

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

In re:

CUSTOM STONE COMPANY, INC.,

**Case No. 16-72508-SCS
Chapter 11**

Debtor-in-Possession.

DISCLOSURE STATEMENT

December 7, 2017

Robert V. Roussos, VSB No. 20629
Kelly M. Barnhart, VSB No. 65246
Roussos, Glanzer & Barnhart, PLC
580 E. Main St., Ste. 300
Norfolk, VA 23510
Telephone: (757) 622-9005
Facsimile: (757) 624-9257
roussos@rgblawfirm.com; barnhart@rgblawfirm.com
Counsel for the Debtor

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I. Introduction

The Debtor submits this Disclosure Statement to all of its known creditors, in order to provide them with adequate information about it and its proposed Plan. A copy of the Plan is included with this Disclosure Statement.

Your rights may be affected. You should read the Plan and this Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

UNLESS OTHERWISE DEFINED HEREIN, TERMS USED IN THIS STATEMENT HAVE THE MEANINGS DEFINED IN THE PLAN. YOU NEED TO READ THE PLAN AND THIS STATEMENT. THE PLAN IS THE DOCUMENT THAT ESTABLISHES YOUR RIGHTS.

The proposed distributions under the Plan are discussed herein at pages 9 – 15. Unsecured Creditors are to be paid \$97,450.00 through the Plan. These payments are to be distributed to Unsecured Creditors on a pro-rata basis, paid on an annual basis and will result in a payout of 33%, unless the Unsecured Creditors accept different treatment, which is greater than they would get were there a liquidation of assets. The Debtor will retain its assets in real property and personal property identified in the Schedules, with new value being contributed by the co-owners of the Debtor, Kenneth Sims (“**Mr. Sims**”) and Joan Sims (“**Mrs. Sims**” and with Mr. Sims, the “**Owners**”). Specifically, they will pledge their personal assets to satisfy the obligation to one of the Debtor’s secured creditors, Xenith, which obligation is also owed by Mr. and Mrs. Sims, as well as make contributions totaling \$9,000.00. All of these contributions are deemed new value.

The purpose of this Statement is to do the following:

- Provide information regarding the Debtor and significant events that have occurred in its case;
- Disclose how the Plan proposes to treat Claims of the type you hold (*i.e.*, what you will receive on your claim if the Plan is confirmed);
- To explain who may vote on, or object to, Confirmation of the Plan;
- Identify what factors the Court may consider in determining whether the Plan should be confirmed;
- Explain why the Debtor believes the Plan is feasible and how the treatment of your claim under the Plan compares to what would occur in a chapter 7 liquidation; and
- Disclose the effects that confirmation of the Plan will have.

Be sure to read the Plan as well as this Statement. While the Statement describes the Plan, it is the Plan that will establish your rights, if confirmed.

NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY AS TO ITS FUTURE INCOME, THE VALUE OF ITS PROPERTY OR THE AMOUNT TO BE DISTRIBUTED UNDER THE PLAN IS AUTHORIZED UNLESS IT IS IN THIS STATEMENT. THIS DISCLOSURE STATEMENT IS THE ONLY AUTHORIZED STATEMENT WITH RESPECT TO THE PLAN. NO OTHER REPRESENTATION REGARDING THE DEBTOR, ITS OPERATIONS, OR THE VALUE OF ITS PROPERTY HAS BEEN AUTHORIZED. YOU SHOULD RELY ONLY ON THE REPRESENTATIONS OR INDUCEMENTS CONTAINED HEREIN. YOU SHOULD REPORT ANY ADDITIONAL REPRESENTATIONS AND INDUCEMENTS TO THE COURT, COUNSEL FOR THE DEBTOR, OR THE UNITED STATES TRUSTEE.

THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN, BUT MERELY CONFIRMS THAT THIS STATEMENT IS ADEQUATE TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED JUDGMENT WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE INFORMATION CONTAINED IN THIS STATEMENT HAS NOT BEEN SUBJECT TO AUDIT. IT IS BASED ON RECORDS KEPT BY THE DEBTOR AND AVAILABLE TO THE DEBTOR. EVERY REASONABLE EFFORT HAS BEEN MADE TO PRESENT ACCURATE FIGURES. HOWEVER, A CERTIFIED AUDIT OF THE DEBTOR'S FINANCIAL RECORDS HAS NOT BEEN PERFORMED AND ALL CREDITORS PROCEED AT THEIR OWN RISK.

