

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SOUTHEASTERN METAL
PRODUCTS LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 19-10989 (BLS)

(Jointly Administered)

Re: Docket No. 371, 372, 380, 435, 447, 448

**ORDER GRANTING FINAL APPROVAL OF AMENDED
DISCLOSURE STATEMENT AND CONFIRMING AMENDED JOINT PLAN OF
ORDERLY LIQUIDATION OF THE DEBTORS AND THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS**

The above-captioned debtors and debtors in possession (the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee" and, together with the Debtors, the "Proponents"), having filed (i) the Amended Joint Plan of Orderly Liquidation of the Debtors and the Official Committee of Unsecured Creditors [Docket No. 371] and (ii) the Plan Supplement to the Amended Joint Plan of Orderly Liquidation of the Debtors and the Official Committee of Unsecured Creditors [Docket No. 435] (together with all exhibits and any other modifications, amendments, or supplements thereto, the "Plan");² the Court having entered, on May 7, 2020, the Amended Order (I) Conditionally Approving the Disclosure Statement; (II) Scheduling a Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Form of Ballot; and (V) Granting Related Relief [Docket No. 380] (the "Solicitation Procedures Order"), establishing, among other things, certain solicitation and voting tabulation procedures associated with the Plan; true and correct copies of the Plan being attached hereto as Exhibit A; the Court having conducted a hearing

¹ The Debtors and the last four digits of their respective federal tax identification numbers are: Southeastern Metal Products LLC (9192) and SEMP Texas, LLC (3419).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

to consider final approval of the Disclosure Statement (as defined below) and confirmation of the Plan on June 24, 2020 (the "Confirmation Hearing"); the Court having considered: (a) the proffered witness testimony at the Confirmation Hearing, as well as the declaration included among the exhibits admitted into evidence at the Confirmation Hearing, including the Declaration of Catherine Nownes-Whitaker Regarding Analysis of Ballots for Accepting or Rejecting the Amended Joint Plan of Liquidation of the Debtors and Official Committee of Unsecured Creditors Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 437] (the "Voting Declaration"); (b) the arguments of counsel and all evidence proffered or adduced at the Hearing; and (c) the additional filings made by the Debtors in support of the Plan, including (i) the Proponents' Memorandum of Law in Support of Confirmation of the Amended Joint Plan of Orderly Liquidation of the Debtors and the Official Committee of Unsecured Creditor [Docket No. 448] (the "Confirmation Memorandum"), (ii) the Notice of Filing of Proposed Order Granting Final Approval of Disclosure Statement and Confirming the Amended Joint Plan of Orderly Liquidation of the Debtors and the Official Committee of Unsecured Creditors [Docket No. 449], and (iii) the Plan related affidavit of service filed by Omni Management Group ("Omni"), the Debtors' claims, noticing, balloting, and solicitation agent in these Chapter 11 Cases [Docket No. 394] (the "Omni Service Affidavit"); and the Court having found that due and proper notice has been given with respect to the Hearing and the deadlines and procedures for voting on the Plan and asserting objections to the Plan consistent with the Solicitation Procedures Order; the appearance of all interested parties having been duly noted in the record of the Hearing; and upon the record of the Hearing, and after due deliberation thereon, and sufficient cause appearing therefor;

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Facts and Conclusions of Law. The findings set forth herein and on the record of the Confirmation Hearing constitute the Court's findings of fact pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Judicial Notice. The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence admitted and arguments made at the hearings held before the Court during the pendency of the Chapter 11 Cases.

C. Exclusive Jurisdiction; Core Proceeding; Venue. This Court has jurisdiction over the Chapter 11 Cases and to confirm the Plan pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court and in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Chapter 11 Petitions. On May 6, 2019, Debtors Southeastern Metal Products LLC and SEMP Texas, LLC commenced their cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Petition Date"). All of these cases are being jointly administered. The Debtors have continued in the possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

E. Eligibility for Relief. Each of the Debtors are a proper debtor under section 109 of the Bankruptcy Code and the Debtors and the Committee are proper proponents of the Plan under

section 1121(a) of the Bankruptcy Code.

F. Official Committee of Unsecured Creditors. On May 20, 2020, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee").

G. Notice, Transmittal, and Mailing of Solicitation Materials. As evidenced by the Omni Service Affidavit, due, adequate, and sufficient notice of the Disclosure Statement, the Plan, and the Combined Hearing, together with all deadline for objecting to and voting to accept or reject the Plan, have been provided as required by the Solicitation Procedures Order. No other or further notice is necessary or shall be required.

