

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	:	
	:	
<b>THOMAS EDWARD BERRY</b>	:	<b>Case No. 16-35232</b>
	:	<b>Chapter 11</b>
<b>DEBTOR</b>	:	
	:	
<b>And</b>	:	<b>Jointly Administered</b>
	:	
<b>B E R PERCISION, INC.</b>	:	<b>Case No. 17-34371</b>
	:	<b>Chapter 11</b>
<b>DEBTOR</b>	:	

**FOURTH AMENDED COMBINED DISCLOSURE STATEMENT  
AND PLAN OF REORGANIZATION**

**INTRODUCTION**

On October 18, 2016, Thomas Edward Berry filed his petition for bankruptcy under Chapter 11 of Title 11 of the United States Code. The corporation known as BER Precision, Inc. filed its petition for bankruptcy under Chapter 11 on July 19, 2017. By order of the Court on July 26, 2017 the cases are jointly administered. The Debtors have prepared and filed this Amended Combined Disclosure Statement (the Statement) and Plan of Reorganization (the Plan) and are seeking the Court's approval for submission of the Statement and Plan to the holders of claims with respect to the Debtors and their assets.

The purpose of this Statement is to provide holders of claims against the Debtors with adequate information about the Debtors and the Plan, to permit such persons to make an informed judgment about the merits of voting for the approval of the Plan. In addition to this Disclosure Statement and Plan, creditors will be provided with a ballot which may be used to vote for the acceptance or rejection of the Plan. That ballot should be completed and returned to Larry A. Vick, Attorney for Debtor-in-possession, at 10497 Town & Country Way, Suite 700, Houston, Texas 77024, to be received prior to the date of the hearing on the Confirmation of the Plan. The Notice of the hearing on the Confirmation of the Plan will be provided by the Court. While creditors are invited to attend this hearing, attendance is not required to have one's vote considered. **YOUR VOTE FOR THOMAS EDWARD BERRY AND BER PRECISION, INC. PLAN IS SOLICITED.**

The Creditor's vote on the Plan is important. For the Plan to be confirmed by the Court 66 2/3% of the total dollar amount of claims voting, and more than 50% of the total number of claims voting in each class must accept the Plan. If the requisite acceptances are not obtained, the Plan may nevertheless be confirmed by the Court pursuant to the provisions of 11 U.S.C. § 1129 if the bankruptcy court finds that certain conditions are met. These conditions are set forth in § 1129(b) of the United States Bankruptcy Code and require a showing that claimants in a non-consenting class will receive either the full value of their claims, or if they receive less than full value, no class

with a junior liquidation priority will receive anything. These complex statutory provisions and this summary is not intended to be a complete statement of the law. The Debtor, however, may choose to rely upon the provisions of § 1129(b) of the United States Bankruptcy Code and seek confirmation of the plan if the plan is not accepted by an impaired class or classes.

No representations regarding the Debtors are authorized other than set forth in this Disclosure Statement. Any representations or inducements made to secure a vote on the Plan which are other than as contained in this Statement should not be relied upon in arriving at a decision. Any such additional representations and inducements should be reported to the Court and to Larry A. Vick at 10497 Town & Country Way, Suite 700, Houston, Texas 77024, for such action as may be deemed appropriate.

## THE DEBTOR

### HISTORY AND NATURE OF BUSINESS AND REASONS FOR THE CHAPTER 11 FILING

**The Debtor.** Thomas Edward Berry is an individual residing at 10111 Aves Street, Houston, Texas 77034. BER Precision, Inc. is a corporation whose main offices and machine shop is located at 1100 N. Washington Avenue, Cleveland Texas 77327.

**Debtor's History, Assets and Value.** Thomas Edward Berry is 74 years of age. He was born on April 17, 1943 in Hamilton, Texas, moved to Arlington, Texas a year later and lived there till he graduated from its high school in 1962. He went to work with Oil States Rubber Company as a machinist as his first job and gradually worked his way up to foreman of the machine shop. In 1975 the Debtor moved to Houston, Texas and obtained employment with the Dixel Manufacturing Company as a machinist. He began his own company in 1977, KCV Manufacturing and in 1979 changed the name of his company to Standrite Manufacturing. Standrite became BER Precision in 1994. This predecessor to the current debtor fell on hard times as did many, if not most, oilfield vendors due to the collapse of the industry in 1984-86. Debtor suffered a cash flow crisis when his customers failed to pay and many also filed bankruptcy. Mr. Berry filed chapter 7 in 1986 and received his discharge during that year.

After filing bankruptcy then he went into business for himself doing contract work in various machine shops in Houston area. Having had more than a decade of experience in manufacturing replacement parts for drillers and oilfield operators, Mr. Berry located the buildings and real estate in Cleveland, Texas where he and BER operate today. He purchased the property in 1996 and has operated there for more than 20 years.

Debtor purchased new and used manufacturing equipment, machines and computers and by 2010 he had paid off the SBA loan that he had obtained to pay for the equipment. Business was good and flourished until January 2015 when it appears to the Debtor most of his customers chose to have their products produced overseas. Debtor borrowed money from his local bank, First Bank & Trust East Texas as a source of funds to keep his business going and keep the monthly payments on some of his equipment financed by the makers of the equipment. Finally, in hopes that the turnaround in the petroleum market was about to occur, Debtor went to "hard money" lenders on the internet and borrowed money that the Debtor now believes was and is usurious.

