of the Plan, including the specific treatment of Claims under the Plan. It is submitted as an aid and supplement to your review of the Plan to explain the terms of the Plan. Every effort has been made to explain fully various aspects of the Plan as they affect the Creditors. If any questions arise, you are encouraged to consult with your own counsel. Counsel for the Debtor is available to answer any questions that your counsel may have regarding the Plan and Disclosure Statement.

## **1.3 Disclaimers.**

**UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE CONCERNING THE DISCLOSURE STATEMENT AND THE PLAN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THE**

**DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.**

**NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND SECTION 1125 OF THE BANKRUPTCY CODE, AND NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTOR TO SOLICIT ACCEPTANCE OR REJECTIONS OF THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. CREDITORS AND EQUITY INTEREST HOLDERS SHOULD NOT RELY ON ANY INFORMATION RELATING TO THE DEBTOR OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS AND SCHEDULES ATTACHED.**

**EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS, NO REPRESENTATION CONCERNING THE DEBTOR, ITS ASSETS, PAST OR FUTURE OPERATIONS, OR CONCERNING THE PLAN IS AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT THE DECISION WITH RESPECT TO THE PLAN. ANY REPRESENTATIONS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR.**

**THE INFORMATION CONTAINED HEREIN IS BELIEVED RELIABLE. HOWEVER, THE DEBTOR HAS NOT UNDERTAKEN TO VERIFY OR INVESTIGATE SUCH INFORMATION. ACCORDINGLY, THE DEBTOR AND ITS PROFESSIONALS CANNOT MAKE ANY REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THE DEBTOR MAKES NO REPRESENTATIONS REGARDING THE TAX IMPLICATIONS OF ANY TRANSACTION CONTEMPLATED UNDER THE PLAN. IT IS NOT UNCOMMON FOR PARTIES TO RETAIN THEIR OWN TAX ADVISORS TO ANALYZE THE PLAN. WILSON ENCOURAGES ALL PERSONS THAT MIGHT BE AFFECTED TO SEEK INDEPENDENT ADVICE REGARDING THE TAX EFFECTS OF THE PLAN.**

**DISTRIBUTION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESS OR IMPLIED, BY THE DEBTOR OR ITS RESPECTIVE PROFESSIONAL CONSULTANTS THAT THE PLAN IS FREE FROM RISK, THAT THE ACCEPTANCE OF THE PLAN WILL RESULT IN A RISK-FREE RESTRUCTURING OF THE DEBTOR'S OBLIGATIONS, THAT ALL POTENTIAL ADVERSE EVENTS HAVE BEEN ANTICIPATED, OR THAT THE DEBTOR'S OBLIGATIONS AS RESTRUCTURED BY THE PLAN WILL BE FULLY PERFORMED IN THE FUTURE WITHOUT RISK OF FURTHER DEFAULT.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT AND THE PLAN ATTACHED SHOULD BE READ IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN, WHICH CONTROLS IN THE CASE OF ANY INCONSISTENCY.**

#### **1.4 Answers to Commonly Asked Questions.**

As part of the Debtor's effort to inform Creditors regarding the Plan and the Plan confirmation process, the following summary provides answers to questions which parties who receive a disclosure statement often ask.

##### **1.4.1 Who is the Debtor?**

Dominion Steel Specialists, Inc. is a Texas corporation formed in 2002 and is one of the leading organizations for the import and wholesale of steel products used in a supporting large industrial applications for a variety of industries nationwide.

##### **1.4.2 What is Chapter 11 bankruptcy?**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code that allows financially distressed businesses to reorganize their debts. The commencement of a Chapter 11 case creates an estate containing all the legal and equitable interests of the Debtor in property as of the date the Petition is filed. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate the debtor's business as a debtor-in-possession. The Debtor remains in possession of its properties and assets. When a Chapter 11 bankruptcy case is filed, creditors are prohibited from attempting to collect debts or enforce liens against the Debtor or its assets without first obtaining approval from the Bankruptcy Court.

##### **1.4.3 If the Plan governs how my claim is treated, what is this Disclosure Statement?**

The Bankruptcy Code requires that debtors solicit acceptances or rejections of a proposed plan from creditors and shareholders whose claims and interests are impaired before the plan can be confirmed by the bankruptcy court. In connection with the presentation of the Plan, the Debtor must provide a Disclosure Statement. The purpose of the Disclosure Statement is to provide creditors with adequate information about the financial affairs of the Debtor to allow creditors to make an informed decision about the proposed Plan. At that time, creditors and interest holders whose claims and interests are impaired under the Plan also receive a voting ballot and other materials.

#### **1.4.4 Do I have to attend the hearing on the Disclosure Statement and Plan?**

If you do not believe that the disclosure statement contains adequate information or if you believe that there is a problem with the Debtor's Plan and you want to either get additional information from the Debtor or object to the plan, you need to file a written objection stating your position and come the hearing. Debtor's counsel can discuss your concerns from the Debtor's perspective, but cannot give you legal advice and you may wish to consult with your own counsel.

#### **1.4.5 Has this Disclosure Statement been approved by the Bankruptcy Court?**

Yes. On \_\_\_\_\_, 2016, the Bankruptcy Court approved this Disclosure Statement as containing adequate information. "Adequate information" means information of a kind, and in sufficient detail, as far as is practicable considering the nature and history of the Debtor and the condition of the Debtor's books and records, to enable a hypothetical investor typical of holders of claims or interests of the relevant classes to make an informed judgment whether to vote to accept or reject the Plan. The Bankruptcy Court's approval of this Disclosure Statement does not constitute an endorsement of any of the representations contained in either the Disclosure Statement or the Plan.

#### **1.4.6 How do I determine how my Claim or Interest is classified?**

To determine the classification of your Claim, you must determine the nature of your claim or interest. Under the Plan, claims and interests are classified into a series of Classes. The pertinent sections of the Disclosure Statement and Plan disclose, among other things, the treatment that each class of Claims or Interests will receive if the Plan is confirmed.

#### **1.4.7 Why is confirmation of the Plan important?**

The Bankruptcy Court's confirmation of the Plan is a condition to the Debtor carrying out the treatment of Creditors and Interest Holders under the Plan. Unless the Plan is confirmed, and any other conditions to confirmation or to the effectiveness of the Plan are satisfied, the Debtor is legally prohibited from satisfying Claims or Interests as provided in the Plan. Put more simply, confirmation of a plan in chapter 11 is required before the Debtor can begin making payments to pre-petition Creditors.

