

READING GUIDE TO  
DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION

1. Before beginning, a complete copy of the Disclosure Statement and Plan, including endnotes, should be printed.
2. Each endnote contains either information to be inserted into the text of the Plan (in **bold**), or instructional information for the plan proponent (underlined), which should not be included in the text. Within the endnotes, information contained in <brackets> may apply, and should be inserted where appropriate.
3. After inserting the appropriate information, the endnotes (which are both in bold and redlined in the text) should be deleted from the text.
4. The Proponent should review the disclosure statement for spelling, typographical, and grammatical errors. In some paragraphs, either the singular or plural form of nouns or verbs is used; however, the particular facts of the Proponent's plan may call for the opposite form. Be sure to make the appropriate changes.
5. Sections II, III, IV, and V should not be modified. Any voting information relevant to this Plan should be provided in Section VI.
6. If the Proponent has not included information required by this mandatory disclosure statement and plan of reorganization form, the Proponent should include within the motion for approval of the disclosure statement, the reason the disclosure made is adequate, including information and evidence regarding the complexity of the case, why the information left out would not benefit creditors and the cost of providing the information.

DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION FOR  
\_\_\_\_\_ [Debtor's name]

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## **I. INTRODUCTION**

On **1**, **2** ("Debtor") filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code ("Code"). The document you are reading is both the Plan of Reorganization ("Plan") and the Disclosure Statement. **3** ("Proponent") has proposed the Plan to treat the claims of the Debtor's creditors and, if applicable, the interests of shareholders or partners **4**. A disclosure statement describes the assumptions that underlie the Plan and how the Plan will be executed. The Bankruptcy Court ("Court") has approved the form of this document as an adequate disclosure statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. The Court has not yet confirmed the Plan, which means the terms of the Plan are not now binding on anyone.

The Proponent has reserved **5** in Courtroom **6** for a hearing to determine whether the Court will confirm the Plan.

Any interested party desiring further information should contact:  
**7**.

## **II. GENERAL DISCLAIMER AND VOTING PROCEDURE**

PLEASE READ THIS DOCUMENT, INCLUDING THE ATTACHED EXHIBITS, CAREFULLY. IT EXPLAINS WHO MAY OBJECT TO CONFIRMATION OF THE PLAN. IT EXPLAINS WHO IS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN. IT ALSO TELLS ALL CREDITORS AND ANY SHAREHOLDERS OR PARTNERS WHAT TREATMENT THEY CAN EXPECT TO RECEIVE UNDER THE PLAN, SHOULD THE PLAN BE CONFIRMED BY THE COURT.

THE SOURCES OF FINANCIAL DATA RELIED UPON IN FORMULATING THIS DOCUMENT ARE SET FORTH IN THE DECLARATION IN SECTION XX BELOW. ALL REPRESENTATIONS ARE TRUE TO THE PROPONENT'S BEST KNOWLEDGE.

NO REPRESENTATIONS CONCERNING THE DEBTOR THAT ARE INCONSISTENT WITH ANYTHING CONTAINED HEREIN ARE AUTHORIZED EXCEPT TO THE EXTENT, IF AT ALL, THAT THE COURT ORDERS OTHERWISE.

After carefully reviewing this document and the attached exhibits, please vote on the enclosed ballot and return it in the enclosed envelope.

The Proponent has reserved a hearing date for a hearing to determine whether the Court will confirm the Plan. Please refer to Section I above for the specific hearing date. If, after receiving the ballots, it appears that the Proponent has the requisite number of votes required by the Code, the Proponent will file a motion for an order confirming the Plan.

The Motion shall at least be served on all impaired creditors and partners or shareholders who reject the Plan and on the Office of the United States Trustee. Any opposition to the Motion shall be filed and served on the Proponent **8** no later than fourteen days prior to the hearing date. Failure to oppose the confirmation of the Plan may be deemed consent to the Plan's confirmation.

### **III. WHO MAY OBJECT TO CONFIRMATION OF THE PLAN**

Any party in interest may object to confirmation of the Plan, but as explained below not everyone is entitled to vote to accept or reject the Plan.

### **IV. WHO MAY VOTE TO ACCEPT OR REJECT THE PLAN**

It requires both an allowed and impaired claim or interest in order to vote either to accept or reject the Plan. A claim is defined by the Code to include a right to payment from the Debtor. An interest represents an ownership stake in the Debtor.

In order to vote a creditor or interest-holder must first have an allowed claim or interest. With the exceptions explained below, a claim is allowed if proof of the claim or interest is properly filed before any bar date and no party in interest has objected, or if the court has entered an order allowing the claim or

interest. Please refer to Section VI below for specific information regarding bar dates in this case.

Under certain circumstances a creditor may have an allowed claim even if a proof of claim was not filed and the bar date for filing a proof of claim has passed. A claim is deemed allowed if the claim is listed on the Debtor's schedules and is not scheduled as disputed, contingent, or unliquidated. Exhibit "9" contains a list of claims that are not scheduled as disputed, contingent, or unliquidated.

Similarly, an interest is deemed allowed if it is shown on the list of equity security holders filed by the Debtor with the court and is not scheduled as disputed.

In order to vote, an allowed claim or interest must also be impaired by the Plan.

Impaired creditors include those whose legal, equitable, and contractual rights are altered by the Plan, even if the alteration is beneficial to the creditor. **10** A contract provision that entitles a creditor to accelerated payment upon default does not, however, necessarily render the claimant impaired, even if the Debtor defaulted and the Plan does not provide the creditor with accelerated payment. The creditor is

deemed unimpaired so long as the Plan cures the default, reinstates the maturity of such claim as it existed before default, compensates for any damages incurred as a result of reasonable reliance upon the acceleration clause, and (except for a default arising from failure to operate a nonresidential lease subject to 11 U.S.C.A. § 365 (b)(1)(A) (West Supp. 2006)) compensates for any actual pecuniary loss incurred as a result of any failure to perform a non-monetary obligation.

Impaired interest-holders include those whose legal, equitable, and contractual rights are altered by the Plan, even if the alteration is beneficial to the interest holder.<sup>11</sup>

There are also some types of claims that the Code requires be treated a certain way. For that reason they are considered unimpaired and therefore holders of these claims cannot vote.

To summarize, there are two prerequisites to voting: a claim or interest must be both allowed and impaired under the Plan.

If a creditor or interest-holder has an allowed and impaired claim or interest, then he or she may vote either to accept or reject the Plan (unimpaired claimants or interest-holders are deemed to have accepted the Plan). Impaired claims or interests



are placed in classes and it is the class that must accept the Plan. Members of unimpaired classes do not vote, although as stated above, they may object to confirmation of the Plan. Even if all classes do not vote in favor of the Plan, the Plan may nonetheless be confirmed if the dissenting classes are treated in a manner prescribed by the Code. Please refer to Section VI below for information regarding impaired and unimpaired classes in this case.