THIS DISCLOSURE STATEMENT PROVIDES INFORMATION ABOUT THE PLAN. ALTHOUGH THE DEBTOR BELIEVES THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE, THE PROVISIONS OF THE PLAN CONTROL IF THERE IS ANY INCONSISTENCY BETWEEN THE PLAN AND THE INFORMATION CONTAINED HEREIN.

II. Background

A. Description and History of the Debtor and Its Business

The Debtor is a Virginia corporation, which fabricates, designs and sells custom stone product. It also provides landscape stone, as well as creating and replacing driveways. It has been operating since November 1995 and employs 35 people, some of which are part-time and some are full-time.

The Owners hold 5,000 shares of interest in the Debtor and were directors of the Debtor as of the Petition Date. Steven R. Sims and Mr. Sims were officers of the Debtor as of the Petition Date and continue to serve in such capacities.

B. Management of the Debtor Before and During the Case

Steven R. Sims and Mr. Sims share the responsibilities of running the Debtor, both Pre-Petition and Post-Petition, with Steven focusing mostly on day-to-day operational matters. Following Confirmation, the ownership and management of the Debtor will continue in the same fashion as of the Petition Date. Mr. Sims will continue to receive a salary of \$1,153.85 per week from the Debtor, and Steven R. Sims will continue to receive a salary of \$1,850.00 a week from the Debtor.

C. Current and Historical Financial Conditions

Starting in 2008, the Debtor's business began to slow, as a result of the real estate market decline. In addition, some real estate developers, home owners, and business owners began to use a cheaper version of stone, offered by the Debtor's competitors, resulting in a loss of contracts, and therefore income. Beginning in 2014, the Debtors business began to improve, but the lull in the construction market had resulted in the Debtor being behind with the Bank, as well as behind on certain tax obligations, which made the Debtor consider seeking bankruptcy relief. In an effort to reduce its overall debt, in January 2015, the Debtor sold off a portion of its real estate, resulting in a pay down of pre-petition debt in the amount of approximately \$1.2 million to Bank of Hampton Roads (now Xenith) and approximately \$120,000 to various taxing authorities.

As of the Petition Date, its year to date income was \$1,193,880.00. Through year-end 2016, its gross income was \$3,162,493.00 (as reported in its 2016 federal income tax return). In 2014, its total gross income was \$2,719,544.00 and its 2015 total gross income was \$2,906,989.00. The Debtors' gross income for 2017, through October 31, 2017, is \$2,835,062.38.

D. Events Leading to Chapter 11 Filing

Because of the loss of income pre-petition following the decline in the real estate and construction markets, the Debtor began to have trouble in maintaining its obligations in a timely fashion, including payments to the Bank and the taxing authorities. Although it had attempted to address the financial problems outside of bankruptcy, such attempts were unsuccessful.

Based on its financial situation, the Debtor determined it would make the most economical sense to file for chapter 11 relief and deal with all of its financial issues at one time rather than trying to address them piecemeal outside of the bankruptcy forum.

E. Assets

1. Real Estate

The Debtor owns the Property, which is the only parcel of real estate it owns, as reflected on its Schedule A/B. The value of the Property is \$2,284,300.00 and is

subject to a lien in favor of the Bank in the approximate amount of \$3,290,000.00. The Bank, however, has additional collateral supporting its claim, which collateral belongs to the Owners, and is believed to be valued at approximately \$5,000,000.00 or greater.

2. Personalty

The Debtor owned the following personal property as of the Petition Date:

<u>Asset/Description</u>	<u>Estimated Value</u>
Bank Accounts (remaining funds following the clearing of checks/payments placed into DIP accounts)	\$47,380.00
Accounts Receivable (collected in timely manner and also deposited into DIP accounts upon receipt of same)	\$466,490.00
Inventory/supplies	\$75,157.10
Office furniture & equipment	\$3,530.00
Vehicles	\$96,078.00
Machinery & equipment	\$165,869.00

As of the date of this Statement, the Debtor owns the following personal property:

<u>Asset/Description</u>	<u>Estimated Value</u>
Available funds in DIP, as of December 4, 2017 – to be used for ordinary course of business expenses	\$2,755.00
Accounts receivable	N/A
Inventory/supplies	\$75,157.10
Office furniture & equipment	\$3,530.00
Vehicles	\$96,078.00
Machinery & equipment	\$165,869.00

3. Contingent and Unliquidated Claims and Causes of Action

The Debtor is not aware of holding either a legal or an equitable interest in any contingent or unliquidated claims. As far as it knows, it also has no causes of action against any parties.