#### **1.4.8 What is necessary to confirm the Plan?**

Under applicable provisions of the Bankruptcy Code, confirmation of the Plan requires that, among other things, at least one class of impaired Claims or Interests vote to accept the Plan. Acceptance by a class of claims or interests means that at least two-thirds in the total dollar amount and more than one-half in number of the allowed Claims or Interests actually voting in the class vote in favor of the Plan. Because only those claims or interests who vote on a plan will be counted for purposes of determining acceptance or rejection of a plan by an impaired class, a plan can be approved with the affirmative vote of members of an impaired class who own less than two-thirds in amount and one-half in number of the claims/interests. Besides acceptance of the Plan by a class of impaired

creditors or interests, a bankruptcy court also must find that the Plan meets a number of statutory tests before it may confirm the Plan. These requirements and statutory tests generally are designed to protect the interests of holders of impaired claims or interests who do not vote to accept the Plan but who will nonetheless be bound by the Plan's provisions if the bankruptcy court confirms the Plan. If one or more classes vote to reject the Plan, the Debtor may still request that the Bankruptcy Court confirm the Plan under § 1129(b) of the Bankruptcy Code. To confirm a plan not accepted by all classes, the plan proponent must demonstrate that the plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under, and that has not accepted, the plan. This method of confirming a plan is commonly called a "cramdown." In addition to the statutory requirements imposed by the Bankruptcy Code, the plan itself also provides for certain conditions that must be satisfied as conditions to confirmation.

#### **1.4.9 What is effect of confirmation of the Plan?**

The provisions of the Plan bind all Creditors and Interest Holders, whether or not they accept the Plan. On and after the Effective Date, all holders of Claims shall be precluded and enjoined from asserting any Claim (i) against the Debtor, the Reorganized Debtor or their assets or properties based on any transaction or other activity of any kind that occurred prior to the Confirmation Date except as permitted under the Plan; and (ii) any derivative claims, including claims against third parties asserting alter ego claims, fraudulent transfer claims or any other type of successor liability.

Neither (a) the Reorganized Debtor, the Plan Agent or any of their employees, officers, directors, agents, representatives, affiliates, attorneys, financial advisors, or any other professional persons employed by any the Reorganized Debtor, or the Plan Agent, nor (b) each Professional for the Reorganized Debtor, the Plan Agent or any of their employees, officers, directors, agents, representatives, affiliates, attorneys, financial advisors, or any other professional persons employed by any of them (the persons identified in (a) and (b) are collectively referred to as "Protected Persons"), shall have or incur any liability to any Person or Entity under any theory of liability for any act or omission occurring on or after the Petition Date in connection or related to the Debtor, the Chapter 11 Case, or the Estate, including, but not limited to, (i) formulating, preparing disseminating, implementing, confirming, consummating or administering this Plan (including soliciting acceptances or rejections thereof); or (ii) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken in connection with this Plan, except for acts constituting willful misconduct, gross negligence, or *ultra vires* activity and in all respects such Protected Persons shall be entitled to rely in good faith upon the advice of counsel. In any action, suit or proceeding by any Person contesting any action by, or non-action of any Protected Person as constituting willful misconduct, gross negligence, or *ultra vires* activity or not being in good faith, the reasonable attorneys' fees and costs of the prevailing party will be paid by the losing party and as a condition to going forward with such action, suit, or proceeding at the outset thereof, all parties thereto will be required to provide appropriate proof and assurances of their capacity to make such payments of reasonable attorneys' fees and costs in the event they fail to prevail.

#### **1.4.10 Is there an Unsecured Creditors' Committee?**

Yes. An Unsecured Creditors' Committee was formed in this case. Chris Adams with Okin Adams

is counsel for the Committee.

#### **1.4.11 When is the deadline for returning my ballot?**

The Bankruptcy Court has directed that, to be counted for voting purposes, your ballot must be received by the Debtor's counsel, Kimberly A. Bartley, Waldron & Schneider, LLP, 15050 Middlebrook Drive, Houston, Texas 77058 or fax 281-488-4597 by \_\_\_\_\_, 2016, at 6:00 pm CST.

**IT IS IMPORTANT THAT ALL IMPAIRED CREDITORS VOTE ON THE PLAN. THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST POSSIBLE RECOVERY TO CREDITORS. THE DEBTOR, THEREFORE, BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF CREDITORS AND RECOMMENDS THAT ALL IMPAIRED CREDITORS VOTE TO ACCEPT THE PLAN.**

### **ARTICLE II OVERVIEW OF PLAN**

An overview of the Plan is set forth below. This overview is qualified in its entirety by reference to the Plan, a copy of which is attached hereto as **Exhibit "A"** to this Disclosure Statement. If the Court confirms the Plan, and in the absence of the applicable stay, and all other conditions set forth in the Plan are satisfied, the Plan will take effect on the Effective Date. The Effective Date is the first business day after the date on which the Confirmation Order becomes a Final Order.

On the Effective Date, all property of the Debtor's bankruptcy estate will vest in the Debtor, as the Reorganized Debtor, free and clear of all liens, claims and encumbrances, except as may be provided in the Plan. The Reorganized Debtor will thereupon be authorized to continue to conduct its business and to pay all of its debts as set forth in the Plan. The Plan does not propose to modify or supplant any federal or state laws or regulations that may be applicable to the Reorganized Debtor. The Debtor intends to appoint Robert Comeaux, Jr. as the initial Plan Agent. The Plan Agent is the person charged with administration of the confirmed Plan including, but not limited to, making distributions contemplated under the Plan, enter into any agreement required or consistent with the Plan, prosecute any litigation determined to be appropriate or beneficial to the Reorganized Debtor, and enforce all provisions of the Plan.

As of the Effective Date of the Plan, the Reorganized Debtor, will be responsible for all payments and distributions to be made under the Plan to the holders of Allowed Claims, together with any payments that become due under any executory contract or unexpired lease assumed by the Debtor or the Reorganized Debtor. Each executory contract and unexpired lease to which the Debtor is determined to be a party shall be deemed rejected unless the Debtor expressly assumes a particular executory contract or lease before the Effective Date.

**ARTICLE III  
THE DEBTOR**

**3.1 The Debtor's Pre-Petition Business and the Events Leading to Bankruptcy**

**3.1.1 The Debtor's Pre-Petition Business and Financial Condition.**

The Debtor is a corporation formed in the State of Texas in 2002. On the date this case was filed, the Debtor's equity was held by a single owner, Robert Comeaux, Jr. Mr. Comeaux remains the sole equity holder of the Debtor. The Debtor is one of the leading companies for the import and wholesale of steel products used in a supporting large industrial applications for a variety of industries nationwide.

Attached as **Exhibit "B"** are the Debtor's financial statements for 2013 through 2016. Further, Debtors in chapter 11 bankruptcy are required to file monthly operating reports with the Bankruptcy Court which reflect current financial information. The most recent monthly operating report filed by the Debtor are attached hereto as **Exhibit "C"**. Since the filing of this case, the Debtor has continued to operate its business and has generated monthly revenues averaging approximately \$187,475.00 from August through October, 2016 from the sale of products.

Prior to the commencement of this case, Crestmark Bank, an asset based lender, extended revolving line of credit to the Debtor with a credit limit not to exceed \$2,000,000.00 ("Crestmark Loan"). The Crestmark Loan is secured by all assets of the Debtor including, but not limited to, accounts receivable, accounts, inventory, furniture, fixtures, and equipment. The Crestmark Loan is repaid monthly in an amount equal to the outstanding accounts receivable received by the Debtor for product sold in prior months. The Debtor remains current with Crestmark Bank and is eligible to borrow against the line of credit for its operations as needed.