BER'S income is generated from the precision engineering and manufacturing of oilfield replacement parts. An itemized list of Debtor's inventory, equipment and other miscellaneous property is detailed on Schedule "B" of BER Precision Inc.'s schedules on file with the United States Bankruptcy Clerk's file. BER's largest valued assets are the machinery, fixtures and equipment used in the business. The assets are located 1100 N. Washington Avenue, Cleveland, Texas. Its shop consists of two buildings, one that houses the main floor with the operational equipment and offices and a second building that is currently used for smaller jobs and for storage. Mr. Berry owns the real property and improvements personally and in his own name. He leases the real property to BER Precision under a long-term lease and received rentals monthly. Mr. Berry's largest assets include his ownership of this real estate and certain undeveloped lots outside the city limits of Cleveland. The remainder of his assets or household items and his vehicle

The following bankruptcy cases are related to this bankruptcy case.

Case Name	Case Number	Date Filed	Nature of Relationship
None			

### I. Description of Assets

Mr. Berry filed schedules of all assets and liabilities on December 2, 2016. BER filed schedules of all assets and liabilities on July 7, 2017. Detailed listings of the assets of both estates are as reflected on Schedule B of Schedules of Assets filed with the Bankruptcy Court. Copies of these records are on file with the Bankruptcy Clerk's Office, 515 Rusk, 5<sup>th</sup> Floor, Houston, Texas 77002 and may be obtained in the Bankruptcy Clerk's office or by written request to Debtor's counsel.

The primary assets of the bankruptcy estate of **THOMAS EDWARD BERRY** and their estimated values and associated liens are:

Description of Asset	Estimated Fair Market Value	Amount of Debt Secured by Liens Against this Asset	Amount Claimed Exempt	Value Available to Estate	Basis of Estimate of Value
Lots 1-5, 7-10, Block 5, otherwise known as 1100 N. Washington Ave., Cleveland, Texas	\$363,210.	\$62,000.	n/a	\$300,000.	Appraisal District

<b>Description of Asset</b>	<b>Estimated Fair Market Value</b>	<b>Amount of Debt Secured by Liens Against this Asset</b>	<b>Amount Claimed Exempt</b>	<b>Value Available to Estate</b>	<b>Basis of Estimate of Value</b>
287 CR 3373, Cleveland, Texas	\$54,681.	n/a.	n/a	\$54,681.	Appraisal District
10 lots in Tract 2, MacDonald Subdivision	\$367,000.	n/a	n/a	\$367,000.	Appraisal District
Lots 303 & 304, Blue Water Addn #2, Crystal Beach, Texas	\$31,980.	n/a	n/a	Undivided ½ marital property interest in \$31,980.	Appraisal District
Household and personal property	\$2,155.	n/a	\$5,275.	\$ 0.00	Debtor's estimate
Privately held stock in Debtor BER Precision, Inc.	\$500,000.	none	n/a	\$500,000.	Debtor's estimate
Cash on hand at the time of filing	\$240.93	none	240.93	\$ 0.00	actual
Cash held in trust pursuant to sale of real estate	\$38,119.81	none	n/a	\$38,119.81	actual
2008 Ford Edge Auto	\$4,000.	none	\$4,000.00	\$ 0.00	Debtor's estimate
Income Tax Refund \$65,413.00	Set off against IRS claim of \$61,186.46	unknown	n/a	unknown	
1997 Palm Harbor double-wide mobile home	\$20,000.	\$44,254.13	none	-0-	Debtor surrenders the mobile home to creditor
1998 Fleetwood double wide mobile home	\$15,000.	none	none	\$15,000.	Debtor's estimate

Description of Asset	Estimated Fair Market Value	Amount of Debt Secured by Liens Against this Asset	Amount Claimed Exempt	Value Available to Estate	Basis of Estimate of Value
1996 Komfort 31 ft. travel trailer	\$4,000.	none	none	½ community property	Debtor's estimate
2006 Bellaire 31 ft. travel trailer	\$3,000.	none	none	½ community property	
				\$ 0.00	
<b>TOTALS</b>	<b>\$1,464,572.40</b>	<b>\$104,254.13</b>		<b>\$1,306,780.80</b>	

The primary assets of the bankruptcy estate of **BER PRECISION, INC.** and their estimated values and associated liens are:

Description of Asset	Estimated Fair Market Value	Amount of Debt Secured by Liens Against this Asset	Amount Claimed Exempt	Value Available to Estate	Basis of Estimate of Value
Accounts receivable on the date of filing	\$41,158.00	none	n/a	\$41,158.00	actual
Finished product	\$1,000.	none	n/a	\$1,000.	actual
Machinery & equipment	\$207,200.	none	n/a	207,200.	Debtor's estimate
Two 1996 Toyota FH mills	\$30,000.	\$23,482.11	n/a	\$6,517.89	Debtor's estimate
Customer lists, good will and intangibles	\$295,000.	none	n/a	\$295,000.	Debtor's estimate
Office equipment	\$800.	none	n/a	\$800.	Debtor's estimate

Description of Asset	Estimated Fair Market Value	Amount of Debt Secured by Liens Against this Asset	Amount Claimed Exempt	Value Available to Estate	Basis of Estimate of Value
1996 Dodge Duly pickup truck	\$3,000.	none	n/a	3,000.	Debtor's estimate
2014 Ford Pickup	16,000.	none	n/a	16,000.	Debtor's estimate
2006 Chrysler Pacifica	800.	none	n/a	800.	Debtor's estimate
<b>TOTALS</b>	<b>\$594,958.00</b>	<b>\$23,482.11</b>		<b>\$571,475.89</b>	

Debtors have identified the following lawsuits that may be filed by them.