Section IX sets forth which claims are in which class. Secured claims are placed in separate classes from unsecured claims. Fed. R. Bankr. P. 3018(d) provides: "A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities."

#### **V. VOTES NECESSARY TO CONFIRM THE PLAN**

The Court may confirm the Plan if at least one noninsider impaired class of claims has accepted and certain statutory requirements are met as to both nonconsenting members within a consenting class and as to dissenting classes. A class of claims has accepted the Plan when more than one-half in number and at least two-thirds in amount of the allowed claims actually voting, vote in favor of the Plan. A class of interests has accepted the

Plan when at least two-thirds in amount of the allowed interests of such class actually voting have accepted it. It is important to remember that even if the requisite number of votes to confirm the Plan are obtained, the Plan will not bind the parties unless and until the Court makes an independent determination that confirmation is appropriate. That is the subject of any upcoming confirmation hearing.

#### **VI. INFORMATION REGARDING VOTING IN THIS CASE**

The bar date for filing a proof of claim in this case was **12**.

The bar date for objecting to claims was **13**.

In this case the Proponent believes that class **14** is impaired and therefore entitled to vote. Class **15** is unimpaired and therefore does not vote. A party that disputes the Proponent's characterization of its claim or interest as unimpaired may request a finding of impairment from the Court in order to obtain the right to vote.

Ballots must be received by the Proponent, addressed to **16** by **17**.

#### **VII. DESCRIPTION OF DEBTOR'S PAST AND FUTURE BUSINESS AND EVENTS**

## PRECIPITATING BANKRUPTCY FILING

The Debtor is a **18**.

Debtor conducted **19** of its business activity in **20** since **21**.

What follows is a brief summary of the dates and circumstances that led Debtor to file bankruptcy. **22**

What follows is a brief description of the Debtor's business and future business plans. Further details relating to the Debtor's financial condition and post-confirmation operation of the Debtor are found in sections X, XI, XII, XVI, and XV.

**23**

**24**

## VIII.CRITICAL PLAN PROVISIONS

Listed below are the sources of money earmarked to pay creditors and interest-holders.

a. **25**

b. **26**

Most likely, general unsecured creditors can expect payment on:

a. **27**

b. in the amount of **28**

c. and continuing every 29 for 30.

## **IX. DESCRIPTION AND TREATMENT OF CLAIMS**

### **a. Overview of Plan Payments**

Below is a summary of who gets paid what and when and from what source. The identity of members within a particular class is explained beginning on the next page. The second column lists two amounts.<sup>31</sup> First, the amount of each payment, or if only one is to be made, then that amount; second, the total amount that will be paid. The Proponent is usually not required by law to pay an unsecured creditor or interest holder everything it would otherwise be entitled to, had a bankruptcy case not commenced. The "Payment Due Date" column states the frequency with which payments will be made and the starting and ending dates. Look at the starting date to figure out who will be paid before and after you and in what amount. The "Source of Payment" column describes the expected source of payment. Further details regarding the source of payment are found in sections X and XI.

The timing of payments to many creditors is determined by the "Effective Date." Administrative claims, unless otherwise stated, must be paid by the Effective Date. The timing of payments to impaired creditors is measured from the Effective Date.<sup>32</sup> In this case, the Effective Date is 33.

<u>Payment Recipient</u>	<u>Amount of each Payment</u> <u>(Total amount to be paid</u>	<u>Payment Due Date</u>	<u>Source of Payment</u>
1.Ms. Bankruptcy Attorney	\$50,000	12/15/92	\$25,000 retainer
	(\$50,000)	[effective date]	\$25,000 sale of personal property
2.Class "X"	\$5,000	quarterly;	
	\$15,000	1/15/93 - 7/15/93	post-confirmation income
3.Class "Y"	\$5,000	quarterly;	post-confirmation income
	\$100,000	1/15/93 - 1/15/97	
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All claims listed below are undisputed. 34 No claimant or interest holder is an affiliate of the Debtor. 35

Below is a detailed description and treatment of administrative expenses, claims and interests

b. Administrative Expenses

1. These include the "actual, necessary costs and expenses of preserving the estate" as determined by the Court after notice to creditors of a request for payment and after a hearing thereon.
- 36
2. The Code requires that allowed administrative expenses be paid on the effective date unless the party holding the administrative expense agrees otherwise. The claimant has not agreed otherwise.

37 38

Administrative Expense #1. 39

Claimant: \_\_\_\_\_

\$ \_\_\_\_\_, subject to court approval

Administrative Expense # 2.

Claimant: \_\_\_\_\_

\$ \_\_\_\_\_, subject to court approval

TOTAL \$ \_\_\_\_\_

c. Unsecured Tax Claims

1. These include certain types of property, sales, and income taxes. **40**
2. The Code requires that the holders of such claims receive regular installment payments in cash over a period ending not later than five years after the date of the order for relief, unless agreed otherwise. The claimant has not agreed otherwise.  
**41** The total cash payments must have a present value equal to the amount of the allowed claim. The treatment of this claim is in a manner not less favorable than the most favored nonpriority unsecured claim provided in this Plan (other than any cash payments to an administratively convenient class). The amount of the allowed claim includes the amount of tax owed plus interest of **42** %. The present value is calculated as of the effective date.

Tax Claim # 1.

Claimant:

Date(s) of order for relief:

Total amount of allowed claim as of [date]:

Total amount of cash payments (over time) to satisfy  
the claim:

Interest rate (to compensate creditor because claim is  
paid over time):

First payment date:

Amount of each installment:

Frequency of payments:

Total yearly payments:

Final Payment date:

TOTAL UNSECURED TAX CLAIM(S) \$ \_\_\_\_\_

d. CLASS ONE **43**

Secured Claim of **44**

Total amount of allowed claim:

Total amount of payments (over time) to satisfy the  
secured claim:

Interest rate (to compensate creditor because claim  
is paid over time):

Impaired **45**



First payment date:

Amount of each installment:

Frequency of payments:

Total yearly payments:

Final payment date:

Lien is not modified in any way by the Plan. **46**

Description of Collateral:

Additional comments:

**47**

e. CLASS TWO

Unsecured Claims

See Exhibit "**48**" for list of claimants and  
amount owed each.

Total amount of allowed claims:

Total amount of payments (over time) to satisfy claims:

Interest rate **49** :

Impaired **50**

First payment date:

Amount of each installment:

Frequency of payments:

Total yearly payments:

Final payment date:

Additional comments:

f. CLASS THREE

Insider Claims

1. This is the claim of a person as defined in 11 U.S.C.A. § 101(31) (West Supp. 2006).

Essentially, an insider is a person with a close relationship with the debtor, other than a creditor-debtor relationship.

Insider # 1.