F. Significant Events During the Case

1. Unsecured Creditors Committee

There is no unsecured creditors committee in this case.

2. The Bar Date

The Bankruptcy Code provides that unless otherwise set by the Court, the last date by which creditors may file proofs of claim or interest is 90 days after the first meeting of creditors held pursuant to § 341 of the Bankruptcy Code.

Pursuant to Rule 3003(c)(2), any creditor whose claim is not scheduled by the Debtor or is scheduled as disputed, contingent or unliquidated, and who fails to file a proof of claim on or before the date so established, will not be treated as a creditor with respect to that claim for purposes of voting or receiving a distribution under the Plan. The deadline to file claims in this Case, for all non-governmental units was November 15, 2016. The deadline for all governmental units was January 17, 2017.

3. Exclusivity Period

The Bankruptcy Code determines who may file a plan in a chapter 11 case. Section 1121 provides for the exclusive right for an entity to file a plan within the first 180 days of the case. See § 1121 (e)(1). Any party in interest is permitted to file a plan after the expiration of the Exclusivity Period, if the Debtor has not filed a plan within the Exclusivity Period. The Exclusivity Period has run in this case and no party has filed any plan of reorganization or liquidation in this case.

4. Hiring of Professionals

Pursuant to § 327, a debtor may employ certain professionals to assist it in carrying out certain duties as provided for in the Bankruptcy Code. The professional may not hold or represent any interest adverse to the estate and must be disinterested.

The Debtor has employed Roussos, Glanzer & Barnhart, PLC as its counsel in this case, which employment was approved by the Court by order entered on August 8, 2016 (Docket Item No. 18).

As of the date of this Statement, the Debtor has not employed any other professionals.

5. Objections to Claims

Except to the extent that a Claim is already Allowed pursuant to a final non-appealable order, the Debtor reserves its right to object to Claims. Therefore, even if your Claim is allowed for voting purposes, you may not be entitled to any distribution if an objection to your Claim is later sustained.

The Debtor will file any objections to Claims by no later than 90 days after the Effective Date.

III. Summary of Plan

A. Purpose of the Plan

The Plan places Claims in various classes and describes the proposed treatment of each class of claims, as required by the Bankruptcy Code. The Plan also provides whether each class is Impaired, entitling the same to vote on the Plan. **If the Plan is confirmed, your recovery is limited to the amounts set forth in the Plan.**

B. Means of Implementation of Plan

Payments and distributions under the Plan will be funded from funds on hand and future income received by the Debtor, as well as new value paid by the Owners, both as payments made on a monthly basis as well as the sale of certain of their assets, including assets subject to a judgment lien in favor of the Bank.

C. Unclassified Claims

Certain claims are entitled to specific treatment under the Bankruptcy Code and are deemed Unimpaired. Holders of these claims may not vote on the Plan, but may object if they want, based upon their belief that the proposed treatment under the Plan does not comply with the requirements of the Bankruptcy Code. As such, the Debtor has not placed the following claims in any class:

1. Priority Claims

Priority claims are claims provided for priority treatment pursuant to § 507 of the Bankruptcy Code. Example of priority claims are those for certain past due wages up to \$12,475.00, income taxes, employment taxes or other types of taxes. Unless the holder of such claim agrees otherwise, it must receive present value of such claim, in regular installments paid over a period not exceeding five years from the order of relief.