Potential Defendant	Description of claim	Amount of Claim	Debtor will pursue lawsuit if not satisfactorily settled
	Trespass on land, damages to property	\$100,000.	Debtor will pursue lawsuit if not satisfactorily settled
WebBank	usury	\$229,500. + atty. fees	Debtor will not pursue lawsuit if objection to claim is sustained.

## II. Events Leading Up to Bankruptcy

The Debtors filed bankruptcy after the following events made them determine that bankruptcy was the best course of action for themselves and their creditors.

- 1) Debtors' customers began buying the products engineered by Debtors from machine shops overseas;
- 2) The price of crude oil and natural gas substantially declined resulting in fewer orders for product from Debtors;
- 3) Debtors could not remain current on monthly payments on lease/purchase equipment contracts and lenders began repossession proceedings; and
- 4) To remain in business during the downturn, Debtors turned to "hard money" lenders when local lending establishments refused to extend credit. The contracts with "hard money" lenders authorized them to draw funds from the Debtor's bank accounts every business day. These withdrawals, whether Debtors' customers paid timely or not, caused many overdraft fees and inability to pay essential operational expenses. Additionally, the contracts with the "hard money" lenders were usurious and the Debtors found that the repayment requirements were impossible to meet.

### III. Sources of Income

In the last three years, the Thomas Edward Berry's primary sources of income have been:

#### Income of THOMAS EDWARD BERRY

Year	Source	Amount of Income
2014	Salary-\$60,000. SSI-\$24,016.00	
2015	Salary-\$60,000. SSI-\$25,118.00	
2016	Salary-\$40,000. SSI-\$26,431.20	\$66,431.00
Year to date	Salary-\$40,000. SSI-\$18,298.00	\$58,298.00

#### Income of BER PRECISION, INC.

Year	Gross Receipts	Amount of Income
2014	Total income	\$1,372,222.
2015	Total income	\$ 191,903.
2016	estimate	\$ 325,094.
Year to date	Reflecting 8 months gross income	\$ 246,599.

### IV. Description of Reorganization

The Debtors intend to reorganize their finances through a combination of the following:

The crude oil industry is showing signs of revival and historically it has after the downturn the market experienced in recent years. Furthermore, because the demand for U.S. manufacturing products is increasing exponentially, the Debtors products and services is experiencing current increase in orders. Debtors have also made changes in its receivables collection procedures that have brought its income vs. payables ratio more positive for the Debtors.

The Debtors believe that their income in each of the next five years will be:

Year	BER PRECISION INC.	Income
2018	estimate	\$369,000.
2019	estimate	\$404,000.
2020	estimate	\$449,000.
2021	estimate	\$450,000.
2022	estimate	\$450,000.

Year	THOMAS EDWARD BERRY	Income
2018	Salary-\$60,000. SSI-\$27,350	\$87,350.

Year	THOMAS EDWARD BERRY	Income
2019	Salary-\$60,000. SSI-\$27,850.	\$87,850.
2020	Salary-\$60,000. SSI-\$28,100.	\$88,100.
2021	Salary-\$60,000. SSI-\$28,600.	\$88,600.
2022	Salary-\$60,000. SSI-\$29,000.	\$89,000.

X  Surrendering the following collateral to eliminate the obligation to repay secured indebtedness.

Lender	Description of Collateral	Total Debt secured by Collateral
21 <sup>st</sup> Mortgage Corporation	1997 Palm Harbor double-wide mobile home	\$44,254.13

X  Reducing their other expenditures, as follows:

Description of Expenditure	Previously Expenditures (per month)	Forecast Expenditures (per month)	Description of how reduction will be made
Additional milling equipment	9,366.00 monthly payments	Debtors do not anticipate adding additional equipment	Three of the mills, two financed by Leaf Financial and one by Scottrade were returned (repossessed) by the creditors.

X  Selling the following assets:

Description of Asset	Forecast Net Proceeds from Sale	Forecast Date of Sale
10 lots in MacDonald Survey, Cleveland, Texas	\$367,000	No later than December 31 2018.
2 1996 Toyoda FH 55 mills	\$30,000.	As soon as Debtors' plans are confirmed.

The Debtor's largest secured creditor is American Business Lending, Inc., as Servicing Agent to HSBC Bank USA, National Association, Trustee for the Certificate Holders of those certain IFC SBA Loan-Backed Adjustable Rate Certificates, Series 1997-1 ("ABL"). ABL holds



a valid and perfected first lien covering real property known as 1100 N. Washington Avenue, Cleveland, Texas, and other business personal property as provided in the Promissory Note, and other loan documents related thereto including a Vendor's Lien retained in Warranty Deed, Deed of Trust (With Security Agreement, Assignment of Rents and Financing Statement), and Security Agreement, as further set forth in the Stipulation and Order for Use of Cash Collateral entered December 6, 2016 [Docket No. 24] and the ABL Proof of Claim filed November 19, 2016 [Claim No. 6]. Pursuant hereto, this Plan shall constitute a ratification, renewal and reinstatement, as applicable, of the Note and related loan documents. The Reorganized Debtor shall continue to make the payments required by the terms of the Note and the related loan documents for the monthly payments of principal and interest which accrue on a monthly basis under the Note and the related loan documents, subject to change from time to time based upon the variable rate under the Note, together with the fees, expenses and costs incurred by ABL as provided in the Note and the related loan documents as such amounts are incurred by ABL from time to time and which are due and payable as accrued, and shall perform all other obligations provided in the Note and related loan documents. The pre-petition liens of ABL in and to the collateral as provided in the Note and related loan documents, as continued as post-petition replacement liens pursuant to the Cash Collateral Order, and as renewed and extended pursuant to the Plan, are valid and duly existing and shall have the priority as existed prepetition, without the necessity of additional recordation of such liens. Time is of the essence of the Reorganized Debtor's performance of its obligations under the Note and the related loan documents.