During the pendency of this case, the Debtor entered into an agreement with Crestmark Bank for the use of cash collateral and continuation of the Crestmark Loan. The agreement was approved by the Court's November 7, 2016, Order ("Cash Collateral Order") (Docket 42). The Debtor has continued to utilize the Crestmark Loan to acquire additional inventory and materials for the sale of product to its customers. The Debtor has remained current with its post-Petition obligations on the Crestmark Loan and, as of the filing of this Disclosure Statement, owes approximately \$878,000.00 on the Crestmark Loan.

In addition to the bank payments, the Debtor's monthly expenses include its rent in the monthly amount of \$11,000.00 to Pelac Central City ("Pelac" or "Landlord"), of which \$5,500.00 is currently paid monthly with the balance of \$5,500.00 accruing monthly to be paid in full by March 31, 2017, unless extended by the landlord, utilities in the total average monthly amount of \$3,000.00, wages to employees in the total average monthly amount of \$36,000.00, insurance in the approximate amount of \$5,000.00, approximately \$150,000.00 - \$200,000.00 monthly in cost of materials and



goods sold, miscellaneous office expenses including, but not limited to, warehouse supplies, uniforms, advertising, and repair and maintenance in the approximate amount of \$3,600.00.

While the Debtor currently anticipates the repayment of its unsecured debt through payment from profits, the Debtor continues to investigate opportunities for the sale of equity to interested third parties to generate revenue for payment to unsecured creditors. If the Debtor successfully negotiates a sale of its equity, the Debtor anticipates the proposed payments to unsecured creditors will be completed on an expedited basis. The Debtor estimates a return of 100.0% to general unsecured creditors.

The Debtor's primary focus for the first year following the Effective Date is to restructure its inventory acquisition process. The Debtor anticipates acquiring more inventory and product available for sale to customers directly from the overseas manufacturers rather than relying solely on traditional vendor financing. This shift will allow the Debtor to streamline its inventory and increase the diversity of product and inventory available for sale. The Debtor anticipates this shift will increase its profitability by 10-12%. During the first year following the Effective Date, the Debtor anticipates a gross sales revenues of \$4,600,000.00. After deduction of operational needs including cost of goods sold, and operating expenses such as bank fees and interest, utilities, payroll, and rent of approximately \$4,564,000.00, the Debtor anticipates approximately \$36,000.00 in net pre-tax profit.

Following the restructuring of its inventory, during the second and third years after the Effective Date, the Debtor intends to expand its marketing efforts by adding at least one key sales person to develop new customer leads as well as working directly with the overseas manufacturers to increase participation in opportunities available in the manufacturing-distribution structure achieved during the prior year. The Debtor anticipates requiring an additional \$2,000,000.00 in inventory in year two to sustain the sales growth achieved in year one. The Debtor currently projects the gross margin for these sales to be approximately 28.0%, which will largely be achieved by reducing the higher costs associated with traditional vendor financing and increasing the acquisition of inventory directly from factories on a cash basis. During year two, the Debtor anticipates net pre-tax profit of approximately \$304,000.00 for distribution to unsecured creditors. The net profit is derived from the difference between sales revenue of approximately \$5,800,000.00 and total operational costs of approximately \$5,496,000.00.

During year three, as the Debtor continues to expand its marketing efforts and its direct factory relationships, it anticipates increasing its sales revenue by approximately 15.0% from year 2. The increased sales revenue and modifications to its inventory acquisition processes will enable the Debtor to achieve a gross profit margin of approximately 30.0%. The Debtor anticipates gross sales revenues of approximately \$6,670,000.00 and total operations costs of approximately \$6,079,000.00, leaving net pre-tax profit of approximately \$591,000.00.

### **3.1.2 Events Leading to Bankruptcy**

The Debtor was formed in 2002 as a corporation specializing in the import and wholesale of steel products used in a supporting large industrial applications for a variety of industries nationwide. The downturn in the energy market beginning in the Spring, 2013, consolidation through mergers

and acquisitions of the Debtor's major customers during the four years prior to the filing, and the encroachment of international manufacturers into the Debtor's market for direct distribution to customers during the same period led to the Debtor incurring an increased level of financing and trade debt. This case was filed to permit the Debtor sufficient time to reorganize its debts and ensure the continued viability of the company.

### **3.1.3 Debtor's Assets**

On the Petition Date, the Debtor's assets consisted primarily of inventory, furniture, fixtures, equipment, accounts receivable, and general intangibles. The Debtor leases its facilities and does not own any real property. The Debtor filed with the Bankruptcy Court its Schedules of Assets and Liabilities and Statement of Financial Affairs (collectively referred to as the "Schedules"). The Schedules contain a listing of the Debtor's assets and liabilities, together with the estimated fair market value of the Debtor's assets and the amounts owed to its Creditors. The value of the Debtor's tangible assets was derived by using a wholesale liquidation value after factoring the age, depreciation, and functionality of the asset. In connection with this Disclosure Statement, Creditors are referred to the Debtor's Schedules, copies of which are available from the Clerk's office or from Debtor's counsel upon request.

### **3.1.4 Liabilities and Claims against the Debtor.**

The Debtor's Schedules contain a detailed listing of creditors, together with the estimated amount of Claims. The Debtor's Schedules generally organize creditors into three general groupings: (i) Schedule D – Secured Claims; (ii) Schedule E – Unsecured Priority Claims; and Schedule F – Unsecured Nonpriority Claims. Under the Bankruptcy Code, the Debtor may amend or supplement the Schedules as needed to ensure accuracy, completeness and fairness of disclosure. The last day for non-governmental proofs of claim is December 19, 2016. The last day for governmental proofs of claim is February 15, 2017.

### **3.1.5 Secured Claims**

Pursuant to the Bankruptcy Code, Claims which are secured by a lien or other security interest may be categorized into a secured and an unsecured component. In general, Claims are Secured Claims to the extent of the value of the collateral that secures the Claims and they are Unsecured Claims to the extent of any deficiency in the value of the collateral. As of the commencement of this case, the Debtor owed Crestmark Bank the sum of \$886,668.00 plus interests, fees, and costs, which is the outstanding debt owed on an asset based line of credit extended pre-Petition. Post-Petition, the Court entered an Order authorizing the Debtor to use cash collateral as well as enter into a debtor-in-possession financing arrangement with Crestmark Bank on similar terms and conditions as the pre-Bankruptcy loan. As of the filing of this Disclosure Statement, the Debtor owes Crestmark Bank approximately \$878,000.00.

### **3.1.6 Priority Claims**

The Bankruptcy Code permits certain claims to be afforded priority treatment. That means those claims are paid before the general unsecured claims are paid. As of the commencement of

this case, Harris County has asserted a priority tax claim in the amount of \$36,433.12 for the 2016 tax year.