Claimant:

Total amount of allowed claim:

Total amount of payments (over time) to satisfy claims:

Interest rate (to compensate creditors because claim is paid over time):

Impaired **51**

First payment date:

Amount of each installment:

Frequency of payments:

Total yearly payments:

Final payment date:

Additional comments:

TOTAL INSIDER CLAIMS \$ \_\_\_\_\_

52

g. CLASS FOUR

Shareholders Interests

53

1. Under the Plan, shareholders simply retain their  
shares of stock.

54

**X. SOURCE OF MONEY TO PAY CLAIMS AND INTEREST-HOLDERS**

The Plan cannot be confirmed unless the Court finds that it is "feasible," which means that the Proponent has timely submitted evidence establishing that the Debtor will have sufficient funds available to satisfy all expenses, including the scheduled creditor payments discussed above. What follows is a statement of projected cash flow for the duration of the Plan. The focus is on projected cash receipts and cash disbursements. All non-cash items such as depreciation, amortization, gains and losses are omitted. A positive number reflects a source of cash; a (negative number) reflects a use of cash. A more detailed statement of cash flow projections for the duration of Plan payments is attached as Exhibit "55".

Years of Plan Payments

	year#1 20 57	year#2 20 58	56
Net cash flow	59		
<u>From operating activities:</u>			
Collections from	60	1,960,000	
Payments for inventory		(1,227,000)	
Payments for selling		(505,000)	
Payments for interest		(15,000)	
Payments for income taxes		(79,000)	
Total		134,000	
Yearly plan payments:		(60,000)	
Net cash available to Debtor			
after all plan payments made:		84,000	

Section XV(c) states the assumptions and details surrounding the statement of projected cash flow.

On the effective date, the Plan pays 61.

#### **XI. FINANCIAL RECORDS TO ASSIST IN DETERMINING WHETHER PROPOSED PAYMENT IS FEASIBLE**

62

Attached as Exhibit "63" are three types of financial documents, including balance sheets, cash flow statements and income and expense statements for the period including the most recent twelve-month calendar year and all months subsequent thereto.

64

#### **XII. ASSETS AND LIABILITIES OF THE ESTATE**

a. Assets

The identity and fair market value of the estate's assets are listed in Exhibit "65" so that the reader can assess what assets are at least theoretically available to satisfy claims and to evaluate the overall worth of the bankruptcy estate. Whether the Plan proposes to sell any of these assets is discussed in section XVI.

b. Liabilities

Exhibit "66" shows the allowed claims against the estate, claims whose treatment is explained in detail by section IX.

c. Summary

The fair market value of all assets equals 67. Total liabilities equal 68.

**XIII.TREATMENT OF NONCONSENTING CLASSES**

As stated above, even if all classes do not consent to the proposed treatment of their claims under the Plan, the Plan may nonetheless be confirmed if the dissenting classes are treated in a manner prescribed by the Code. The process by which dissenting classes are forced to abide by the terms of a plan is commonly referred to as "cramdown." The Code allows dissenting classes to be crammed down if the Plan does not "discriminate unfairly" and

is "fair and equitable." The Code does not define discrimination, but it does provide a minimum definition of "fair and equitable." The term can mean that secured claimants retain their liens and receive cash payments whose present value equals the value of their security interest. For example, if a creditor lends the Debtor \$100,000 and obtains a security interest in property that is worth only \$80,000, the "fair and equitable" requirement means that the claimant is entitled to cash payments whose present value equals \$80,000 and not \$100,000. The term means that unsecured claimants whose claims are not fully satisfied at least know that no claim or interest that is junior to theirs will receive anything under the Plan, except where the Debtor is an individual, has elected to retain property included in the Estate under 11 U.S.C.A. § 1115 (West Supp. 2006) and has satisfied 11 U.S.C.A. § 1129(b)(2)(B)(ii) (West Supp. 2006). "Fair and equitable" means that each holder of an interest must receive the value of such interest or else no junior interest is entitled to receive anything.

Therefore, if a class of general unsecured claims votes against the Plan, the Plan ordinarily cannot be confirmed where a non-individual Debtor or a class of interest holders (e.g. shareholders or partners) will receive or retain any property under the Plan, unless the Plan provides that the class of general unsecured claims shall be paid in full with interest.<sup>69</sup>

These are complex statutory provisions and the preceding paragraphs do not purport to state or explain all of them.

70

#### **XIV. TREATMENT OF NONCONSENTING MEMBERS OF CONSENTING CLASS (CHAPTER 7 LIQUIDATION ANALYSIS)**

The Plan must provide that a nonconsenting impaired claimant or interest holder of a consenting class receive at least as much as would be available had the Debtor filed a Chapter 7 petition instead.

In a Chapter 7 case the general rule is that the Debtor's assets are sold by a trustee. Unsecured creditors generally share in the proceeds of sale only after secured creditors and administrative claimants are paid. Certain unsecured creditors get paid before other unsecured creditors do. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the total amount of allowed claims.

A creditor would recover from the assets of the bankruptcy estate less under Chapter 7 than under Chapter 11 for three reasons **71**.

First, the liquidation value of **72** is less than its fair market value **73** because **74**. Second, in a chapter 7 case a

trustee is appointed and is entitled to compensation from the bankruptcy estate in an amount no more than 25% of the first \$5,000 of all moneys disbursed, 10% on any amounts over \$5,000 and up to \$50,000, 5% on all amounts over \$50,000 and up to \$1,000,000, and such reasonable compensation no more than 3% of moneys over \$1,000,000. Finally, a chapter 7 recovery may be less because an individual debtor is permitted to exempt a certain amount of the sales proceeds before unsecured creditors are paid anything.**75**

	Chapter 7	Chapter 11 <b>76</b>
1. value of assets		
2. administrative exp. secured claims priority unsecured claims		
3. chapter 7 trustee fee		n/a
4. exemption(s)		n/a
TOTAL AVAILABLE FOR DISTRIBUTION TO GENERAL UNSECURED CR.		
	<hr/>	<hr/>
	unsecured creditors receive payment of <b>77%</b> of total claims	unsecured creditors receive payment of <b>78%</b> of total allowed claims under Plan



**XV. FUTURE DEBTOR**

**79**

a. Management of Debtor

1. Names of persons who will manage the Debtor's business affairs:
2. Proposed compensation to persons listed above:
3. Qualifications:
4. Affiliation of persons to Debtor:
5. Job description:

b. Disbursing Agent

**80** is responsible for collecting money intended for distribution to claimants and transmitting it to them.

The disbursing agent's address and telephone number are: **81**.

1. Proposed compensation to person listed above:
2. Qualifications:
3. Affiliation of person to Debtor:
4. Job description:

c. Future Financial Outlook

The Proponent believes that the Debtor's economic health will improve **82** from its prebankruptcy state for the following reasons. **83**

Section X provides a summary of the projected cash flow of

the Debtor for the duration of the Plan. The following assumptions underlie the projections. **84 85** As previously stated, Plan payments will come from the continued operation of the Debtor's business. If the business generates insufficient funds to provide all of the Plan payments, then the Proponent will make up the shortfall under the following conditions and subject to the following terms **86**. The Proponent's financial solvency, which is relevant to its ability to honor its commitment to make up any shortfall, is demonstrated by the following facts. **87**

**88**

**XVI. SALE OR TRANSFER OF PROPERTY; ASSUMPTION OF CONTRACTS AND  
LEASES; OTHER PROVISIONS**

The Plan provides for the following: **89**

The Court must make certain findings of fact before approving the aforementioned provisions as part of the Plan. The Proponent will request that the Court make the appropriate findings at the confirmation hearing, based upon evidence submitted in support of the confirmation motion.