The Debtor's next largest secured debt is \$23,482.11. The secured party is First Bank & Trust East Texas in Cleveland, Texas. As to the secured claim of First Bank & Trust – East Texas the Debtor will pay the claim of FBTET in full on or before Ninety (90) days from the effective date of the plan.

Can Capital filed a proof of claim alleging that it is a secured creditor. Debtors challenged this claim on the grounds that it is not the lender nor does it have a perfected claim and that Debtor received no consideration from Can Capital to support its claim. The "hard money" lender, WebBank contracted with the Debtors to lend money in the amount of \$150,000. The loan documents show that WebBank is guilty of usury. Debtors objected to the Can Capital claim and the Court sustained Debtors' objection. The claim is disallowed.

## **V. FINANCIAL INFORMATION**

THE INFORMATION CONTAINED IN THE PROJECTION IS ONLY AN ESTIMATE. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. ALL THE FINANCIAL INFORMATION WITH RESPECT TO THE DEBTORS AND THE CONTENTS OF THE PLAN HAS BEEN COMPILED FROM INFORMATION TAKEN FROM THE BOOKS AND RECORDS OF THE DEBTORS OR FROM THE SCHEDULES AND STATEMENTS OF AFFAIRS FILED BY THE DEBTORS. AS A RESULT, THE DEBTORS ARE NOT ABLE TO WARRANT AND REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO BE ACCURATE. CREDITORS SHOULD READ THE PLAN IN FULL. CREDITORS ARE FURTHER URGED TO CONSULT LEGAL COUNSEL TO ENSURE COMPLETE UNDERSTANDING OF THE PLAN AND THIS DISCLOSURE STATEMENT.

## VI. CLASSIFICATION OF CLAIMS

The claims against the Debtor are divided into the following classes:

- Class 1: Administrative Expense Claims.
- Class 2: Priority claims.
- Class 3: Secured claims.  
Class 3A – claim held by American Business Lending, Inc.  
Class 3B – claim held by First Bank & Trust East Texas.
- Class 4: General Unsecured claims that are Undisputed.

### A. ADMINISTRATIVE AND PRIORITY CREDITORS

The administrative expenses of the Debtor's Chapter 11 case allowed pursuant to the Section 503(b) of the Code and each allowed claim entitled to priority pursuant to Section 507 (a) (1) of the Code shall be paid in full on or before the expiration of 30 days after confirmation or, in the case of professional fees within 14 days after entry of order approving them..

**Estimated Administrative Expenses.** The Debtor estimates administrative expenses including professional fees and expenses, and pre-confirmation U.S. Trustee quarterly fees for this case to be approximately \$40,000. The administrative expenses are comprised of attorney's fees, U.S. Trustee quarterly fees, and a reserve for other possible administrative expenses. Debtor is unable to estimate the amount of fees that the Real Estate Broker may receive but the amount will be paid at closing of the sale(s) and shall be based on the percentage of commission standard in the industry.

**Avoidance and Contested Claims.** The Debtor has reviewed all payments more than \$5,850.00 made within 90 days of the filing date and is not aware of any claims that should be avoided.

**Summary of Non-Bankruptcy Litigation.** To the knowledge of the Debtor, there is no other non-bankruptcy litigation involving the Debtor.

### B. SUMMARY OF CLAIMS AND TREATMENT UNDER THE PLAN

The following summary of claims is derived from the Debtor's records and schedule in this proceeding. Some of the figures quoted in this summary are approximations, and may vary significantly from the actual amounts. The exact amount of each claim will ultimately be determined by (a) the amount as shown on each timely filed claim; (b) the amount as listed on the Debtor's schedules (if not listed as unliquidated, contingent or disputed); or, (c) the amount as determined by the Court in the event some of the following claims and their approximate amounts will significantly affect the amount ultimately received by each creditor under the Plan, exact amounts can be determined from the claims filed with the Court. Creditors will receive notice of pending litigation concerning any disputed claims, and information concerning the ultimate results of such litigation may be obtained from the Debtor's attorney or the Court.

The Plan of Reorganization divides claims into four (4) separate Classes (Classes 1 through 4). The classes consist of the following:

**Class 1 claims:** (including those of the U.S. District Clerk, U.S. Trustee and Debtor's Counsel) US Trustee fees are payable when due; all approved attorney's fees shall be paid upon court approval of the fee applications on a payment schedule permitted by Debtor's disposable income. All other administrative expenses shall be due and payable on the first day of the first month following sixty days after the Plan is confirmed. The reorganized Debtor shall be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, the reorganized Debtor shall file with the court and serve on the United States Trustee a monthly financial report for each month (or portion thereof) the case remains open in a format prescribed by the United States Trustee and provided to the Debtor by the United States Trustee.