### **3.1.7 Unsecured Claims**

Based on the Claims Register and Debtor's Schedules, the Debtor has approximately \$2,208,957.82 in general unsecured claims. The Debtor reserves the right to object to any proofs of claim. Furthermore, should additional or amended proofs of claim be filed, the Debtor reserves the right, after review, to object to those deemed improper. The Debtor is unable to predict the outcome of any claim objections. Copies of the Debtor's Schedules are available for review at the office of the Clerk of the Court.

**THE RIGHT OF THE DEBTOR TO OBJECT TO ANY CLAIM WHICH WAS FILED IN THIS CASE IS EXPRESSLY RESERVED. THE INCLUSION OF A CLAIM OR CLAIMS WITHIN THIS DISCLOSURE STATEMENT IS NOT AN ADMISSION REGARDING THE VALIDITY OR ALLOWANCE OF ANY CLAIM. YOU SHOULD NOT ASSUME THAT A VOTE FOR OR AGAINST THE PLAN WILL HAVE ANY AFFECT OF THE STATUS OF YOUR CLAIM. IF ANYONE SUGGESTS THAT THE STATUS OF YOUR CLAIM MAY BE AFFECTED BY YOUR VOTE, YOU SHOULD REPORT SUCH INCIDENT TO THE DEBTOR'S COUNSEL IMMEDIATELY AS ANY SUCH SUGGESTION MAY VIOLATE TITLE 18, UNITED STATES CODE.**

### **3.1.8 Executory Contracts and Unexpired Leases**

The Debtor currently leases its facility at 5301 Polk, Houston, Texas 77023 for a monthly rental of \$11,000.00. Under an agreement with the landlord, the Debtor has been paying the sum of \$5,500.00 per month in monthly rent with the balance of \$5,500.00 per month in unpaid rent due on March 31, 2017. The Reorganized Debtor intends to affirm its unexpired lease.

### **3.2 Significant Events during the Chapter 11 Case.**

During the course of the Chapter 11 case, the Debtor has continued to operate its business. The Debtor sought and obtained the Court's authority to enter into a post-petition debtor-in-possession financing arrangement with Crestmark Bank whereby Crestmark Bank extended a revolving line of credit to the Debtor in the amount of \$2,000,000.00, secured by the Debtor's assets including, but not limited to its accounts, accounts receivable, furniture, fixtures, and inventory. The Debtor has remained current on its post-petition financing obligations. The Debtor further has sought out third parties who may be interested in acquiring the Debtor's business.

On August 29, 2016, the Court authorized the Debtor to employ Waldron & Schneider, LLP as counsel for the Debtor. On August 29, 2016, the Court authorized the Debtor to employ William G. West, PC, CPA ("West") as the Debtor's CPA. On November 7, 2016, the Court authorized the employment of Okin Adams as counsel for the Committee of Unsecured Creditors.

### **3.3 Legal Proceedings**

As of the commencement of the case, the Debtor was not a party to any litigation. The Debtor has not commenced any post-petition lawsuits. There is no pending litigation.

## **ARTICLE IV SUMMARY OF THE PLAN**

The following is a summary of the Plan and the treatment to be provided to Creditors under the respective Classes of Claims. The Plan is attached as **Exhibit “A”** and should be reviewed carefully because the terms of the Plan control to the extent there is any discrepancy between the summary description provided in this Disclosure Statement and the Plan.

The Bankruptcy Code requires that Claims be treated as either Impaired or as Unimpaired under the Plan. Unimpaired Claims are Claims that are satisfied in accordance with non- bankruptcy law. Impaired Claims are Claims that are satisfied in a manner other than in accordance with non-bankruptcy law.

### **4.1 Identification and Treatment of Classes of Claims**

#### **4.1.1 Class 1 – Administrative Claims – Unimpaired**

Class 1 Allowed Administrative Claims arising under 11 U.S.C. § 503(b) will be paid in Cash and in full by the Debtor on the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes an Allowed Claim; or (iii) such other date as the Debtor and the holder of the Allowed Administrative Claim shall agree. Allowed Administrative Claims that are not secured by a valid, perfected, post-petition Lien are not entitled to post-petition interest or legal fees and expenses.

#### **4.1.2 Class 2 – Crestmark Bank’s Secured Claim – Unimpaired**

Class 2 consists of the secured claim of Crestmark Bank for the pre-Petition and debtor-in-possession financing approved by this Court’s November 7, 2016, Order. Class 2 claims shall be paid in accordance with the terms of the Court’s Order.

#### **4.1.3 Class 3 – Taxing Authorities - Unimpaired**

Priority Tax Claims against the Debtor will be paid in Cash and in full by the Debtor on the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes an Allowed Claim; or (iii) such other date as the Debtor and the holder of the Allowed Priority Tax Claim shall agree. Allowed Priority Tax Claims that are secured claims shall be entitled to interest at the rate provided by applicable law. Each taxing authority shall retain all liens currently held, whether for pre-petition tax years or for the current tax year, on any property of the Debtor until paid in full.

#### **4.1.4 – Class 4 – Unsecured Creditors – Impaired**

Class 4 consists of the allowed general unsecured claims of the unsecured creditors in this Estate. The deadline for filing proofs of claim is December 19, 2016. These claims shall be paid as identified in paragraph 4.3.2.

#### **4.1.5 Class 5 – Equity – Impaired**

Class 5 consists of the ownership interest in the Debtor. These parties shall receive nothing under the Plan unless and until all other classes are paid in full.

### **4.2 Treatment of Executory Contracts and Unexpired Leases**

The Debtor currently leases its facility at 5301 Polk, Houston, Texas 77023 from Pelac for a monthly rental of \$11,000.00. The Reorganized Debtor intends to reaffirm its unexpired lease.

### **4.3 Implementation of the Plan**

#### **4.3.1 The Reorganized Debtor**

Pursuant to the provisions of sections 1141(b) and 1141(c) of the Bankruptcy Code, all assets of the Debtor that remain will vest in the Reorganized Debtor on the Effective Date free and clear of all Claims, Liens, encumbrances, charges and other interest of the holders of Claims and Equity Interests, except as otherwise provided in the Plan.

#### **4.3.2 Payments from Profit.**

The Debtor intends to pay all unsecured claims 100.0% of the Allowed Claim as of the Effective Date. The Debtor's projections of its operations over the period of time during which these payments will occur is attached as **Exhibit "D"**. The Debtor has begun modification of its business methods and processes to reduce inefficiency and move towards a profitable status. The Debtor intends to meet its obligations through minimum payments of 10.0% of each Creditor's Allowed Claim during the first two years following the Effective Date with the remaining 80.0% to be paid in months 25-60 following the Effective Date until all claims are paid in full. The Debtor proposes a minimum payment of 15.0% of the remaining balance of each creditor's Allowed Claim during the third year following the Effective Date, a minimum payment of 40.0% of the outstanding balance on each remaining creditor's Allowed Claim during the fourth year following the Effective Date, and the remaining balance being paid in full during the fifth year following the Effective Date. To the extent the Debtor's net profits exceed its current projections, the minimum payments in any given year may be supplemented by additional payments until all Allowed Claims are paid in full.