As of the Petition Date, the Debtor identified the following parties as holding Priority Claims:

Creditor holding a Priority Claim	Basis for Claim	Amount of Claim as Identified on Schedule E/F
City of Virginia Beach	Business personal property taxes	\$54,978.00
City of Virginia Beach	Real Estate taxes	\$26,962.00
Commonwealth of Virginia	2016 taxes	\$3,859.00
Commonwealth of Virginia	(not listed)	\$6,427.00
Internal Revenue Service	3 rd Quarter 2014 941 taxes	\$23,042.26
Internal Revenue Service	1 st & 2 ^d Quarter 2016 941 taxes	\$69,346.00

The Internal Revenue Service filed a claim in the Debtor's case, indicating it had a priority claim for the 3rd quarter of 2014, related to 941 taxes, in the amount of \$21,144.28, plus interest owed of \$1,897.98 as of the Petition Date. The claim filed by the Internal Revenue Service further identified that it had a claim for the 1st quarter 2016 941 taxes of \$33,629.17, with interest of \$291.59 and 941 taxes for the 2d quarter of 2016 of \$35,425.55, with interest of \$166.86. Adding these figures together, the IRS's priority tax claim, as of the Petition Date, is \$92,555.54. For purposes of the payments on this claim, this amount has been rounded to \$92,556. Including gap interest that has accrued since the Petition Date, through the last payment to be made on this claim, the total amount owed on these taxes is \$99,786.11. The Debtor will make the following payments to the IRS to pay this obligation in full:

- Year 1 – Eight Payments, to be paid as follows:
 - o Month 1: \$6,251.72;
 - o Month 2: \$2,000.00;
 - o Month 3: \$4,751.72;
 - o Month 5: \$4,751.72;
 - o Month 6: \$2,000.00;
 - o Month 7: \$6,251.72;
 - o Month 8: \$4,751.72;
 - o Month 11: \$2,250;
 - o Month 12: \$1,000.00

- Year 2 – Eight Payments, to be paid as follows:
 - o Month 13: \$10,000.00;
 - o Month 14: \$2,500.00;
 - o Month 15: \$8,000.00;
 - o Month 17: \$4,751.52;
 - o Month 18: \$3,000.00;
 - o Month 19: \$6,500.00;
 - o Month 20: \$3,500.00;
 - o Month 23: \$1,000.00

- Year 3 – Five Payments, to be paid as follows:
 - o Month 25: \$10,000.00;
 - o Month 26: \$9,500.00;
 - o Month 27: \$3,250.00;
 - o Month 29: \$1,500.00; and
 - o Month 31: \$2,275.79

The Debtor also owes a portion of the 3d quarter 2016 941 taxes to the IRS, which quarter straddled the Petition Date, which claim is estimated at \$27,500.00. This claim came due on or about October 31, 2016 and is entitled to gap interest at a rate of 3%, from the Petition Date through the date of the last payment to be made on this obligation. Including gap interest, the total amount to be paid by the Debtor to the IRS on this obligation is \$28,053.20. The Debtor will make the following payments to the IRS to pay this obligation in full:

- Year 1 – Four payments of \$3,617.28, to be paid in Months 4, 5, 8 and 11;
- Year 2 – Four payments of \$3,396.02, to be paid in Months 16, 17, 20 and 23

The Commonwealth of Virginia filed a priority claim related to withholding taxes, for 2016, totaling \$17,817.73. Providing for interest at a rate of 6% from the Petition Date through the date of the last payment to be made by the Debtor on this obligation, the total estimated amount of this claim is \$20,085.60. The Debtor will make the following payments to the Commonwealth of Virginia to pay this obligation in full:

- Year 1 – Five Payments, to be paid as follows:
 - o Month 2: \$750.00;
 - o Month 3: \$250.00;
 - o Month 6: \$250.00;
 - o Month 7: \$250.00;
 - o Month 11: \$2,000.00;
- Year 2 – Eight Payments, to be paid as follows:
 - o Month 13: \$2,500.00;
 - o Month 14: \$2,250.00;
 - o Month 15: \$1,750.00;
 - o Month 17: \$1500.00;
 - o Month 18: \$250.00;
 - o Month 19: \$2,250.00;
 - o Month 20: \$2,750.00;
 - o Month 23: \$500.00
- Year 3 – One payment, in Month 25 of \$2,835.00

The City of Virginia Beach filed a proof of claim, indicating it was owed \$39,900.57 in a priority claim (as well as \$1,137.45 in a secured claim and \$22,911.04 as a general unsecured claim – both of these will be addressed later in this Statement). The Debtor has been remitting \$9,600 a year (in the form of monthly payments of \$800), to the City of Virginia Beach on the secured claim and priority claim owed to the City of Virginia Beach, and upon information and belief, the balance owed on the priority claim owed to the City of Virginia Beach is \$14,392.64 (as of October 10, 2017). This claim is entitled to gap interest from the Petition Date until the balance is paid in full, and including the gap interest, the total to be paid is \$15,762.67.