**XVII. BANKRUPTCY PROCEEDINGS**

90

**XVIII. TAX CONSEQUENCES OF PLAN**

91

**XIX. EFFECT OF CONFIRMATION OF PLAN**

a. General comments

The provisions of a confirmed Plan bind the Debtor, any entity acquiring property under the Plan, and any creditor, interest holder, or general partner of the Debtor, even those who do not vote to accept the Plan.

The confirmation of the Plan vests all property of the estate in the Debtor. **92**

The automatic stay is lifted upon confirmation as to property of the estate. However, the stay continues to prohibit collection or enforcement of pre-petition claims against the Debtor or the Debtor's property until the date the Debtor receives a discharge, if any. If the Debtor does not seek a discharge, the discharge is deemed denied, and the stay as to the Debtor and the Debtor's property terminates upon entry of the order confirming the Plan.

b. Discharge of liability for payment of debts; status  
of liens; equity security holders

Unless the Debtor is not entitled to receive a discharge pursuant to 11 U.S.C.A. 1141(d)(3) (West 2004), the debtor may obtain a discharge only upon specific order of the Court. **93**

**94**

c. Modification of the Plan

The Proponent may modify the Plan pursuant to 11 U.S.C.A. § 1127 (West 2004 & Supp. 2006).

d. Post-Confirmation Causes of Action

To the best knowledge of the Proponent, the estate has the following causes of action: **95**

**96** is designated as representative of the estate under 11 U.S.C.A. § 1123(b)(3) (West 2004) and shall have the right to assert any or all of the above causes of action post-confirmation in accordance with applicable law.

e. Final Decree

Once the Plan has been consummated, a final decree may be entered upon motion of the Proponent. The effect of the final decree is to close the bankruptcy case. After such closure, a party seeking any type of relief relating to a Plan provision can seek such relief in a state court of general jurisdiction.

**XX. DECLARATION IN SUPPORT OF DISCLOSURE STATEMENT AND PLAN**

I, **97**, declare under penalty of perjury under the laws of the United States of America that the following statements are true and based upon personal knowledge.

1. **98** is the individual who prepared this document. **99**
2. The source of all financial data is **100**.
3. All facts and representations in the Plan and Disclosure Statement are true to the best of my knowledge.
4. No fact material to a claimant or equity security holder in voting to accept or reject the proposed Plan has been omitted.
5. The name of the person(s) who prepared the cash flow projections and the other financial documents is(are) **101**, and such person(s) was(were) acting within the capacity of **102** for the Debtor.
6. The accounting method(s) used to prepare the cash flow projections and the other financial documents is (are) **103**.

Date: **104**

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Consolidated Balance Sheets  
December 31, 2004 and 2003

<u>ASSETS</u>	<u>2004</u>	<u>2003</u>
Current assets:		
Cash and cash equivalents	\$x,xxx	x,xxx
Trade accounts and notes receivable, less allowance for doubtful accounts of \$xxx in 2004 and \$xxx in 2003	x,xxx	x,xxx
Due from officers and employees	xxx	xxx
Inventories		
Finished goods	x,xxx	x,xxx
Work in process	x,xxx	x,xxx
Raw materials and supplies	<u>x,xxx</u>	<u>x,xxx</u>
Total inventories	x,xxx	x,xxx
Prepaid expenses	<u>xxx</u>	<u>xxx</u>
Total current assets	<u>xx,xxx</u>	<u>xx,xxx</u>
Marketable investment securities	xxx	xxx
Investments in affiliated companies	x,xxx	x,xxx
Property, plant, and equipment:		
Land	xxx	xxx
Buildings	x,xxx	x,xxx
Machinery and equipment	x,xxx	x,xxx
Leasehold improvements	xxx	xxx
Construction in progress	<u>xxx</u>	<u>xxx</u>
Less accumulated depreciation and amortization	<u>x,xxx</u>	<u>x,xxx</u>
Net property, plant, and equipment	xx,xxx	xx,xxx
Goodwill, less accumulated amortization	xxx	xxx
Other assets, at cost, less accumulated amortization	<u>xxx</u>	<u>xxx</u>
	<u>\$xx,xxx</u>	<u>xx,xxx</u>

Consolidated Balance Sheets  
December 31, 2004 and 2003

<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>	<u>2004</u>	<u>2003</u>
Current liabilities:		
Notes payable to banks	\$ xxx	xxx
Current installments of long-term debt	xxx	xxx
Current installments of obligations under capital leases	xxx	xxx
Trade accounts payable	x,xxx	x,xxx
Income taxes payable	xxx	xxx
Due to affiliated company	xx	xx
Accrued expenses	xxx	xxx
Deferred income taxes	<u>x,xxx</u>	<u>x,xxx</u>
Total current liabilities	x,xxx	x,xxx
Long-term debt, excluding current installments	x,xxx	x,xxx
Obligations under capital leases, excluding current installments	x,xxx	x,xxx
Deferred income taxes	<u>x,xxx</u>	<u>x,xxx</u>
Total liabilities	<u>xx,xxx</u>	<u>xx,xxx</u>
Stockholders' equity		
\$x cumulative preferred stock, \$xx par value (aggregate involuntary liquidation preference \$xxx). Authorized xx,xxx shares; issued and outstanding xx,xxx shares 2004 and xx,xxx shares in 2003	xxx	xxx
Common stock, \$x par value. Authorized x,xxx,xxx shares; issued x,xxx,xxx shares in 2004 and x,xxx,xxx shares in 2003	x,xxx	x,xxx
Additional capital	x,xxx	x,xxx
Retained earnings	<u>x,xxx</u>	<u>x,xxx</u>
	xx,xxx	xx,xxx
Less:		
Net unrealized loss on noncurrent marketable equity securities	(xxx)	(xxx)
Treasury stock, x,xxx common shares, at cost	<u>(xxx)</u>	<u>(xxx)</u>
Total stockholders' equity	xx,xxx	xx,xxx
	<u>xx,xxx</u>	<u>xx,xxx</u>



INCOME AND EXPENSE STATEMENT  
FOR THE 12 MONTH PERIOD ENDING \_\_\_\_\_

Revenue:

- <Rental revenue>
- <Interest revenue>
- <Other revenue>
- Total revenue

Expenses:

- General and administrative expense
  - including salaries, utilities, etc.
- <Operating expenses> [Debtor = manufacturer]
- <Cost of goods sold> "
- <Advertising expense>
- <Bad debt expense> (including uncollectible accounts receivable)
- <Other expense>
- Total expense

Net income for period:

[An important point to bear in mind whenever disclosing financial data is that the financial data is usually presented in the form of voluminous illegible exhibits. This is worthless. It is much better to present this financial information in the form of clear and easily understood summaries. This area of disclosure must be fine-tuned to the particular case. For example, if all parties with the right to vote are sophisticated trades people or investors, then the information may be set forth in a more raw and less digested form. If however, the Debtor has many consumer creditors or small trade creditors, then it is better that the financial information be presented in a simple and brief format.]