### **4.4 Directors and Officers of the Reorganized Debtor**

The Reorganized Debtor will be managed by Robert Comeaux, Jr.

#### **4.5 Business Operations of the Reorganized Debtor**

Following confirmation of the Plan, the Reorganized Debtor will continue its business operations comprised of importing and selling steel products supporting various nationwide industries.

#### **4.6 Resolutions of Claim Controversies**

In the event a controversy or dispute should arise involving issues related to the classification, impairment or voting rights of any Creditor or Interest Holder under the Plan, prior to the Confirmation Date, the Bankruptcy Court may, after notice and a hearing, determine such controversy. Without limiting the foregoing, the Bankruptcy Court may estimate for voting purposes the amount of any contingent or unliquidated Claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the Chapter 11 Case. In addition, the Bankruptcy Court may in accordance with § 506(b) of the Bankruptcy Code conduct valuation hearings to determine the Allowed Amount of any Secured Claim.

#### **4.7 Discharge of Debtor**

Except as otherwise provided in the Plan, the entry of the Confirmation Order, as of the Effective Date, will act as a complete discharge of all Claims against the Debtor of any nature at all, including, without limitation, any liability of a kind specified in sections 502(g), 502(h) or 501(I) of the Bankruptcy Code, that arose, or have been asserted against the Debtor at any time before the Effective Date or that arise from any pre-confirmation conduct of the Debtor whether or not the Claim is known to or knowable by the current or former holder of the Claim. The discharge of the Debtor will be effective as to each Claim whether or not the Claim constituted an Allowed Claim and whether or not the holder of the Claim voted to accept the Plan. In addition, the Confirmation Order will operate as a general resolution with prejudice, as of the Effective Date, of all pending legal proceedings, if any, against the Debtor and its assets and properties and any proceedings not yet instituted against the Debtor and its assets and properties, except as otherwise provided in the Plan. As provided in section 524 of the Bankruptcy Code, the discharge operates as an injunction against the prosecution of any Claim so discharged. Except as otherwise expressly provided in the Plan or Confirmation Order, all Persons who have held, hold or may hold Claims against the Debtor or who have held, hold or may hold a Claim against any person or entity who is covered under any policy of insurance with respect to which the Debtor is also covered, are permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, or the Reorganized Debtor, or any entity who is covered under any policy insurance with respect to which a Debtor is also covered, or their property, with respect to any such Claim or Equity Interest, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any such Claim against the Debtor, or the Reorganized Debtor, or any entity who is covered under any policy of insurance with respect to which the Debtor is also covered, or their property, (c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, or the Reorganized Debtor, or any entity who is covered under any policy of insurance with respect to such Claim, and (d) asserting any right of subrogation of any kind against any obligation due the Debtor, or the Reorganized Debtor, or the

property of the Debtor or the Reorganized Debtor or any equity who is covered under any policy of insurance with respect to which a Debtor is also covered with respect to any such Claim. Unless otherwise provided in the Plan or by order of the Bankruptcy Court, all injunction or automatic stays provided for in this case pursuant to section 105, if any, or section 362 of Bankruptcy Code or otherwise, and in existence on the Confirmation Date will remain in full force and effect until the Effective Date. Any claims against the Debtor's current or former officers, directors, employees and agents shall not be affected by the foregoing and shall not be discharged. In addition, the foregoing shall not in any way affect any causes of action available under Chapter 5 of the Bankruptcy Code.

#### **4.8 Plan Distributions**

The Plan sets forth the amount and timing of distributions that are to be made to holders of Claims.

#### **4.9 Effectuating Documents and Necessary Authorizations**

The Plan Documents, which consist of all documents and exhibits that aid in effectuating the Plan will be executed and, if appropriate, filed with the appropriate governmental authorities on or before the Effective Date, and they will become effective on the Effective Date.

Robert Comeaux, Jr., the current President of the Debtor, will have authority to execute, deliver, file or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### **4.10 Regulatory Approvals**

While the Debtor does not anticipate any regulatory approval being necessary, to the extent such approval is required, the Debtor or the Reorganized Debtor will obtain all regulatory approval required in connection with the Plan.

#### **4.11 Objection Procedures and Treatment of Disputed Claims**

The Reorganized Debtor shall have the exclusive right to object to the allowance of any Claims. All Claim objections and requests for determination under 11 U.S.C. §505 must be filed within 120 days after the Effective date of the Plan.

#### **4.12 Statutory Requirements for Confirmation of Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in 11 U.S.C. § 1129, these requirements are as follows:

**4.12.1** The Plan complies with the applicable provisions of the Bankruptcy Code.

**4.12.2** The proponent of the Plan complies with the applicable provisions of the Bankruptcy Code.

**4.12.3** The Plan has been proposed in good faith and not by any means forbidden by law.

**4.12.4** Any payment made or to be made by the Plan proponent, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

**4.12.5** The proponent of the Plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint Plan with the Debtor, or a successor to the Debtor under the Plan; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and the proponent of the Plan has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such.

**4.12.6** Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Plan Proponent has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval.

With respect to each class of impaired claims or equity interests, each holder of a claim or interest of such class has accepted the Plan; or will 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 Plan Proponent were liquidated under Chapter 7 of the Bankruptcy Code on such date; or if 11 U.S.C. § 111(b)(2) is applied to the claims of such class, the holder of a claim of such class will 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 interest in the property that secured such claims.

**4.12.7** Except to the extent that the holder of a particular claim has agreed to a different treatment of the claim, the Plan provides:

- with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the Allowed Amount of such Claim;

- with respect to a class of Claims of a kind specified in 507(a)(3), 507(a)(4), 507(a)(5), or 507(a)(6) of the Bankruptcy Code, each holder of a claim of such class will receive:

- if such class has accepted the Plan, deferred cash payments of a value, as of



the Effective Date of the Plan, equal to the Allowed Amount of such Claim; or

- if such class has not accepted the Plan, cash on the Effective Date of the Plan equal to the Allowed Amount of such Claim; and

- with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of a claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim of a value, as of the Effective Date of the Plan, equal to the Allowed Amount of such Claim.

**4.12.8** If a class is impaired under the Plan, at least one class of claims that is impaired has accepted the Plan, determined without including any acceptance of the Plan by any insider.

**4.12.9** Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Plan Proponent or any successor to the Plan Proponent under the Plan, unless such liquidation or reorganization is proposed in the Plan.

**4.12.10 ABSOLUTE PRIORITY RULE: the Bankruptcy Code requires that if the shareholders of the Debtor are to retain their stock, then all classes must either accept the treatment afforded by the Plan or be paid in the full amount of their claims as of the Effective Date. This means that if the shareholders are to retain their stock (as they are in this case), then the creditors have to accept the Plan in order for it to be confirmed.**

The Debtor believes that the Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code, that it has complied or will have complied with the all the requirements of Chapter 11, and that the proposal of the Plan is made in good faith.