The Debtor proposes to continue to remit payments to the City of Virginia Beach on its priority claim until the obligation is satisfied, as follows:

- Year 1 – Five Payments, to be paid as follows:
 - o Months 1 and 2: \$2,400.00 each;
 - o Month 6: \$400.00;
 - o Month 7: \$2,000.00;

- Month 11: \$1,600.00;
- Year 2 – Four Payments, to be paid as follows:
 - Month 13: \$1,700.00;
 - Month 14: \$2,965.67;
 - Month 15: \$697.00;
 - Month 23: \$1,600.00

Virginia Employment Commission, although identified as a general unsecured creditor in the Debtor’s Schedules, filed a priority claim for \$1,521.47. The Debtor proposes to pay this in full on the Effective Date.

2. Administrative Claims

Administrative expenses are costs or expenses associated with the administration of the case, which are allowed under § 507(a)(2). Such expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days of the Petition Date. The Code requires that all administrative expenses be paid on the Effective Date, unless a particular claimant agrees to a different treatment.

The following is a chart identifying the Debtor’s estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount as of the Disclosure Statement	Proposed Treatment
Expenses arising in the ordinary course of business	\$30,000.00	N/A
Professional fees, as approved or to be approved by the Court	\$30,000.00	To be paid in full on the Effective Date of the Plan, following approval by the Court, or paid pursuant to a separate agreement. The budget anticipates monthly payments during the Plan term. These fees may also be paid in full if such funds become available.
Office of the U.S. Trustee	\$0.00	Any quarterly fees that come due during the course of the Case will be paid in full and nothing herein shall be interpreted to provide any different treatment
Post-Petition Taxes	\$0.00	Any that come due, or have come due, will be paid in the ordinary course.

D. Classes of Claims and Equity Interests

1. Allowed Secured Claims

a. Secured Claim of John Deere Financial

In its Schedule D, the Debtor listed John Deere Financial as holding a secured claim with a balance of \$7,195.00. John Deere Financial filed a proof of claim in the Debtor's case, indicating its secured claim was \$7,195.59 as of the Petition Date. The Debtor and John Deere Financial entered into an agreement as to the use of collateral and payment of adequate protection soon after the Petition Date, and as of the date of the Disclosure Statement, and upon information and belief, there is no balance on the claim owed to John Deere Financial and the Debtor therefore is not providing for the claim in its Plan.

This claim is Impaired and is entitled to vote on Confirmation of the Plan.

b. Secured Claim of SunTrust

In its Schedule D, the Debtor listed SunTrust Bank ("**SunTrust**") as holding a secured claim of \$10,845.00, which claim was secured by a 2008 Ford F-150. The Debtor has been remitting \$251.12 a month towards this claim. SunTrust filed a proof of claim, indicating that as of the Petition Date it was owed \$10,225.78, which claim accrues interest at a rate of 6.19%.

The Debtor will continue to make the payments under the terms of the contract with SunTrust, which payments of \$251.12 will continue until June of 2020.

This claim is Unimpaired and not entitled to vote as to Confirmation of the Plan.

c. Secured Claim of Xenith

In its Schedule D, the Debtor listed Xenith as holding a claim of \$3,287,842.00, which claim was secured by the Real Property. The claim was identified as being secured at \$2,284,300, with the balance being unsecured. The Real Property was pledged as security for a loan made to the Owners. In its proof of claim, Xenith indicated its claim had a balance of \$3,312,673.56 as of the Petition Date. In its proof of claim, it identifies that it is secured at \$2,284,300 and \$1,028,373.56 as unsecured. This claim is also secured by other assets owned by the Owners and/or their Trusts and accordingly while the proof of claim filed by Xenith, as well as the Debtor's schedules reflect an unsecured balance owed to Xenith as it relates to the Debtor, its claim is fully secured and treated as such. Xenith will not be entitled to any distributions as an unsecured creditor.