**Class 2A claims:** (Federal taxes) The Internal Revenue Service filed an amended proof of claim with Thomas Edward Berry as taxpayer on December 9, 2016 with amounts due of \$61,186.46, \$9,000. secured and \$46,219.01 priority. Debtor believes the claims are not correct and that no taxes are due based on the 2016 return reflecting credit for a loss carry forward. Mr. Berry will file objections to the IRS claims if the Service does not withdraw the claim. However, any payment required to satisfy undisputed liabilities shall be made to the Internal Revenue Service within 30 days after the resolution of claims objections to the IRS claims.

The IRS claims that BER Precision, Inc. owes a priority amount of \$14,333.15 based on unfiled returns. The returns have been filed and reflects that no taxes are due. BER will file objections to the IRS claims if the Service does not withdraw the claim. However, any payment required to satisfy undisputed liabilities shall be made to the Internal Revenue Service within 30 days after the resolution of claims objections to the IRS claims.

**Class 2B claims:** Cleveland Independent School District ("Cleveland ISD"), Galveston County and Montgomery County (collectively, the "Taxing Authorities") are holders of ordinary course administrative expense claims for the 2017 ad valorem taxes in the amount of \$26,366.85 in case number 16-35232. Thomas Edward Berry shall pay the 2017 taxes timely pursuant to applicable non-bankruptcy law. The Taxing Authorities shall retain their liens for the 2017 taxes with the same validity, extent and priority until all taxes and related interest, penalties, and fees, if any, have been paid in full.

Cleveland ISD is the holder of a pre-petition claim for the 2017 taxes in the amount of \$3,053.99 in case number 17-34371. BER Precision, Inc. shall pay Cleveland ISD's pre-petition claim monthly with the first payment due no later than the first day of the first month which is 30 days after entry of the confirmation order, unless an objection to the claim has been filed before that date (the "Tax Claim Objection Bar Date"). These payments shall include interest from February 1, 2018 through the date of payment in full at the applicable state statutory rate of 1% per month pursuant to 11 U.S.C. §§ 506(b), 511, and 1129. The Cleveland ISD shall retain its lien for the prepetition taxes with the same validity, extent and priority until all taxes and related interest, penalties, and fees (if any) have been paid in full. In the event of a default under the plan, notice of default shall be sent to counsel for the Debtor and the Debtor shall have 15 days from the date of such notice to cure said default. In the event of failure to cure the default timely, Cleveland ISD shall be entitled to pursue collection of all amounts owed pursuant to applicable none bankruptcy

law without further recourse to the Bankruptcy Court. Cleveland ISD shall only be required to send two notices of default; upon a third event of default, it may proceed to collect all amounts owed pursuant to applicable none bankruptcy law without further notice. Failure to pay any post-petition ad valorem taxes prior to their becoming delinquent under Texas law shall constitute an event of default under the Plan.

**Class 3A Claim.** The secured claim of American Business Lending, Inc. (“ABL”) shall be satisfied under this Plan as provided herein. The Plan constitutes a ratification, renewal and reinstatement, as applicable, of the Note and related loan documents. The Reorganized Debtor shall continue to make the payments required by the terms of the Note and the related loan documents for the monthly payments of principal and interest which accrue on a monthly basis under the Note and the related loan documents, subject to change from time to time based upon the variable rate under the Note, together with the fees, expenses and costs incurred by ABL as provided in the Note and the related loan documents as such amounts are incurred by ABL from time to time and which are due and payable as accrued, and shall perform all other obligations provided in the Note and related loan documents. The pre-petition liens of ABL in and to the collateral as provided in the Note and related loan documents, as continued as post-petition replacement liens pursuant to the Cash Collateral Order, and as renewed and extended pursuant to the Plan, are valid and duly existing and shall have the priority as existed prepetition, without the necessity of additional recordation of such liens. Time is of the essence of the Reorganized Debtor’s performance of its obligations under the Note and the related loan documents.

**Class 3B claim:** As to the secured claim of First Bank & Trust – East Texas [“FBTET”], the Debtor shall pay the claim of FBTET in full on or before Ninety (90) days from the effective date of the plan. FBTET shall retain all rights, remedies, interests, liens, and lien position with respects to its Note and Security Agreement as to the Debtor and the Collateral pursuant to applicable law. The automatic stay is hereby terminated upon the Effective Date of the Plan. Debtors shall, at all times, maintain, and provide to FBTET proof of, current and effective full coverage insurance in accordance with the terms of the Contract insuring the interest of FBTET in the Collateral. Debtors shall maintain such insurance so long as FBTET maintains an interest in the Collateral and Debtors shall provide continued proof of such insurance immediately upon change of insurance or cancellation of same to FBTET. FBTET shall be listed on the insurance policy as lien-holder. The Debtor shall remain current in payment of taxes as to the Collateral at all times. If Debtor defaults in any provision of this paragraph or any other provision of the plan, the Debtor shall be in default of Note and any and all security Agreements and FBTET shall send Debtor and Debtor’s attorney a 10-day notice of default. If the Notice of default is not cured within the 10-day period, then FBTET shall be entitled to proceed under applicable non-bankruptcy law against the Collateral and the Debtor.