The Debtor further believes that the holders of all Claims and Equity Interests impaired under the Plan will receive payments or distributions under the Plan having a present value as of the Effective Date in amounts not less than the amounts likely to be received by such holders if the Debtor was liquidated in a case under Chapter 7 of the Bankruptcy Code.

Finally, the Debtor believes that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtor.

#### **4.13 Cramdown**

In the event that any impaired class of Claims and Equity Interests does not accept the Plan, the Bankruptcy Court may still confirm the Plan if, as to each impaired class which has not accepted the Plan, the Plan does not discriminate unfairly and is “fair and equitable.” A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity interests.

“Fair and equitable” has different meanings with respect to the treatment of secured and unsecured claims. As set forth in section 1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

**4.13.1** With respect to a class of secured claims, the Plan provides:

- (a) (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the Plan Proponent or transferred to another entity, to the extent of the Allowed Amount of such Claims; and
  - (ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim of a value, as of the Effective Date of the Plan, of at least the value of such holder's interest in the estate's interest in such property:
- (b) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the Liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) and (b) of this subparagraph; or
- (c) for the realization by such holders of the indubitable equivalent of such claims.

**4.13.2** With respect to a class of unsecured claims, the Plan provides;

- that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the Effective Date of the Plan, equal to the Allowed Amount of the Claim; or
- the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.

**4.13.3** With respect to a class of interests, the Plan provides:

- that each holder of any interest of such class receive or retain on account of such interest property of a value, as of the Effective Date of the Plan, equal to the greatest of the Allowed Amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
- the holder of any interest that is junior to the interests of such class will not receive or retain under the Plan on account of such junior interest any property.

The Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired class of Claims and Equity Interests. The Debtor believes that the Bankruptcy Court will find these requirements satisfactory and will confirm the Plan.

#### **4.14 Conditions Precedent to Effectiveness of Confirmation Order and Plan**

The Plan will not be effective unless (a) the Confirmation Order becomes a Final Order; and (b) all Plan Documents and other applicable corporate documents necessary or appropriate to the implementation of the Plan have been executed, delivered, and where applicable, filed with the appropriate governmental authorities. The Debtor reserves the right to waive any of the conditions precedent to the effectiveness of either the Confirmation Order or the Plan. If any of the conditions precedent are not waived, and are not satisfied within the specified time periods or can no longer occur, the Confirmation Order will be annulled and the Debtor and all parties in interest will return to the *status quo ante* immediately before the entry of the Confirmation Order.

#### **4.15 Retention of Jurisdiction by Bankruptcy Court**

After the Effective Date of the Plan, the Bankruptcy Court will continue to have jurisdiction over all matters arising under, arising out of or relating to this Case. Such jurisdiction will be exercised to (a) insure that the purpose and intent of the Plan are carried out; (b) consider any modification of the Plan under section 1127 of the Bankruptcy Code before substantial consummation as defined in section 1101(s) of the Bankruptcy Code; (c) hear and determine all Claim, controversies, suits, and disputes against the Debtor; (d) hear and determine all Objection to Claims, controversies, motions, applications, suits and disputes that maybe pending at or initiated after the Effective Date; (e) classify the Claims of any creditor and to re-examine Claims which have been allowed for purposes of voting, and to determine all Objections which may be filed to Claims; (f) hear, determine and enforce all claims and causes of action which may exist on behalf of the Debtor or its Estate; (g) consider and act on the compromise and settlement of any Claim against or cause of action on behalf of the Debtor or the Estate; (h) hear and determine all controversies, suits, and disputes that may arise in connection with the interpretation, execution or enforcement of the Plan; (i) hear and determine all requests for compensation and/or reimbursement of expenses for services rendered or expenses incurred prior to the Confirmation Date; (j) enforce and interpret by injunction or otherwise the terms and conditions of the Plan; (k) enter an order closing the Chapter 11 Case; (l) correct any defect, cure any omission, or reconcile any inconsistency in the Plan or Confirmation Order which may be necessary or helpful to carry out he purposes and intent of the Plan; (m) consider and act on such other matters consistent with the Plan as may be provided in the Confirmation Order; (n) issue orders in aid of execution of implementation of this Plan to the extent authorized by 11 U.S.C. §1142 or provided by the terms of this Plan; and (o) decide issues concerning the Federal or State Tax Liability of the Debtor or Reorganized Debtor which may arise in connection with the confirmation or consummation of this Plan.

### **ARTICLE V MISCELLANEOUS PROVISIONS**

#### **5.1 Compliance with Law**

The Plan mandates compliance by the Reorganized Debtor and any other person charged with carrying out any provisions of the Plan with all withholding and reporting requirements

imposed by federal, state, and local taxing authorities, and all distributions under the Plan will be subject to such withholding and reporting requirements. In addition, the Plan requires that the Reorganized Debtor, if notified by any governmental authority that it is in violation of any applicable rule, law, regulation, or order of such governmental authority relating to its business, comply with such law, rule, regulation or order unless the legality or applicability of such requirement is being contested in good faith in an appropriate proceeding and, if appropriate, an adequate reserve has been set aside. Finally, all fees payable pursuant to 28 U.S.C. § 1930 will be paid on or before the Effective Date.

## **5.2 Modification, Revocation and Severability Rights**

The Debtor may modify the Plan at any time before confirmation, provided that the requirements of sections 1122, 1123 and 1125 are satisfied with respect to the modification. After confirmation and before substantial confirmation of the Plan, the Reorganized Debtor may make modifications to the Plan to the extent permitted by sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, may confirm the Plan under section 1129 of the Bankruptcy Code as modified.

The Debtor may revoke and/or withdraw the Plan at any time before entry of the Confirmation Order. If the Debtor revokes and/or withdraws the Plan, or if confirmation of the Plan does not occur, then the Plan will be deemed null and void and nothing contained therein will be deemed (a) to constitute a waive or release of any Claims by the Debtor or any other Person, (b) to prejudice in any manner the rights of the Debtor or any other Persons, or (c) to constitute an omission by the Debtor or any other Person.

## **5.3 Other Considerations**

The Plan affords holders of Claims the potential for the greatest realization on the Debtor's assets and, therefore, is in the best interest of the holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) continuation of the Chapter 11 Case; (b) alternative plans of reorganization; (c) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code; and (d) dismissal of the Chapter 11 case.

## **5.4 Feasibility of the Plan**

The plan is the Debtor's best effort to reorganize its debts in a manner that will result in payment to all creditors. The Debtor believes the Plan is feasible. The current equity owners' interest will be terminated and the Reorganized Debtor will be able to continue business operations while providing a payment to unsecured creditors and addressing all secured obligations and past due taxes. The bid procedures proposed ensure the highest fair market value for the equity interests will be obtained while avoiding a liquidation under Chapter 7, which would result in no return to the unsecured creditors.

## **5.5 Alternative Plans of Reorganization**

If the Plan is not confirmed, another party in interest in this case could attempt to formulate

and propose a different plan or plans. Such plans might, theoretically, involve either reorganization or an orderly liquidation of all of Debtor's property. The Debtor has not received any suggestions for an alternative plan. The Debtor believes the proposed plan maximizes the potential recovery for unsecured creditors.