The Debtor proposes that this loan will be re-amortized at a 5.00% interest rate, over a three year period, resulting in a balance of \$3,574,216.74. The Owners propose to sell certain real property owned by their trusts, which properties are located at 3333

Whippoorwill Point in Virginia Beach, Virginia (the “**Rental Property**”) and 8001 Clarcona Ocoee Road, Orlando, Florida (the “**Florida Property**”).

Specifically, the Rental Property will be sold within twelve (12) months of the Effective Date of the Plan, at an anticipated sales price of \$650,000, and after paying closing costs estimated at 10% (including the real estate agent’s commission), and paying the first mortgage in favor of TowneBank of approximately \$141,000, all net proceeds will be remitted to Xenith (estimated at \$444,000.00).

The Florida Property will be sold within twenty-four (24) months of the Effective Date, resulting in a payment in full of the balance owed to Xenith. The Florida Property is appraised at approximately \$4,400,000.00 with one tract therein being subject to a reverse mortgage in favor of the Owners of approximately \$650,000.

This claim is Impaired and entitled to vote as to Confirmation of the Plan.

d. City of Virginia Beach

The City of Virginia Beach, in its proof of claim, identified that it held a Secured Claim, as of the Petition Date, of \$1,137.45. Upon information and belief, this claim is \$0.00 and the Debtor will not be remitting any payments on the Secured Claim of Virginia Beach.

This claim is Unimpaired and entitled to vote as to Confirmation of the Plan.

2. Allowed Unsecured Claims

General unsecured claims are not secured by property of the Estate and are not entitled to priority treatment under § 507(a). This class is designated as Class 5 and is Impaired and entitled to vote as to Confirmation. Holders of Unsecured Claims, as identified in **Exhibit A**, attached hereto and incorporated herein, are either scheduled by the Debtor as unsecured creditors or filed a proof of claim, reflecting an unsecured claim against the Estate. If an unsecured creditor files a proof of claim, and the amount listed differs from the amount listed in the Debtor’s schedules, and it does not object to the claim, the amount listed in the proof of claim shall govern.

The total balance owed to Unsecured Creditors, as of the Petition Date, was \$294,501.67, not including the claim of Xenith. These claims are not entitled to any interest. All payments contemplated herein will be made on a pro-rata basis and payments will be remitted on an annual basis, beginning at the end of year 3 and going through the end of the Plan term. The payments will be sent Month 37 (totaling \$18,000.00); Month 49 (totaling \$39,000.00) and Month 60 (totaling \$40,450.00). These payments include new value being paid by the Owners.

This class is Impaired and entitled to vote.

3. Equity Interests

This Class is designated as Class 6 and is comprised of the equity interest in the Debtor held by the Owners. Upon Confirmation, the Debtor will cancel equity interests and will reissue 100% of common stock to both, and they will satisfy the obligation owed to Xenith Bank in exchange for their stock, which will be considered new value and will be paid in the form of satisfying the claim of Xenith Bank over the first 24 months of the Plan.

E. Executory Contracts and Unexpired Leases

The Debtor was not a party to any leases or contracts as of the Petition Date. Accordingly, there are no unsecured claims based upon damages from any rejection of either a lease or contract.

IV. Tax Consequences of Plan

CREDITORS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.

A. General

A description of certain United States federal income tax consequences of the Plan is provided below, based upon, among other things, the Internal Revenue Code and Treasury Regulations issued thereunder as of the date of this Disclosure Statement. Changes in these authorities or their interpretation could alter the United States federal income tax consequences of the Plan in a material way. The Debtor has not independently determined the tax consequences of the Plan to holders of Claims, and has not requested any ruling from the IRS or any other taxing authority with respect to such matters. The income tax consequences of the Plan on any particular holder of a Claim may be affected by matters not discussed in this Statement. In addition, this Statement does not discuss state, local or non-U.S. tax consequences.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. Thus, no assurance can be given as to the interpretation that the IRS will adopt. **EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS FOR FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES UNDER THE PLAN.**

B. United States Federal Tax Consequences of Payment of Allowed Claims

The United States federal income tax consequences to the holders of Allowed Claims under the Plan will depend upon, among other things, the consideration received by the Claimant, whether the Claimant reports income on the accrual or cash method, whether the holder receives Distributions under the Plan in more than one taxable year, and whether the holder has taken a bad debt deduction with respect to its Claim.