H. Solicitation. Votes for acceptance and rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the Solicitation Procedures Order, all applicable provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations.

I. Disclosure Statement. The Disclosure Statement provides holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125 of the Bankruptcy Code. The Disclosure Statement also provides holders of Claims, holders of Equity Interests, and other entities with sufficient notice of the injunction, exculpation, and release provisions contained in Article IX of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

J. Vote Certification. All procedures used to tabulate the Ballots were fair and conducted in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations. As

evidenced by the Voting Declaration and the vote certification, Classes 2, 3, and 4 voted to accept the Plan.

K. Plan Supplement. On June 15, 2020, the Debtor filed the Plan Supplement [Docket No. 435], which included a list of all Holders of Allowed Bankruptcy Code Section 503(b)(9) claims. The Plan Supplement complies with the terms of the Plan, and the filing and notice of such Plan Supplement provided due, adequate, and sufficient notice in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice is necessary or shall be required. Consistent with the terms of the Plan, the Debtors reserve their rights to alter, amend, update, or modify the Plan Supplement before the Effective Date.

L. Bankruptcy Rule 3016. The Plan is dated and identifies its proponents in accordance with Bankruptcy Rule 3016(a). The filing of the Disclosure Statement on the docket of the Chapter 11 Cases satisfied Bankruptcy Rule 3016(b).

Compliance with Section 1129 of the Bankruptcy Code

M. Burden of Proof. The Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable standard.

N. The Plan Complies With Section 1129(a) of the Bankruptcy Code. The evidentiary record at the Confirmation Hearing, the Declarations, the contents of the Plan and the Disclosure Statement, the Omni Service Affidavits, the Confirmation Memorandum, and the Court's judicial notice of the complete record of these Chapter 11 Cases support the findings of fact and conclusions of law set forth herein.

O. Section 1129(a)(1). The Plan complies with section 1129(a)(1) of the Bankruptcy Code, as the Plan complies with each applicable provision of the Bankruptcy Code. In particular,

the Plan complies with the requirements of sections 1122 and 1123 of the Bankruptcy Code as follows:

1. In accordance with section 1122(a) of the Bankruptcy Code, (a) Article IV of the Plan classifies Claims and Equity Interests into five (5) separate Classes reflecting the differing characteristics of those Claims and Equity Interests between Classes and the distinct legal rights of the holders of those Claims and Equity Interests in the separate Classes; and (b) the Claims and Equity Interests within each Class are substantially similar to the other Claims or Equity Interests within the same Class.
2. In accordance with section 1123(a)(1) of the Bankruptcy Code, Articles II and IV of the Plan properly classify all Claims and Equity Interests that require classification.
3. In accordance with section 1123(a)(2) of the Bankruptcy Code, Articles III and IV of the Plan properly identify and describes that no class is unimpaired under the Plan.
4. In accordance with section 1123(a)(3) of the Bankruptcy Code, Articles III and IV of the Plan properly identify and describe that Classes 1, 2, 3, 4 and 5 are impaired under the Plan.
5. In accordance with section 1123(a)(4) of the Bankruptcy Code, Article IV of the Plan treats each Claim or Interest against the Debtors, in each respective Class, the same as each other Claim or Interest in such Class.
6. In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for its implementation, including, without limitation, (a) the vesting of assets of the Estates in the Reorganized Debtors, (b) the appointment and powers of the Plan Administrator, (c) the retention and pursuit of certain claims and causes of action by the Plan Administrator, with the release of any Avoidance Actions, and (d) the distribution of the Assets.
7. Section 1123(a)(6) of the Bankruptcy Code is satisfied because the Plan does not provide for the issuance of equity securities.
8. Section 1123(a)(7) of the Bankruptcy Code is not applicable because the Plan is a plan of liquidation and the Plan provides for the Plan Administrator, to replace the Debtor's current management, and enables the Plan Administrator to act on behalf of the Reorganized Debtors. Plan, Art. V.
9. Section 1123(a)(8) of the Bankruptcy Code is not applicable in these

Chapter 11 Cases because the Debtors are not an "individual."