## **5.6 Liquidation Under Chapter 7**

At this date, the Debtor does not believe that the case should be converted to Chapter 7. If a conversion of the case were to occur, then a trustee would be elected or appointed to liquidate the Debtor's assets. If converted, the proceeds of the liquidation would be distributed to the respective holders of Claim against and Equity Interests in the Debtor according to the priorities established under the Bankruptcy Code. The Debtor's analysis of payments under a liquidation of the company is attached as **Exhibit "E"**.

Under Chapter 7, a secured creditor whose claim is fully secured would be entitled to full payment, including interest, from the proceeds of the sale of its collateral. Unless its claim is nonrecourse, a secured creditor's collateral is insufficient to pay its claim in full would be entitled to assert an unsecured claim for its deficiency. Claims entitled to priority under the Bankruptcy Code would be paid in full before any distribution to general unsecured creditors. Funds, if any, remaining after payment of secured claims and priority claims would be distributed pro rata to general unsecured creditors. At this time, the Debtor believes that the assets are fully encumbered and a liquidation under Chapter 7 would result in a distribution to the general unsecured creditors in an amount less than 100% of the allowed claims. The Debtor believes the proposed plan is in the best interest of all parties.

## **5.7 Risk Factors**

As with any ongoing operation, the Debtor's business remains subject to the variations in the economy and marketplace. The Debtor has a good faith belief that the efforts of the management team to restructure the Debtor's business operation, including the change in manufacturer and vendor relationships will result in streamlining operations and re-invigorate its sales. These activities have placed the Debtor in a position to continue to operate into the future.

There are certain risks inherent in the reorganization process under the Bankruptcy Code. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if Creditors accept the Plan. Although the Debtor believes that the Plan meets such standards, there can be no assurances that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Debtor to re-solicit acceptances, which could delay and/or jeopardize confirmation of the Plan. In this case, the same is true if the Bankruptcy Court determines that the contents of this Disclosure Statement are not sufficient or do not meet the standards of 11 U.S.C. §1125.

As to the consummation of the Plan, if this Plan is confirmed, the Debtor believes it can perform as set forth in the proposed Plan. The Debtor is confident it can perform under the Plan as proposed.

## 5.8 Taxation

### 5.8.1 Introduction

The following discussion summarizes certain federal income tax consequences of the transactions described herein and in the Plan. This discussion is for informational purposes only and does not constitute tax advice. This summary is based upon the Internal Revenue Code and the Treasury Regulations promulgated thereunder, including judicial authority and current administrative rulings and practice as of the date of this Disclosure Statement and will not be updated for subsequent tax or factual developments. Neither the impact on foreign holders of claims and equity interests nor the tax consequences of these transactions under state and local law is discussed. Also, special tax considerations not discussed herein may be applicable to certain classes of taxpayers, such as financial institutions, broker-dealers, insurance companies, mutual funds, regulated investment companies, real estate investment trusts, trusts, S corporations, dealers and traders in securities and currencies, partnerships and other entities classified as partnerships for federal tax purposes and tax-exempt organizations. Furthermore, due to the complexity of the transactions contemplated in the Plan, and the unsettled status of many of the tax issues involved, the tax consequences described below are subject to significant uncertainties including subsequent legislative and other tax changes. No opinion of counsel has been obtained and no ruling has been requested from the Internal Revenue Service (“IRS”) on these or any other tax issues. There can be no assurance that the IRS will not challenge any or all of the tax consequences of the Plan, or that such a challenge, if asserted, would not be sustained.

**HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR ARE THEREFORE URGED TO CONSULT WITH THEIR TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

### 5.8.2 Tax Consequences to the Debtor and Equity Interest Holders.

The Debtor may realize cancellation of indebtedness (“COI”) income in respect of each Claim generally in an amount equal to the excess, if any, of (i) the portion of the Claim (including accrued and previously deducted but unpaid interest) from which the Debtor is (or is deemed to be) discharged; and (ii) the sum of any cash or the “issue price,” under the Internal Revenue Code of 1986 (the “Internal Revenue Code”) §§ 1273(b) and 1274, of any debt obligations distributed under the Plan in discharge of such Claims. The exact amount of COI income realized upon consummation of the Plan has not been finally determined. Under the Internal Revenue Code, a taxpayer is generally required to include COI income in gross income. COI income is not includable in gross income, however, if it occurs in a case under the Bankruptcy Code, provided the taxpayer is under the jurisdiction of a Court in such case and the cancellation of indebtedness is granted by the Court or is pursuant to a plan approved by the Court. The Debtor’s COI income, if any, resulting from the Plan should satisfy these requirements, and, therefore, should not result in recognition of gross income to the Debtor. COI income that is excluded from gross income will reduce certain tax attributes of the taxpayer, including net operating loss suspended under Internal Revenue Code Section 1361(d) (hereinafter “NOLs”) carryovers, capital loss carryovers and the tax basis of assets, in a specified order of priority beginning with the NOLs and NOL carryovers,

unless the taxpayer elects to have the reduction applied first to the tax basis of depreciable assets. The reduction of tax basis is limited to the excess of (i) the aggregate of the tax bases of the taxpayer's property (determined immediately after the discharge); and (ii) the aggregate liabilities of the taxpayer (determined immediately after the discharge). The exclusion for COI is deemed to occur immediately following the end of the Debtor's tax year, and not during the tax year. The Debtor will recognize gain or loss on the sale of assets to third parties equal to the sales price of such assets less the Debtor's adjusted tax basis in such properties. The sales price includes all indebtedness assumed by a buyer as well as all other consideration received by the Debtor. The amount and tax character of such gain and loss will depend on the applicable facts and circumstances. To the extent any proceeds from the sale of assets of the Debtor remain after satisfaction of all Allowed Claims and Interests in accordance with the Bankruptcy Code, the Plan Agent will not distribute any remaining amounts to the Equity Interest Holders of Debtor.

### **5.8.3 Tax Consequences to Creditors.**

**In General.** The federal income tax consequences of the implementation of the Plan to a holder of a Claim will depend, among other things, on: (a) whether its Claim constitutes a debt or security for federal income tax purposes, (b) whether the Claimant receives consideration in more than one tax year, (c) whether the Claimant is a resident of the United States, (d) whether all the consideration by the Claimant is deemed to be received by that Claimant as part of an integrated transaction, (e) whether the Claimant utilizes the accrual or cash method of accounting for tax purposes, and (f) whether the holder has previously taken a bad debt deduction or worthless security deduction with respect to the Claim.