Typically, a Claimant should recognize a gain or loss equal to the amount realized under the Plan as to each Claim less the Claimant's basis in the Claim. Any gain or loss may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Claim and Claimant, and the length of time the Claimant held the Claim. If the Claimant realizes a capital loss, its deduction of loss may be limited. A Claimant who receives an amount less than the Claimant's tax basis in the Claim may be entitled to a bad debt deduction in some amount under § 166(a) of the Internal Revenue Code. The applicability of such deduction is fact-specific. Claimants are urged to consult their tax advisors as to their ability to take such a deduction.

C. Professional Tax Assistance Recommended

The foregoing discussion is intended only as a summary of certain United States federal income tax consequences of the Plan and is for informational purposes only. This Statement does not provide any tax advice and the tax consequences for each Claimant may vary depending upon the Claimant's particular circumstances. Accordingly, Claimants are urged to seek advice from their tax advisors regarding all tax consequences of the Plan.

V. Confirmation Requirements and Procedures

To be confirmable, the Plan must meet the requirements listed in § 1129(a) or (b) of the Bankruptcy Code. These include the requirements that: (a) the Plan be proposed in good faith; (b) at least one impaired class of claims accepts the Plan, without counting votes of insiders; (c) the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and (e) the Plan is feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for Confirmation.

The Bankruptcy Code requires the Court, after notice, to hold a hearing to determine whether a plan of reorganization should be confirmed. A hearing on Confirmation of the Plan will be scheduled and notice will be circulated in accordance with the Bankruptcy Code and Rules. The hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the hearing.

All objections to Confirmation of the Plan will be heard at the Confirmation Hearing. Any objection to Confirmation of the Plan must be made in writing, filed with the Bankruptcy Court and served on the following parties **not later than seven days before the Confirmation Hearing**:

Robert V. Roussos
Kelly M. Barnhart
Roussos, Glanzer & Barnhart, PLC
580 E. Main St., Ste. 300
Norfolk, VA 23510

Office of the United States Trustee
Federal Building, Room 625
200 Granby Street
Norfolk, VA 23510

Objections to Confirmation of the Plan are governed by Rule 9014.

UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY FILED AND SERVED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

A. Who May Vote and/or Object

Any party in interest may object to Confirmation if the party believes that any requirement of the Bankruptcy Code has not been met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) Allowed or Allowed for voting purposes; and (2) Impaired.

In this case, the Debtor believe that Classes 1, 3 and 5 Impaired and are therefore entitled to vote to accept or reject the Plan.

1. Allowed Claims

Only a creditor with an Allowed Claim has the right to vote on the Plan. Generally, a claim is Allowed if either: (1) the Debtor has listed the claim in its schedules, unless the claim has been listed as disputed, contingent or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and a hearing, either overrules the objection or allows the claim for voting purposes under Rule 3018(a).

The deadline for filing a proof of claim in this case, for all creditors, except governmental units was November 15, 2016. The deadline for filing a proof of claim in this case for all governmental units was January 17, 2017.

2. Impaired Claims

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

3. Parties Not Entitled to Vote

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

- Holders of claims that have been disallowed by an order of the Court;
- Holders of other claims that are not “Allowed Claims”, unless they have been “allowed” for voting purposes;
- Holders of claims in unimpaired classes;
- Holders of claims entitled to priority status pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code;
- Holders of claims in classes that do not receive or retain any value under the Plan; and
- Administrative expenses.

4. Voting in More than One Class

A creditor with a Claim that is allowed in part as a Secured Claim and in part as an unsecured claim, or who otherwise holds Claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each Claim. For example, the City of Virginia Beach and the IRS hold claims in multiple classes and are entitled to submit a ballot for each type of class of claim.

B. Votes Necessary for Confirmation

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

1. Votes Necessary for a Class to Accept the Plan

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

2. Treatment of Non-Accepting Classes

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

C. Liquidation Analysis

In a chapter 7, creditors would not be entitled to receive any distributions or recovery on there claims. Thus, given that the Debtor is proposing to pay \$97,450.00 to

its Unsecured Creditors, the Debtor is proposing more than they would receive in a chapter 7 bankruptcy case. A copy of the Liquidation Analysis is attached hereto and incorporated herein as **Exhibit B**.