10. Consistent with section 1123(b)(1) of the Bankruptcy Code, Articles II, III and IV of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests.
 11. Consistent with section 1123(b)(2) of the Bankruptcy Code, Article VIII of the Plan provides for the rejection of all of the executory contracts or unexpired leases of the Debtor that have not already been assumed or rejected in these Chapter 11 Cases.
 12. Consistent with section 1123(b)(3) of the Bankruptcy Code, Art. V of the Plan provides for the retention and pursuit of certain claims by the Plan Administrator, including the Causes of Action (excluding Avoidance Actions), releases, exculpation and injunction.
 13. Consistent with section 1123(b)(4) and orders entered by the Court, the Plan will effectuate the sale of the Debtors' real and personal property assets and provides for the distribution of the proceeds of such sale among holders of claims or interests.
 14. Consistent with section 1123(b)(5) of the Bankruptcy Code, the Plan permissibly modifies the rights of holders of secured claims.
 15. Consistent with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code, including, without limitation, (a) the provisions of Article V establishing certain details relating to the Plan Administrator, (b) the provisions of Article VI and VII establishing procedures for resolving Disputed Claims and making Distributions on Allowed Claims pursuant to the Plan; (c) the provisions of Article XI providing for the post- confirmation retention of jurisdiction by the Court, and (d) the provisions of Article XI providing, among other things, for certain settlements with CVG and article VIII for the dissolution of the Official Committee after the Effective Date.
 16. Section 1123(c) of the Bankruptcy Code is not applicable in these Chapter 11 Cases because the Debtors are not "individuals."
 17. In accordance with section 1123(d) of the Bankruptcy Code, Article XI of the Plan provides for the rejection of any executory contracts or unexpired leases, and anticipates no cure amounts associated with the assumption of an executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.
- P. Section 1129(a)(2). The Debtors have complied with all applicable provisions of

the Bankruptcy Code with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, the Plan complies with the requirements of sections 1125 and 1126 of the Bankruptcy Code as follows:

1. In compliance with the Solicitation Procedures Order, on or before May 8, 2020, the Debtors, through Omni, caused copies of the following materials to be transmitted to the known holders of Claims in Classes that were entitled to vote to accept or reject the Plan (collectively, the "Voting Parties"):
 - *Amended Order (I) Conditionally Approving the Disclosure Statement; (II) Scheduling a Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan; (III) Approving Solicitation Packages and Procedures; (IV) Approving the Form of Ballot; and (V) Granting Related Relief* (the "Amended Order") [Docket No. 380];
 - the Disclosure Statement;
 - the Plan;
 - the Combined Hearing Notice;
 - an appropriate form of ballot and a pre-addressed postage prepaid return envelope (collectively with the materials described in the preceding bullets, the "Solicitation Package").
2. In compliance with the Solicitation Procedures Order, on May 8, 2020, the Debtors, through Omni, caused copies of the Non-Voting Notice to be served on parties not entitled to vote, as applicable.
3. In addition, in compliance with the Solicitation Procedures Order, copies of the Solicitation Procedures Order, the Plan, and the Disclosure Statement have been available upon request from the Debtors' counsel and, free of charge, at www.omnimgt.com/southeastern (the "Omni Website") and the foregoing was set forth in the Combined Hearing Notice.
4. On June 15, 2020, the Debtors filed the Plan Supplement and, through Omni, made the Plan Supplement available on the Omni Website.
5. The Debtors, through Omni, provided adequate service of the Combined Hearing Notice as specified in the Omni Service Affidavits.

6. The Combined Hearing Notice provided due and proper notice of the Hearing and all relevant dates, deadlines, procedures, and other information relating to the Plan and/or the solicitation of votes thereon, including, without limitation, the Voting Deadline and the Objection Deadline (as such terms are defined in the Combined Hearing Notice), the time, date, and place of the Hearing and the provisions in the Plan concerning certain of the third party releases provided for in the Plan.
7. Based on the foregoing, all persons entitled to receive notice of the Disclosure Statement, the Plan, and the Combined Hearing have received proper, timely, and adequate notice in accordance with the Solicitation Procedures Order, the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and have had an opportunity to appear and be heard with respect thereto. As such, the Debtors are in compliance with section 1128 of the Bankruptcy Code and Bankruptcy Rules 2002(b) and 3017(d)-(f). No other or further notice is required.
8. Further, also based on the foregoing, the Proponents solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order.
9. Based upon the procedures approved in the Solicitation Procedures Order, Omni has made a determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including the amount and number of accepting and rejecting Claims in Classes 2, 3 and 4 under the Plan.
10. Exhibits A-C to the Voting Declaration sets forth the tabulation of votes and demonstrates that such tabulation was conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Procedures Order.