STATEMENT OF CASH FLOWS  
Years ended December 31, 2004 and 2003

	<u>2004</u>	<u>2003</u>
Cash flows from operating activities		
Net income	\$x,xxx	x,xxx
Adjustments to reconcile net income to net cash provided by operated activities:		
Depreciation of plant and equipment	xxx	xxx
Other amortization	xx	xx
Allowance for doubtful accounts	xx	xx
Loss on sale of marketable investment securities	xx	xx
Undistributed income of affiliates	(xxx)	(xxx)
Gain on sale of equipment	(xxx)	--
Extraordinary loss on destruction of plant and equipment	xxx	--
Increase in trade accounts and notes receivable	(xxx)	(xxx)
Decrease (increase) in amounts due from officers and employees	(xx)	xx
Decrease (increase) in inventories	xxx	(xxx)
Increase in prepaid expenses	(xx)	(xx)
Increase in trade accounts payable	xxx	xxx
Decrease in amount due to affiliated company	(xx)	(xx)
Increase (decrease) in accrued expenses	xx	(xx)
Increase (decrease) in income taxes payable	(xxx)	xxx
Increase in deferred income taxes	<u>xxx</u>	<u>xxx</u>
Net cash provided by operating activities	<u>\$x,xxx</u>	<u>x,xxx</u>
Cash flows from investing activities:		
Proceeds from sale of marketable investment securities	xxx	xxx
Purchases of marketable investment securities	(xx)	(xx)
Proceeds from sale of equipment	xxx	--
Capital expenditures, including interest capitalized	<u>(x,xxx)</u>	<u>(xxxx)</u>
Net cash used in investing activities	<u>(x,xxx)</u>	<u>(xxxx)</u>
Cash flows from financing activities:		
Proceeds from issuance of notes payable to banks	xxx	xxx
Principal payments on notes payable to banks	(xxx)	(xxx)
Proceeds from issuance of long-term debt	xxx	--
Principal payments on long-term debt	(xxx)	(xxx)
Principal payments under capital lease obligations	(xxx)	(xxx)
Proceeds from issuance of preferred stock	xxx	--
Payments to acquire treasury stock	--	(xxx)
Dividends paid	<u>(xxx)</u>	<u>(xxx)</u>
Net cash provided by financing activities	<u>xxx</u>	<u>xxx</u>

Net increase (decrease) in cash and cash equivalents	xxx	(xxx)
Cash and cash equivalents at the beginning of year	<u>xxxx</u>	<u>xxxx</u>
Cash and cash equivalents at end of year	<u>\$ xxxx</u>	<u>xxxx</u>

BALLOT FOR ACCEPTING OR REJECTING PLAN

**105** filed a Plan of Reorganization on **106**. **107** By this ballot you will decide whether to accept or reject this Plan.

The Plan referred to in this ballot can be confirmed by the Court and thereby bind you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the Plan.

If the requisite acceptances are not obtained, the Court may nevertheless confirm the Plan if the Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of 11 U.S.C.A. § 1129(b) (West 2004 & Supp. 2006).

Check the appropriate line below, which describes your interest:

\_\_\_\_\_ The undersigned, a creditor with an allowed claim in the amount of \$\_\_\_\_\_:

\_\_\_\_\_ The undersigned, a holder of a bond in the amount of \$\_\_\_\_\_, with a stated maturity date of \_\_\_\_\_, registered in the name of \_\_\_\_\_, and bearing serial number(s)\_\_\_\_\_:

\_\_\_\_\_ The undersigned, the holder of \_\_\_\_\_ shares of \_\_\_\_\_ (explain type of stock) stock, with a certificate(s) No. \_\_\_\_\_:

[ ] Accepts the Plan

[ ] Rejects the Plan

**108**

Print or type name: \_\_\_\_\_

State which class you are a member of: \_\_\_\_\_

Signed: \_\_\_\_\_

If appropriate, by: \_\_\_\_\_ as \_\_\_\_\_

Address:

Return this ballot on or before **109** to **110**.

- 
1. Insert petition date.
  2. Insert name of Debtor.
  3. Insert name of plan proponent; insert "Debtor" if "Debtor" is the proponent.

Less detail is required if the proponent is not the Debtor and does not have access to all relevant information, including all important financial documents, so long as the proponent has taken reasonable steps to procure such information.

4. Insert "and to reorganize the Debtor's business affairs" if the plan contemplates reorganization rather than liquidation.
5. Insert hearing date and time reserved for the motion to confirm the plan.
6. Insert appropriate courtroom number. Judge Ahart's hearings are in courtroom 1375.
7. Insert name, telephone number, and address of Proponent.
8. Insert "Trustee" and "Committee" if appropriate.
9. Insert number/letter of exhibit.
10. Creditors who receive cash in full equal to their allowed claim by the effective date would be considered impaired.
11. Similarly, an interest holder who receives the greater of any fixed liquidation preference to which the terms of any security representing such interest entitle the interest holder or any fixed price at which the Debtor, under the terms of such security, may redeem such security from such holder is deemed impaired.
12. Insert bar date for filing proofs of claim. If the bar date for filing proofs of claim has not yet passed, so state, and insert the bar date.
13. Insert bar date for objecting to claims. If the bar date for objecting to claims has not yet passed, so state, and insert the bar date.

In most bankruptcy cases it is necessary that a bar date for filing proofs of claims and objections thereto has passed before a disclosure statement and plan are proposed. Without knowing the amount and nature of the claims against the estate, it is

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impossible to complete a precise liquidation analysis and difficult to determine whether the Plan is feasible. If all bar dates have not yet passed, the motion for order approving the disclosure statement should explain why the disclosure statement and plan are propounded now instead of waiting for all bar dates to pass. The Proponent can file a motion for order temporarily allowing a claim or interest for the purpose of accepting or rejecting a plan in accordance with Fed. R. Bankr. P. 3018, as can any party in interest.

14. Identify all impaired classes. Change singular words to plural if appropriate.

15. Identify all unimpaired classes. Change singular words to plural if appropriate.

16. Insert Proponent's address.

17. Insert deadline for submitting ballots.

18. Insert "corporation," "partnership," "limited partner of partnership x"," "general partner of partnership x," "an individual," "unincorporated association," "business trust," etc.

For cases filed after on or after October 17, 2005, the Proponent must disclose whether the Debtor is a small business debtor, as defined in 11 U.S.C.A. § 101(51D) (West Supp. 2006).