**Class 4 claims:** The general unsecured claims that are not disputed shall receive pro-rata distributions before the expiration of 60 months, but not before all claims of Classes 1 and 2 are satisfied. Debtor estimates that the amount of the dividends paid to this class will total \$182,889.59. It is estimated that the Class 4 claimants will receive dividends equal to 100 % of each claim at -0- percent interest.

Below is a list of the unsecured creditors and their claim amounts that the Debtors propose to pay in full pursuant to the Plan:

1) Discover Bank	\$ 1,223.61
2) Leaf Capital Funding, LLC (claim no.4)	\$ 55,717.35
3) Leaf Capital Funding, LLC (claim no.5)	\$ 61,690.38
4) Scottrade Bank Equipment Finance	\$ 64,258.25

### C. DISCHARGE OF INDEBTEDNESS

The payments, distributions and other treatment provided in respect to each allowed claim shall be in complete satisfaction, discharge, and release of all claims that were filed or could have been filed by any creditor or party in interest that received notice of these proceedings.

### D. INTANGIBLE BENEFITS UNDER THE PLAN

Under the Plan as proposed, Thomas Edward Berry will continue to manage and operate BER Precision, Inc. and conduct additional business with existing creditors.

### E. MEANS FOR EXECUTION OF THE PLAN

Debtors' Plan consists of three alternative courses of action to fulfil the execution of the plan.

#### ALTERNATIVE PLAN ONE

Plan is based upon the distribution to the creditors from the sale of the ten lots containing approximately 80 contiguous acres of undeveloped property on or before December 31, 2018. Debtor's real estate broker, Phillip Cameron of Cameron Real Estate, Cleveland, Texas successfully marketed two lots next to BER's machine shop and closed the sale on July 28, 2017. Mr. Cameron is a court approved professional and has shown that he will aggressively market Debtor's real property. Debtor believes that these lots will sell, either by parcel or in totality. Payments to creditors provided by this plan shall be made from the sales proceeds of the real property. Claims in Classes 1 and 2 shall be paid in full on or before the expiration of 30 days after confirmation or, in the case of professional fees within 14 days after entry of order approving them.

Debtor shall satisfy each allowed unsecured claim by payment of a dividend equaling 100%. These distributions shall begin on the 1<sup>st</sup> day of the month following the satisfaction of Classes 1, 2, and 3 claims.

#### ALTERNATIVE PLAN TWO

Should the sale of Debtors' real estate fail to provide sufficient income to fund the Plan on or before December 31, 2018, Debtors shall fund the Plan with monthly payments from the gross income of BER Precision, Inc. Debtors shall make 45 monthly payments each equal to 1/45<sup>th</sup> of the plan, not exceed 60 months from the date of confirmation. Distribution of the payments will be made by Thomas Edward Berry beginning on January 10, 2019 and on the on or before the 10<sup>th</sup> day of the every subsequent month until the allowed claim is satisfied.

Claims in Classes 1 and 2 shall be paid in full on or before the expiration of 30 days after confirmation or, in the case of professional fees within 14 days after entry of order approving them.

### ALTERNATIVE PLAN THREE

Debtors reserve the right to market and sell BER Precision Inc. as an operating business. Debtors believe that the value of the assets of BER exceed the total amount of all allowed claims. Distribution of the payments will be made by Thomas Edward Berry on or before the 30<sup>th</sup> day after good funds received by Debtors from the sale of the assets of BER Precision, Inc.

Claims in Classes 1, 2, and 3 shall be paid in full on or before the expiration of 30 days after confirmation or, in the case of professional fees within 14 days after entry of order approving them.

### **VII. AMENDMENTS AND WAIVERS**

Except as otherwise specifically set forth in the Plan, any term of the Plan may be amended and the observance of any term of the Plan may be waived (either generally or in a instance and either prospectively or retroactively) upon compliance with the following provision:

Holders of Plan debts may amend, with the concurrence of the debtor-in-possession, or waive compliance with any term or condition of the Plan relating to or for the benefit of the holders of Plan debts or of such debt. The Plan may be modified, as may be appropriate, at the confirmation hearing.

### **VIII. RETENTION OF POSSESSION AND JURISDICTION**

The Debtor shall remain in possession of all property which shall be free and clear of liens upon confirmation, except as set forth above. The Debtor may operate his business and property, and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code. Debtor shall continue to pay his monthly expenses at their present level or higher if the business becomes more profitable. The Court shall retain non-exclusive jurisdiction of this Chapter 11 case during the next year and shall have exclusive jurisdiction of all matters arising out of this proceeding and the Plan pursuant to and for the purposes of sections 105 (a), and 1127 and 1142 of the Bankruptcy Code and for the following purposes:

- (a) to consider any modification of this Plan under section 1127 of the Bankruptcy Code or modification of this Plan after substantial consummation, as such term is defined in section 1101(2) of the Bankruptcy Code;
- (b) to recover all assets and properties of the Debtor, wherever located;
- (c) to determine and fix all claims arising from the rejection or assumption of executory contracts or unexpired leases;
- (d) to determine all applications for the rejection or assumption of executory contracts or unexpired leases or for the assumption and assignment of executory contracts or unexpired leases to which the Debtor is a party or with respect to which it may be liable;
- (e) to hear and determine all controversies, suits, and disputes that may arise about interpretation or enforcement of this Plan;



- (f) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, or vacated;
- (g) to hear and determine all requests for compensation or reimbursement of expenses which may be made after the Confirmation Date;
- (h) to hear and determine all objections to claims, controversies, suits, and disputes that may be pending at or initiated after the Confirmation Date, except as provided in the Final Order of the Bankruptcy Court confirming the Plan;
- (i) to consider and act on the compromise and settlement of any claim or any cause of action on behalf of the Debtor;
- (j) to liquidate or estimate damages or determine the manner and time for such liquidation or estimation about any disputed, contingent, or unliquidated claim;
- (k) to adjudicate all claims of any lien on any property or any proceeds thereof;
- (l) to hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;
- (m) to correct any defect, cure omission, or reconcile any inconsistency in the Plan or in the order of the Bankruptcy Court confirming the Plan as may be necessary to carry out the purpose and intent of the Plan;
- (n) to consider and act on such other matters consistent with this Plan; and
- (o) to enter a final decree closing the Chapter 11 case.