Q. Section 1129(a)(3). The Plan has been proposed by the Proponents in good faith and in the belief that the proposed liquidation will maximize value for the Debtors' creditors. The Plan accomplishes the goals promoted by section 1129(a)(3) of the Bankruptcy Code by enabling the Plan Administrator to make distributions to creditors on a fair and equitable basis, in accordance with the priorities established by the Bankruptcy Code. The Plan is the direct result of extensive good faith, arm's length negotiations between the Debtors, the Committee, Fairview and Juno and thereby reflects substantial input from the principal constituencies having an interest in

these Chapter 11 Cases. The Plan has been proposed with the legitimate and honest purpose of implementing a liquidation of the Debtors and maximizing the value of the Estates to achieve the best interests of the Debtors' creditors. In so finding, the Court has considered the totality of the circumstances in these Chapter 11 Cases. The strong support for the Plan by holders of Claims in Classes entitled to vote further demonstrates that the Plan was proposed in good faith. Finally, as described in greater detail below, the Plan's indemnification, exculpation, release, and injunction provisions are warranted, necessary, and appropriate, and are supported by sufficient consent and consideration under the circumstances of the Chapter 11 Cases as a whole and are consistent with sections 105, 1123(b)(6), and 1129 of the Bankruptcy Code and applicable law in this Circuit.

R. Section 1129(a)(4). No payment for services or costs and expenses in connection with these Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be made by the Debtors other than payments that have been authorized by an order of the Court, including without limitation by the confirmation of the Plan by this Confirmation Order. The Court has previously authorized the interim payment of the fees and expenses incurred by Professionals in connection with the Chapter 11 Cases. See Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 254]. Pursuant to the Plan, such Professionals' applications for allowance of final compensation and reimbursement of expenses must be filed and served no later than thirty (30) days after the Effective Date. Such applications will be subject to review and approval by the Court.

S. The identity and affiliation of the Plan Administrator was disclosed, in satisfaction of section 1129(a)(5)(A)(i) of the Bankruptcy Code. Further, in accordance with section 1129(a)(5)(A)(ii) of the Bankruptcy Code, the appointment of the Plan Administrator is consistent with the interests of creditors and with public policy inasmuch as no objection to the proposed

Plan Administrator was received and the Committee participated in the selection of the Plan Administrator.

T. Section 1129(a)(6). The Plan does not provide for any changes in rates that require regulatory approval of any governmental agency. As such, section 1129(a)(6) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

U. Section 1129(a)(7). Each holder of an impaired Claim or Equity Interest that has not accepted or is deemed not to have accepted the Plan will, on account of such Claim or Equity Interest, receive or retain property under the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. The Proponents have demonstrated that the Plan is in the best interests of their creditors.

V. Section 1129(a)(8). Four of the five Classes under the Plan have either voted to accept the Plan, are deemed to have accepted the Plan, or are unimpaired under the Plan. See Plan at Article II and III. The holders of Allowed Claims in Class 1 shall be paid upon the Effective Date or upon allowance. The holders of Equity Interests in Class 5 shall neither receive nor retain any property under the Plan; therefore, Class 5 is deemed to have rejected the Plan. Nevertheless, with respect to Class 5, the Plan is confirmable because it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such non-accepting Classes of Claims and Equity Interests.

W. Section 1129(a)(9). The Plan provides treatment for Allowed Administrative Claims and Allowed Priority Tax Claims that is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code. Unless otherwise agreed to, the holder of each Allowed Administrative Claim and Allowed Priority Tax Claim will receive full payment in Cash on account of such Claim within the prompt timeframe specified in the Plan with respect to such Claims.

X. Section 1129(a)(10). The Plan has been accepted by impaired Classes entitled to vote on the Plan-Classes 2, 3 and 4, without including the acceptance of the Plan by any insider.

Y. Section 1129(a)(11). As a result of the sale of the Debtors' assets, the Debtors have sufficient funds to satisfy Claims pursuant to the treatment set forth in the Plan as well as to implement the Plan. Thus, confirmation of the Plan is not likely to be followed by the need for further bankruptcy relief for the Debtors, and Section 1129(a)(11) of the Bankruptcy Code is satisfied.

Z. Section 1129(a)(12). The Plan provides the fees required under 28 U.S.C. § 1930(a) will be paid until the Chapter 11 Cases are closed, converted, or dismissed.

AA. Section 1129(a)(13). The Debtors do not owe retiree benefits (as that term is defined under section 1114 of the Bankruptcy Code). Thus, section 1129(a)(13) is inapplicable to the Plan.