19. Insert percentage of business conducted in the location given at note 20.

20. Insert city and state where business conducted.

21. Insert date Debtor began conducting business activity.

22. Insert summary of facts leading to bankruptcy.

Proponent must disclose the receipt of any notices from any governmental agency relating in any manner to actual or potential liability on the part of the Debtor for any environmental or toxic waste hazards, whether or not occurring on the Debtor's premises.

23. Briefly describe the Debtor's business and future business plans. Insert one of the following, if applicable:

- a. **Debtor is in the business of renting real estate.**
  - 1. **Location building <#1>:**
  - 2. **Square footage:**

- 
3. Current occupancy rate:
  4. Debtor will continue to lease its real estate <other?>. [follow same format if additional properties]
- b. Debtor is a real estate developer.
1. Location of Lot <#1>:
  2. Size of lot<s>:
  3. Stage of development:
  4. Debtor will continue to develop and market real estate in order to sell <other?>. [follow same format if additional properties]
- c. Before bankruptcy, Debtor manufactured and<or> sold the following type of product<s>: \_\_\_\_\_. <Debtor provided the following services for pay: \_\_\_\_\_.> Debtor will continue this business <other?>.
- d. Debtor is an individual employed by \_\_\_\_\_ in the capacity as \_\_\_\_\_ <individual contractor who provides "x" hours of service/week to \_\_\_\_ in the capacity as \_\_\_\_\_. Debtor will continue this course of conduct <other?>.

24. If the Debtor is an individual or a small business, insert a new section entitled, **"PRE-CONFIRMATION REQUIREMENTS OF DEBTOR"** and re-number the following sections and amend the Table of Contents as appropriate.

If the Debtor is an individual, provide the following information in this new section:

**"Debtor <has/has not> filed all requested tax documents with the Court. Debtor <has/has not> paid any and all amounts for domestic support obligation that became payable post-petition."**

11 U.S.C.A. § 1129(a)(14) (West Supp. 2006); See Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1228(b), 119 Stat. 23, 200 (2005).

If the Debtor is a small business debtor, include the following information in this new section:

**"Debtor <has/has not> complied with the requirements of 11 U.S.C.A. § 1116 (West Supp. 2006)."**

If the Debtor has complied with the requirements of 11 U.S.C.A. § 1116 (West Supp. 2006), the Proponent must indicate which requirements were satisfied, the date of satisfaction, and how the requirements were satisfied.

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If the Debtor has not complied with the requirements of § 1116, the Proponent must explain the reason(s) for noncompliance.

25. If the Debtor is a business, insert the following:

**"Future earnings from continued operations of the Debtor."**

If the Debtor is an individual, insert the following:

**"All or such portion of earnings from personal services performed by the Debtor after the commencement of the case or other future income of the Debtor as is necessary for the execution of the Plan."** See 11 U.S.C.A. § 1123(a)(8) (West Supp. 2006).

26. Insert additional sources of funds; e.g.,

b. Infusion of capital, consisting of:

1. a loan; and <or>

2. equity investment.

c. Sale of some or all of the Debtor's assets.

27. Insert date of first payment to general unsecured creditors.

28. Insert the amount of the first payment to unsecured creditors.

29. Insert frequency of further payments to unsecured creditors (e.g., monthly, quarterly).

30. Insert length of time creditors will receive these payments.

31. If the Plan provides for distributions of property other than cash, delete the word "payment" and substitute "distribution" where appropriate.

32. If timing of payments is not tied to the Effective Date, explain why.

33. After the Court has approved the Disclosure Statement, the Proponent should insert a specific date as the Effective Date, which date should be on or after the date set for the hearing on the motion to confirm the Plan.

34. If any claims are disputed and the bar date for objecting to claims has not passed, or if there are disputed administrative expenses, then add the following paragraphs:

**"On the effective date <insert another date if applicable> the Disbursing Agent <insert another entity if applicable> will**



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deposit into a segregated account ("Reserve Account") an amount of cash equal to <insert amount>% of the aggregate amount of disputed claims. Cash together with interest accruing thereon will be held in trust for the benefit of holders of disputed claims.

When a disputed claim becomes allowed, the Disbursing Agent will distribute to the holder thereof an amount equal to <insert amount>% of its claim plus accrued interest thereon. If a surplus arises from the fact that not all claims are allowed, then that money <shall be available to guarantee payment of other claims><shall revert back to the Debtor.>"

35. Modify statement if any person or entity is an affiliate of the Debtor.

36. If there are other types of administrative expenses in this case, define what they are. Also, § 507(a)(3) claims must be treated in the same manner as administrative expenses. See 11 U.S.C.A. § 507(a)(3) (West Supp. 2006).

37. Change claimant to plural if necessary. If claimant(s) has (have) agreed to accept later payment, so state.

38. Holders of administrative expenses under § 507(b) are paid before other administrative expenses. See 11 U.S.C.A. § 507(b) (West Supp. 2006). If any such expenses must be paid, so state.

39. Insert the applicable information in the spaces provided for each class.

40. If there are other types of taxes in this case, change the definition accordingly. The applicable code section is 11 U.S.C.A. § 507(a)(8) (West 2004 & Supp. 2006).

41. If the claimant(s) has (have) agreed to accept later payment, so state.

42. Insert percentage.

The interest rate is the rate determined under applicable nonbankruptcy law as of the calendar month in which the Plan is confirmed. See 11 U.S.C.A. § 511 (West Supp. 2006).

43. Unless the election is not available, the plan proponent must disclose that each class of secured claim(s) may elect 11 U.S.C. § 1111(b)(2) treatment at any time prior to the conclusion of the hearing on the disclosure statement or within such time as the court may fix. See Fed. R. Bankr. P. 3014. If the court has

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fixed a later time for an § 1111(b)(2) election, then so state.

If an § 1111(b)(2) election was made as to any of the following secured claims, then the treatment of any such claim must comply with § 1129(a)(7)(B) which states that "each 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 secures such claims." 11 U.S.C.A. § 1129(a)(7)(B) (West 2004); See also Fed. R. Bankr. P. 3014.

44. Insert priority of secured claim (e.g., 1st Deed of Trust).

45. Change to "Unimpaired" if appropriate.

46. If lien is modified by the Plan, so state, and describe the modification(s).

47. Place any additional secured creditors in separate secured classes and provide same information as that given above.

If a governmental unit has a secured claim which, if it were unsecured, would be a § 507(a)(8) claim, the Plan must provide that the governmental unit will receive regular cash installment payments over a period of up to 5 years after the order for relief in a manner not less favorable than the most favored nonpriority unsecured class provided by the Plan (other than any cash payments to an administratively convenient class).

48. Insert number/letter of exhibit.

49. Interest ordinarily must be paid on unsecured claims only if unsecured creditors would receive payment in full if the Debtor were liquidated under chapter 7 on the Plan's effective date.

However, if the Debtor is an individual and the holder of an allowed unsecured claim objects to confirmation, either: (1) the Plan must provide for payment in full of such claim with interest from the effective date, or (2) the value of property to be distributed under the Plan must at least equal the projected disposable income of the Debtor (as defined in § 1325(b)(2)) to be received during the period for which the Plan provides payments, but not less than 5 years from the date the first payment is due under the Plan. See 11 U.S.C.A. § 1129(a)(15) (West Supp. 2006).