The Debtor has reviewed his transactions to determine if there exists a preferential or voidable transfer which may be recoverable. He has found none and believes that none exist and therefore there is no value to the estate in this regard.

#### **IX. MODIFICATION OF EXISTING CLAIMS**

The provisions of all secured claims shall be modified as of the effective date of the Plan in accordance with the provisions of payment set forth in Paragraph VI hereof. Any default shall be deemed to have been waived or cured by the holders of secured claims as of the effective date of the Plan.

Any creditor who has not within the time provided in the Plan or any Final Order of the Court, performed any act required in the Plan or in such Final Order shall not participate in any distribution under the Plan.

All claims not allowed or filed prior to the bar date as may be fixed by the Court which are scheduled as contingent or disputed, and not previously barred by Order of the Court, shall be deemed barred.

## **X. OBJECTIONS TO CLAIMS**

The debtor shall file objections to all disputed claims within ninety (90) days from the effective date of the plan. ANY CLAIM SUPPORTED BY A PROOF OF CLAIM THAT HAS BEEN TIMELY FILED WITH THE BANKRUPTCY COURT'S CLERK, AND THAT IS NOT SPECIFICALLY IDENTIFIED FOR TREATMENT IN THIS PLAN IS DEEMED TO BE DISPUTED. If no objection is filed within the time so limited to the allowance of any claim duly proved, such claim shall be deemed allowed in the amount in which it is proved and the holder of such claim shall be entitled to obtain a distribution order thereon. The Court may estimate the amount of any disputed, unliquidated, contingent, or other claim for the purposes of classification and/or voting under the Plan. The Debtor may, in his discretion, withhold payment of any disputed claim until the dispute has been resolved.

## **XI. NOTICES**

After the date the Order Confirming Plan is signed by the Court, all notices required to be given under the applicable provisions of the Bankruptcy Code and/or Bankruptcy Rules ("Notices") shall be sent by first class mail, postage pre-paid, to LARRY A. VICK, Attorney for the Debtor-In-Possession at 10497 Town & Country Way, Suite 700, Houston, Texas 77024.

## **XII. DISCHARGE, VESTING AND EFFECTIVE DATE**

After the Effective Date, but prior to the completion of all Plan Payments, the Debtors may seek to administratively close this case. If the case is closed prior to completion of the Plan Payments, the debtor may later seek to reopen the case for the purpose of filing a motion for discharge.

Upon completion of all Plan Payments, the individual debtor must file a motion for discharge, served on all holders of allowed claims, in which he will certify that (i) he meets the standards set forth in Section 1141(d)(5)(C) of the Bankruptcy Code; and (ii) has completed all payments under the plan. Unless a party objects and the Court sustains the objection to the motion for discharge, the individual debtor will be discharged of his liability on debts to the maximum extent allowed by Section 1142 of the Bankruptcy Code.

Pending completion of all Plan Payments under the plan, the plan's provisions bind all persons to the extent allowed by Section 1141(a) of the Bankruptcy Code.

This Effective Date of this plan is the day the Court has entered an order confirming the plan and such order has become a Final Order. The order confirming the plan shall become a "Final Order" upon the earlier of (i) the 15<sup>th</sup> day after entry of the order and no party has secured an order staying confirmation or (ii) if the confirmation is stayed, the 15<sup>th</sup> day following termination of the stay.

No party may act pursuant to this plan prior to the Effective Date.

If Debtors default in performing under the provisions of this Plan and this case is converted to a case under chapter 7, all property vested in Debtors and all subsequently acquired property owned as of or after the conversion date shall re-vest and constitute property of the bankruptcy estate in the converted case.



### **XIII. CONSEQUENCES IF DEBTORS' PLAN IS NOT CONFIRMED**

There are three possible consequences should this Plan be rejected or should the Court refuse to confirm the Plan:

- (1) the Court could allow the Debtor or some third party additional time to formulate a different Plan under Chapter 11;
- (2) the case could be converted to a Chapter 7 liquidation case; or
- (3) the Court could dismiss the case.

If a dismissal were to occur, the debtor-in-possession would no longer have the protection of the Court and the Code. After dismissal, the Internal Revenue Service would most likely seize and post for sale substantially all the Debtor's assets for sale, and would garnish the Debtor's bank accounts and accounts receivable, leaving nothing for the remaining creditors.