**Gain or Loss on Exchange.** Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his Allowed Claim for cash and other property in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount, as described below) if the Claim was a capital asset in the hand of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange. The tax treatment of an Allowed Claim for accrued unpaid interest will depend on the Claimant's tax basis in such Claim, which primarily depends on whether the Claimant has previously recognized income for the accrual of such interest and/or recognized a loss with respect to same. Any such holders should consult with their tax advisors regarding the tax treatment of any such accrued unpaid interest. Any loss recognized by a holder of an Allowed Claim will be a capital loss if the Claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

### **5.8.4 Information Reporting and Backup Withholding.**

Under the backup withholding rules of the Internal Revenue Code, holders of Claims and Equity

Interest Holders may be subject to backup withholding with respect to payments made pursuant to the Plan unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividends and interest income. Any amount withheld under these rules will be credited Case 14-33564 Document 135 Filed in TXSB on 09/05/14 Page 30 of 35 28 against the holder's federal income tax liability. Holders of Claims and Equity Interests may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

#### **5.8.5 Importance of Obtaining Professional Assistance.**

**THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. TO COMPLY WITH TREASURY DEPARTMENT CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT, THE PLAN OR ANY RELATED MATERIALS, IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY YOU, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON YOU UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AND (B) ANY SUCH DISCUSSIONS ARE BEING USED ONLY IN CONNECTION WITH SATISFYING THE REQUIREMENTS IMPOSED UNDER THE BANKRUPTCY CODE FOR DISCLOSURE STATEMENTS, AND (C) YOU SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR WITH RESPECT TO YOUR FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES BASED ON YOUR PARTICULAR CIRCUMSTANCES.**

### **ARTICLE VI CAUSES OF ACTION**

#### **6.1 Preferences**

Under the Bankruptcy Code, a Debtor may recover certain preferential transfers of property, including cash, made while insolvent during the 90 days immediately prior to the filing of its bankruptcy petition with respect to pre-existing debts, to the extent the transferee received more than it would have in respect of the pre-existing debt had the Debtor been liquidated under Chapter 7 of the Bankruptcy Code. In the case of "insiders", the Bankruptcy Code provides for a one year preference period. There are certain defenses to such recoveries. Transfers made in the ordinary course of the Debtor's and transferee's business according to the ordinary business terms in respect of debts less than 90 days before the filing of a bankruptcy are not recoverable. Additionally, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the bankruptcy case), such extension of credit may constitute a defense to recovery, to the extent of any new value, against an otherwise recoverable transfer of property. If a transfer is recovered by the Debtor, the transferee has an Unsecured Claim against the



Debtor to the extent of the recovery. In this case, the Debtor has carefully reviewed all of its records for the past year and has determined that there were no preferences paid.

## **6.2 Fraudulent Transfers**

Under the Bankruptcy Code and various state laws, the Debtor may recover certain transfers of property, including the granting of a security interest in property, made while insolvent or which rendered the Debtor insolvent. The Debtor reserves the right to bring any fraudulent conveyance claims although it does not believe at this time that any exist. The Debtor has reviewed its books and records and determined that, as with preferences, there were no fraudulent conveyances.

## **6.3 Preservation of Claims**

All claims and causes of action, including but not limited to claims recoverable under section 550 of the Bankruptcy Code and claims for the collection of amounts due from any third party, are hereby preserved and retained for enforcement by the Reorganized Debtor after the Effective Date.

# **ARTICLE VII VOTING PROCEDURE AND REQUIREMENTS**

## **7.1 Ballots and Voting Deadline**

A ballot to be used to vote to accept or reject the Plan is enclosed with this Disclosure Statement. A Creditor who is voting must (1) carefully review the ballot and instructions thereon, (2) complete and execute the ballot indicating the Creditor's vote to either accept or reject the Plan and (3) return the executed ballot to the address indicated thereon by the deadline specified by the Bankruptcy Court.

**THE BANKRUPTCY COURT HAS DIRECTED THAT, TO BE COUNTED FOR VOTING PURPOSES, BALLOTS FOR THE ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY THE DEBTOR'S COUNSEL NO LATER THAN \_\_\_\_\_, 2016, AT \_\_\_\_:\_\_\_\_ P.M. (CST).**

If you hold an impaired Claim against the Debtor PLEASE return your ballot to:

Kimberly A. Bartley  
kbartley@ws-law.com  
Waldron & Schneider, LLP  
15150 Middlebrook Drive  
Houston, Texas 77058  
Fax: 281-488-4597  
[kbartley@ws-law.com](mailto:kbartley@ws-law.com)

## **7.2 Creditors Entitled to Vote**

Any Creditor whose Claim is impaired under the Plan is entitled to vote, if either (i) the Debtor has scheduled its Claim on its Statement of Liabilities and such Claim is not scheduled as disputed, contingent, or unliquidated, or (ii) such Creditor has filed a Proof of Claim on or before the last date set by the Bankruptcy Court for filing Proofs of Claim and no objection has been filed to such Claim.

Holders of Disputed Claims are not entitled to vote on the Plan. Any Claim to which an objection has been filed and remains pending, is not entitled to vote unless the Bankruptcy Court, upon motion by the Creditor who holds the Disputed Claim temporarily allows the claim in an amount that it deems proper for accepting or rejecting the Plan. Any such motion must be heard and determined by the Bankruptcy Court before the date established by the Bankruptcy Court as the final date to vote on the Plan. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by the creditor was not solicited or obtained in good faith or according to the provisions of the Bankruptcy Code.

Classes of Claims that are not impaired are deemed to have accepted the plan or reorganization pursuant to 11 U.S.C. §1126(f) and, therefore, are not entitled to vote on the Plan. Pursuant to 11 U.S.C. §1126(f), only classes of claims or interests which are “impaired” are entitled to vote on a plan of reorganization. Generally, a claim is impaired if the plan or reorganization alters the legal, equitable, or contractual rights to which the holder of the claim is otherwise entitled.

## **7.3 Voting Procedures**

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, and the Debtor’s determination will be final and binding. The Debtor also reserves the right to reject any Ballot not in proper form, the acceptance of which would, in the opinion of the Debtor or its counsel, be unlawful. The Debtor further reserves the right to waive any defects or irregularities or conditions to delivery as to any particular Ballot. The interpretation by the Debtor of the provisions of this Disclosure Statement and the Ballots will be final and binding on its parties in interest unless otherwise directed by the Bankruptcy Court. Unless waived, any defects or irregularities concerning deliveries of Ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determines. Neither the Debtor nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of Ballots will not be deemed to have been made and will be invalidated unless or until all defects and irregularities have been timely cured or waived.

## **7.4 Vote Required for Class Acceptance**

The Bankruptcy Code defines acceptance of a plan of reorganization by a class of Claims as the acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2)

in number of the Allowed Claims of the Class actually voting to accept or reject the proposed plan of reorganization.

**7.5 Cramdown and Withdrawal of Plan**

If the Plan is not accepted by all classes of impaired Creditors, the Debtor reserves the right to withdraw the Plan. If the Plan is accepted by one or more Classes of Impaired Creditors of the Debtor, the Debtor reserves the right to request the Bankruptcy Court to approve the Plan under 11 U.S.C. §1129(b).

**THE DEBTOR STRONGLY URGES ALL IMPAIRED CREDITORS TO VOTE TO ACCEPT THE PLAN.**

Respectfully submitted,

**WALDRON & SCHNEIDER, LLP**

/s/ Kimberly A. Bartley

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