50. Change to "Unimpaired" if appropriate.

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51. Change to "Unimpaired" if appropriate.

52. Insider claims that are secured must be placed in separate classes because they are not "substantially similar to the other claims" of such class as required by § 1122.

53. If applicable, insert the following:

**"The Articles of Incorporation <insert "Bylaws" if appropriate> have been changed to include a provision prohibiting the issuance of nonvoting equity securities, as required by § 1123(a)(6)."**

54. If applicable, insert the following:

**"2. Shareholders redeem their shares of stock and receive consideration as described below." OR**

**"Partner's interest<s> in partnership Debtor**

- 1. Each partner's interest in the Debtor shall remain as it is now. The general partners are <insert identity of general partners> <If applicable, insert identity of limited partners.>**
- 2. The interest of some <insert "all" if applicable> of the partners changes under the Plan, as described below."**

55. Insert exhibit number/letter.

The accounting method used to produce the financial information and the name of the accountant(s) who prepared the documents must be disclosed in the Declaration in Support of Disclosure Statement and Plan, Section XX.

56. Continue listing years of plan payments as applicable.

57. Insert last two digits of first year of plan payments.

58. Insert last two digits of second year of plan payments.

59. If the Debtor is an individual, the Plan must provide for the payment of creditors under the Plan of all or such portion of earnings from personal services performed by the Debtor after the commencement of the case or other future income of the Debtor as is necessary for the execution of the Plan. See 11 U.S.C.A. § 1123(a)(8) (West Supp. 2006).

60. Insert "customers," "tenants," or other source of income.

If there are any additional sources or uses of cash from operating or nonoperating activities like the sale of property outside the ordinary course of business, then add and delete

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entries accordingly.

61. Insert amount to be paid on effective date.  
If applicable, add:

**"The Court has ordered that prior to confirming the Plan, <insert amount> must be deposited in a special account established for the exclusive purpose of making the distribution on this date."**

The motion for order seeking approval of this document as containing "adequate information" must be accompanied by evidence of the amount of funds available for Plan payments as of the date the Disclosure Statement and Plan is filed. If the Court has not ordered funds deposited prior to confirming the Plan, then provide evidence in this document of how, when, and in what amount funds will become available for payment on the effective date.

62. If the Plan proposes to pay all creditors on the effective date, then it is not necessary to include any financial documentation. However, the Court may require, prior to confirming the Plan, the deposit with the debtor-in-possession or the trustee of the consideration required by the Plan to be distributed on the effective date. See Fed. R. Bankr. P. 3020.

If the Debtor is a partnership, then the Proponent must disclose the financial condition of the general partners of the partnership, as required by 11 U.S.C.A. §§ 1129(a)(7) (liquidation analysis) and 723(a) (liability of general partner for partnership deficiency). (West 2004 & Supp. 2006).

63. Insert number/letter of exhibit.

64. Unless the Proponent requests from the Court permission to do otherwise, all of these financial statements must be included even if this is a liquidating plan. That is because income and cash flow affect the valuation of assets and because these statements give creditors a basis for comparing the relative advantages and disadvantages of a liquidating plan versus a "going concern" plan.

Balance sheets are useful because they provide a historic view of the Debtor's assets and liabilities. A balance sheet records the relationship between the Debtor's assets and liabilities as of a specific date. The basic equation represented by the balance sheet is that assets equal liabilities plus equity. The bottom line of a balance sheet does not in itself provide the reader much information. That is because it looks at the solvency of the Debtor on one particular day. Moreover, the balance sheet

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only gives the reader information about assets and not about past nor future earnings.

An income and expense statement recognizes revenue in the period when earned rather than when cash is received. The income statement recognizes expenses in the period when incurred. In contrast, a cash flow statement describes the cash received and spent during the period.

Financial information should be provided for the most recent 12-month calendar year and all months subsequent thereto. For example, if the plan is proposed in June 2006, the proponent should include financial information for all of 2005, plus the first 5 months of 2006.

An important point to bear in mind whenever disclosing financial data is that the financial data is usually presented in the form of voluminous illegible exhibits. This is worthless. It is much better to present this financial information in the form of clear and easily understood summaries. This area of disclosure must be fine-tuned to the particular case. For example, if all parties with the right to vote are sophisticated trades people or investors, then the information may be set forth in a more raw and less digested form. If, however, the Debtor has many consumer creditors or small trade creditors, then it is better that the financial information be presented in a simple and brief format. The Proponent must explain the basic accounting principles set forth above regarding balance sheets, cash flow statements, and income statements if Debtor's creditors and interest-holders are not sophisticated business people.

65. Insert number/letter of exhibit.

The exhibit should include the following information for all assets:

1. property description <e.g., commercial/residential>
  - A. **fair market value** **<sales price>** = **<insert price>**

**<if Plan contemplates sale, no need to provide information below>**

1. **basis for opinion of value: <income/sales approach>**
2. **qualifications of person rendering opinion:**
3. **date of valuation:**

**<if rental property, provide info. below>**

4. **monthly cash flow, deducting for debt service and ordinary, necessary operating expenses;**  
**Average over past two years = <insert amount>**  
**Average over past three months = <insert amount>**

Proponent must describe each item of property with particularity and give a value for each item separately. If possible, Proponent should also provide a going concern value for the business as a whole so long as the foundation for that opinion is explained. For accounts receivable, the Proponent must explain the likelihood of collecting the accounts and for what amount. In addition, the debtor's status as a plaintiff in a lawsuit<s> represents potential value to the estate. Although it may be difficult to estimate the exact value of a lawsuit, an effort must be made to present a low and high range of value and the foundation for such belief. The amount of cash on hand must also be disclosed, including for any real property, any prepaid rent or security deposits paid by tenants and held by the Debtor.

The exhibit should include the following information:

identity of claimant	amount of allowed claim
----------------------	-------------------------

- TOTAL LIABILITIES =** \_\_\_\_\_

plaintiff/defendant/ case #/court]	amount sought in prayer for relief	Debtor's valuation of suit
---------------------------------------	---------------------------------------	----------------------------------

- Provide the same level of detail relating to lawsuits that represent potential recovery to the estate.

68. Insert total amount of liabilities.  
Distinguish between disputed and undisputed liabilities.

"If a class of interest holders votes against the Plan, the Plan

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**cannot be confirmed where the Debtor will receive or retain any property under the Plan, unless the Plan provides that the class of interest holders shall be paid in full with interest."**

70. If the Plan proposes to satisfy the "fair and equitable" requirement by giving secured creditors the "indubitable equivalent" of such claims as provided for in § 1129(b)(2)(A)(iii), the Proponent must explain what that means exactly. See 11 U.S.C.A. § 1129(b)(2)(A)(iii) (West 2004). If § 1129(b)(2)(A)(ii) applies, so state. 11 U.S.C.A. § 1129(b)(2)(A)(ii) (West 2004).