In Chapter 7 liquidation, a Trustee will be appointed. The amount to be received by unsecured creditors will depend upon the net estate available after all assets of the Debtor have been deduced to cash. The cash realized from liquidation of these assets will be distributed in accordance with the Order of Distribution prescribed in the Bankruptcy Code as follows:

- (1) Payment of all Secured creditors.
- (2) Administrative expenses of the Trustee.
- (3) Administrative expenses of the Chapter 11 case.
- (4) Priority Wage claims.
- (5) Priority Tax claims.
- (6) General Unsecured claims, including deficiency claim of secured creditor.

The Trustee would be entitled to receive compensation under Section 326 of the Bankruptcy Code. Such compensation would not exceed 15% of the first \$1,000.00 or less, 6% of any amount more than \$1,000.00 but not more than \$3,000.00, 3% of any amount in excess of \$3,000.00 upon all monies disbursed or turned over in the case by the Trustee to parties in interest, excluding the Debtor, but including holders of secured claims. The Trustee's fee would be paid as a cost of administration and would be paid in full prior to the costs and expenses incurred in the Chapter 11 case and prior to any payment to unsecured creditors.

It can also be anticipated that the Trustee would retain his own attorneys and accountants, whose fees would be priority claims in the Chapter 7 case, with a higher priority than those administrative claims arising in the Chapter 11 proceeding. These fees would be in addition to the Debtor's own attorney's fees. A Chapter 7 trustee would not be in as good a position to generate cash through the continued operation of the Debtor's business as his duty is to liquidate rather than to reorganize the Debtor. Quite often prices obtained by Chapter 7 trustees for estate property are less than market due to the constraints of sale including the need to "wrap up" the estate in a relatively short period of time.

The unsecured creditors could receive substantial less through a distribution under Chapter 7 of the Bankruptcy Code. Under the Plan of Reorganization set out herein the unsecured creditors would realize a recovery after the claims of Class 2 and 3 are satisfied.

#### **XIV. RISKS TO CREDITORS UNDER THE DEBTORS PLAN**

The priority and unsecured creditors should be aware that they are impaired under this Plan in that they will be delaying in receiving dividends. However, it is anticipated that priority and unsecured creditors could experience further delay in receiving dividends under Chapter 7 liquidation.

#### **XV. TAX CONSEQUENCES**

Discharge of debt in bankruptcy case under Title 11 will not be recognized as income. I.R.C. Section 108. A discharge is a judicially approved cancellation of debt. A Title 11 discharge, for purposes of the Internal Revenue Code, occurs in Chapter 11 cases under Section 1141.

As a rule, tax attributes are reduced or eliminated as a trade-off for not recognizing the debt forgiveness as income. Thus, the reduction of tax attributes which results from the discharge of debt merely delays that recognition. This is the tax "cost" of nonrecognition of discharge of debt income.

To the extent that the Debtor's debt is reduced or forgiven (if in Title 11), certain tax attributes of the taxpayer must be reduced. Internal Revenue Code Section 108(b) (2) sets forth the order in which these attributes are reduced. In rank order, the reducible attributes are: 1) net operating loss; 2) general business credit; 3) capital loss carryover; 4) basis reduction under I.R.C. Section 108; and 5) foreign tax credit.

Tax attributes are reduced one dollar for each dollar of debt discharged or forgiven, except in the cases of credit carryovers, which are reduced 33-1/3 cents for each dollar of debt excluded from gross income. The attributes are reduced by reducing net operating loss first, until it is exhausted, and then moving on to general business credit and so forth down the list.

The Debtor keeps his accounting records on a cash basis as opposed to an accrual basis and shall continue to do so.

#### **XVI. DISCLAIMERS**

The approval of the disclosure statement is not a finding that the information contained therein is accurate and complete, and that approval of the disclosure statement is not an indication by the Court of the confirmability of the plan.

The function of Counsel is solely to include herein the financial information furnished by Debtor. Counsel expresses no opinion as to the accuracy of any financial information reported herein and disclaims that by so including any financial information Counsel has himself made any representation as to the accuracy of such information, all financial representations contained herein being totally disclaimed by Counsel.

## **XVII. SUMMARY OF SIGNIFICANT ORDERS ENTERED DURING THE CASE**

The Court entered an order permitting Debtor to use cash collateral on December 6, 2016. There have been no other significant orders entered during this case and up to the filing of this Combined Plan and Disclosure Statement.

## **XVIII. MODIFICATION OF PLAN**

This Plan may be amended or modified by the Debtors before or after the date on which the confirmation order is final as provided in section 1127 of the Bankruptcy Code.

11 U.S.C. Section 1127 provides that the Plan may be modified at any time after confirmation of the plan but before the completion of Plan Payments, whether the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to--

- (1) Increase or reduce the amount of payments on claims of a class provided for by the plan;
- (2) Extend or reduce the time for such payments; or
- (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

## **CONCLUSION**

The approval by the Bankruptcy Court of this Disclosure Statement does not constitute an endorsement by the Bankruptcy Court of the Plan of Reorganization or a guaranty of the accuracy or completeness of the information contained herein.

THOMAS EDWARD BERRY and BER PRECISION, INC. believe that this Plan will provide an opportunity for creditors to receive more than would be received in liquidation under a Chapter 7 Trustee, and should therefore be accepted. Consequently, they urge you to vote for this Plan.

DATED this 10<sup>th</sup> day of January, 2018.

Respectfully submitted,

/s/ Thomas Edward Berry  
THOMAS EDWARD BERRY  
DEBTOR-IN-POSSESSION

/s/ Thomas Edward Berry  
B E R PRECISION, INC. by  
Thomas Edward Berry, President

APPROVED:

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