D. Feasibility

The Court must find that Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, unless such liquidation or reorganization is proposed in the Plan. The Debtor contends that the Plan is feasible.

1. Ability to Fund the Plan

The Debtor believes it will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses entitled to be paid on that date.

2. Ability to Make Future Payments

The Debtor must also demonstrate that it will have enough cash over the life of the Plan to make the required Plan payments. Accordingly, the Debtor has provided projected financial information, in **Exhibit C** to this Statement.

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

VI. Voting Procedures and Requirements

A. Confirmation through Voting

As stated above, the Court will confirm the Plan only if the requirements of § 1129 are satisfied. One of the requirements is that either: (1) each class of Impaired claims has voted to accept the Plan; or (2) if at least one class of Impaired claims has voted to accept the Plan, the Plan does not discriminate unfairly and is fair and equitable to non-accepting classes.

B. Ballots

Creditors entitled to vote will receive Ballots on which to record their acceptances or rejections of the Plan. You must complete your Ballot and return it to counsel for the Debtor, who will tally the votes and report the results to the Court at the Confirmation Hearing of the Plan. Please complete the Ballot sent to your with this Disclosure Statement, sign the original, and return it to counsel for the Debtor.

C. Effects of Failure to Vote

If you are entitled to vote and do not, the Ballots will be tallied as though you do not exist. **IF NO CREDITORS IN A CLASS VOTE, THE CLASS WILL BE**

DEEMED TO ACCEPT THE PLAN¹.

VII. Effects of Confirmation

A. Discharge

On the date of Confirmation of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the Effective Date, to the extent specified in § 1141(d)(1)(A) of the Bankruptcy Code, except that the Debtor will not be discharged of any debt: (1) imposed by the Plan; (2) of a kind specified in § 1141(d)(6)(A) if a timely complaint is filed in accordance with Rule 4007(c); or (c) of a kind specified in § 1141(d)(6)(B).

Upon the granting of a discharge, unless specifically excepted by this Court, the Debtor shall be released and discharged from any and all Pre-Petition Claims, rights, debts, liabilities, demands, obligations, covenants, liens, security interests, rights of indemnity or contribution, promises, acts, agreements, contracts, costs, expenses, damages, judgments, and causes of action, of any kind or nature, in law, equity, or otherwise, whether known or unknown, direct or indirect, which any creditor, even had, now has or hereafter can, shall or may have, or succeed to, arising from, or related to, or in connection with, whether directly or indirectly, the Case and the provisions of the Plan.

B. Modification of Plan/Withdrawal of Plan

The Debtor may modify the Plan at any time prior to Confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan. The Debtor may also seek to modify the Plan at any time after Confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

The Debtor may revoke or withdraw the Plan before the Confirmation Date. If the Plan is revoked or withdrawn prior to Confirmation, the Plan shall be of no force or effect, and shall be deemed null and void. If the Plan is revoked or withdrawn prior to Confirmation, nothing contained herein shall in any way effect or prejudice the rights of the Debtor with regard to the Claims, or any other rights or interests.

C. Final Decree

Once the estate has been fully administered, as provided for in Rule 3022, the Debtor, or such party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court may enter such final decree on its own motion.

¹ See, e.g., *In re Adelpia Comm. Corp.*, 368 B.R. 140 (Bankr. S.D.N.Y. 2007); *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988); *In re Northeast LA Telephone Co., Inc.*, 2006 Bankr. LEXIS 2589 (Bankr. W.D. LA 2006); *In re Cypresswood Land Partners, I*, 409 B.R. 396 (Bankr. S.D.N.Y. 2009).

VIII. Conclusion

The Debtor believes that the Plan is in the best interest of all creditors and urges holders of Impaired Claims to vote to accept the Plan and to return their Ballots with all due speed.

Respectfully submitted,

/s/ *Kenneth R. Sims*
Kenneth R. Sims, for
CUSTOM STONE COMPANY, INC.

/s/ *Kelly M. Barnhart*
Kelly M. Barnhart, VSB. No. 65246
Counsel for Custom Stone Company, Inc.