71. Delete or add reasons as applicable.

72. Insert liquidation value.

73. Insert sales price, if Plan contemplates a sale.

74. Insert explanation.

75. The foregoing paragraph is not applicable if the plan provides for payment from future income rather than from proceeds from sale of assets.

76. Items 1,2,3, and 4 of this column are not applicable if the plan provides for payment from future income rather than from proceeds from sale of assets.

77. Insert percentage of total claims unsecured creditors would receive in chapter 7 liquidation.

78. Insert percentage of total allowed claims unsecured creditors would receive under the Plan.

79. Use this section if claims will be paid from post-confirmation operations of the Debtor. Insert the applicable information in the spaces provided.

80. Insert name of proposed disbursing agent.

81. Insert address and telephone number of disbursing agent.

82. Change to "has improved" if appropriate.

83. Insert explanation for improved economic state.

84. Insert assumptions underlying projections.

Specificity is required because this statement is the principle tool for determining whether the Plan is feasible. For

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example, specify if classes are not supposed to share the post-confirmation income pro rata and in proportion to the amount of their allowed claims.

85. If the Debtor is to be sold, insert

**"Section XVI provides that the Debtor will be sold to the Proponent <insert another entity if applicable>."**

86. Insert applicable conditions and terms.

87. Insert any applicable facts.

88. If applicable, insert the following:

**<MULTI-PURPOSE POST-CONFIRMATION AGENT> <DISBURSING AGENT>**

If creditors will not be paid out of the Debtor's continuing post-confirmation operations nor from the sale of all of the Debtor's assets to the Proponent or other entity, choose one of the two titles depending upon whether the Plan appoints a representative of the estate to pursue causes of action and to resolve matters other than the sale of assets and distribution of sales proceeds.

Insert: **"<name of Disbursing Agent> has agreed to be employed by the Debtor for the purpose of selling the assets of the estate and distributing the proceeds in accordance with the Plan. He <or "she"> has no <or "has an"> affiliation with the Debtor. <Explain the nature of any affiliation with the Debtor.> The rate of compensation is as follows <insert compensation>. The Disbursing Agent will pay all amounts due under the Plan from a fund hereby authorized to be opened. This fund shall be maintained in a segregated, interest-bearing account in a depository approved by the United States Trustee for the Central District of California for deposits of funds by trustees."**

If the Plan envisions a post-confirmation agent who will assume responsibility beyond simply liquidating assets and making distributions, then describe in detail the scope of the agent's responsibilities, qualifications, any affiliations with the Debtor, compensation, and attach as an exhibit any employment agreement.

89. Insert the relevant paragraphs from those listed here and add others as necessary.

- "a. **Sale of property of the estate**  
**<identify type of property; identify buyer, terms of sale, buyer's financial condition. If 11 U.S.C § 1129(b)(2)(A)(ii) (West 2004) applies, then explain**



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how that section impacts on the rights of a lienholder at a sale of the property.>

- b. The assumption, rejection, or assignment of an executory contract or unexpired lease.  
<Identify subject of contract or lease and the parties to the agreement. If assumed, apply the requirements of 11 U.S.C.A. § 365 (West 2004 & Supp. 2006) to the facts of this case.>"

If the Plan proposes a sale of all or substantially all of the Debtor's assets to one party, then disclose the financial solvency of the proposed buyer.

Note: all transfers of property of the Plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. See 11 U.S.C.A. § 1129(a)(16) (West Supp. 2006).

90. Describe and explain what orders have been entered and when, pending motions and adversaries, and whether all professionals' employment have been court-approved.

91. State the potential material Federal tax consequences of the Plan to the Debtor, any successor to the Debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the Plan, even if uncertain. See 11 U.S.C.A. § 1125(a)(1) (West Supp. 2006). If the Proponent has no idea of what such consequences might be, then disclose that fact and why it is so.

If the Disclosure Statement and Plan is propounded by the Debtor, it is hard to imagine a situation where the tax consequences would not be considered because any tax liability would affect distribution to creditors, to whom the Debtor owes a fiduciary duty to maximize the return to the estate. Tax considerations might affect the likelihood of continued successful post-confirmation operation of the Debtor and may also affect the feasibility analysis. For these reasons it seems unlikely that the Proponent would have no idea of the tax consequences of the Plan.

92. If the Plan will provide otherwise, so state.

93. If § 1141(d) does not provide for a discharge for the type of debtor involved in this case, state instead that the Debtor will not receive a discharge. 11 U.S.C.A. § 1141(d) (West 2004 & Supp. 2006).

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94. In the case of an individual debtor, insert the following:

"A discharge does not discharge a debt excepted from discharge under 11 U.S.C.A. § 523 (West 2004 & Supp. 2006). Additionally, confirmation of the Plan does not discharge any debt provided for in the Plan until the Court grants a discharge on completion of all payments under the Plan. At any time after the confirmation of the Plan, and after notice and a hearing, the Court may grant a discharge to the Debtor who has not completed payments under the Plan if - (i) the value, as of the Effective Date of the Plan, of property actually distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under Chapter 7 on such date; and (ii) modification of the Plan under section 1127 is not practicable, unless the Court finds that there is no reasonable cause to believe that - (i) section 522(q)(1) may be applicable to the Debtor; and (ii) there is pending any proceeding in which the Debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)." See 11 U.S.C.A. § 522(q)(1)(A)-(B) (West Supp. 2006).

In the case of a corporate debtor, insert the following:

"The confirmation of the Plan does not discharge the Debtor from any debt of a kind specified in 11 U.S.C.A. § 523(a)(2)(A)-(B) (West 2004 & Supp. 2006) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute, or for a tax or customs duty with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or to defeat such tax or such customs duty."

See 11 U.S.C.A. § 1141(d)(5)-(6) (West Supp. 2006).

95. Describe all causes of action, including but not limited to avoiding actions, and designate proposed defendants, and, if applicable, the amount in controversy.

96. Insert name of entity designated as representative of the estate under 11 U.S.C.A. 1123(b)(3) (West 2004).

97. Insert name of declarant.

98. Insert name of individual<s> who prepared Plan.

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99. Explain relationship of person preparing document to Proponent.
100. Insert source of financial data.
101. Insert name of person(s).
102. Identify the capacity in which the person who prepared the financial statements is employed by and/or serves the Debtor.
103. Describe the accounting method(s) (e.g., cash or accrual, generally accepted accounting principles, etc.).
104. Insert date declaration signed.
105. Insert name of Proponent.
106. Insert date on which Plan was filed.
107. If more than one plan is proposed, state that the first one listed is Plan A. Repeat these two sentences, changing Plan "A" to Plan "B" et seq.
108. If more than one plan filed, insert the following:  
**"The undersigned prefers the plans accepted in the following order:  
First:  
Second:"**
109. Insert deadline for returning ballots.
110. Insert name and address to which ballots should be sent.