BB. Sections 1129(a)(14)-(16). Sections 1129(a)(14)-(16) of the Bankruptcy Code apply to individuals or nonprofit entities and are not applicable to these Chapter 11 Cases.

CC. Section 1129(b). The Plan does not "discriminate unfairly" with respect to Classes 1, and 5, which are the Classes that are impaired under the Plan and have not accepted the Plan. First, the Claims in Class 1 shall be paid upon the Effective Date or upon allowance. With respect to the Equity Interests in Class 5, these interests are not classified separately for the purpose of unfair discrimination because Class 5 comprises all of the Equity Interests in the Debtors. The Plan is otherwise "fair and equitable" under section 1129(b) of the Bankruptcy Code with respect to Class 5 because no holder of an interest that is junior to the Equity Interests in Class 5 is receiving or retaining any property under the Plan on account of such interest.

DD. Section 1129(c). The Plan is the only plan that has been filed in the Chapter 11

Cases and it is the only plan that has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

EE. Section 1129(d). No party in interest, including but not limited to any governmental unit, has requested that the Court deny confirmation of the Plan on grounds that the principal purpose of the Plan is "the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933," and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

FF. Section 1129(e). Because the Debtors are not "small business debtors" under section 101(51D) of the Bankruptcy Code, section 1129(e) of the Bankruptcy Code is not applicable to the Chapter 11 Cases.

Means for Implementation of the Plan

GG. Implementation. The various means for implementation of the Plan have been designed and proposed in good faith, are adequate and will promote the maximization of the value of the ultimate recoveries under the Plan in a fair and equitable manner in accordance with the priorities established by the Bankruptcy Code. The means for implementation of the Plan are not intended to hinder, delay, or defraud any entity to which the Debtors are indebted on the Effective Date.

HH. Executory Contracts and Unexpired Leases. Pursuant to sections 365 and 1123(6)(2) of the Bankruptcy Code, upon the occurrence of the Confirmation Date, the Plan provides for the rejection of all remaining executory contracts and unexpired leases of the Debtors (i) which have not expired by their own terms on or prior to the Confirmation Date or (ii) which have not been assumed and assigned or rejected with the approval of the Bankruptcy Court or

pursuant to procedures established by order of the Bankruptcy Court. The Debtors' determinations regarding the assumption or the rejection of executory contracts and unexpired leases are based on and within the sound business judgment of the Debtors, will aid in the implementation of the Plan, and are in the best interests of the Debtors, their Estates, and the holders of Claims and other parties in interest in the Chapter 11 Cases.

II. No party objected to the rejection of any executory contracts or unexpired leases pursuant to the Plan.

JJ. Injunctions and Releases. The Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code and sections 105, 524, and 1141 of the Bankruptcy Code to approve the provisions with respect to the releases and injunction set forth in Article IX of the Plan. The releases set forth in Article IX of the Plan represent a valid exercise of the Debtors' business judgment and accordingly are appropriate under section 1123(b)(3)(A) of the Bankruptcy Code. The released parties pursuant to the Plan have contributed substantial value to the Debtors and the formulation of the Plan. Such released parties' efforts in negotiating and ultimately formulating the Plan enabled the Debtors to file the Plan. The injunction set forth in Article IX of the Plan complies with the Bankruptcy Code and is important to the overall objectives of the Plan to finally resolve all claims against the Debtors in the Chapter 11 Cases. Based upon the record of these Chapter 11 Cases and the evidence admitted at or prior to the Confirmation Hearing, this Court finds that the releases, injunctions, and exculpations set forth in Article IX of the Plan are consistent with the Bankruptcy Code and applicable law.

KK. Other Findings. To permit the Plan Proponent to commence his duties as quickly as practicable, to promote prompt distributions under the Plan for the benefit of creditors and because a significant number of activities are capable of being undertaken in short order, good

cause exists to support the waiver of the stay imposed by Bankruptcy Rule 3020(e).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

1. Confirmation. All requirements for confirmation of the Plan have been satisfied. The Plan is CONFIRMED in its entirety pursuant to section 1129 of the Bankruptcy Code. The terms of the Plan, exhibits to the Plan, the Plan Supplement, and any other documents filed in connection with the Plan and/or executed or to be executed in connection with the transactions contemplated by the Plan, and all amendments and modifications thereof, are expressly incorporated into, and form an integral part of, this order (the "Confirmation Order"). A copy of the Plan in the form confirmed is attached hereto as Exhibit A.

2. Final Approval of Disclosure Statement. The Disclosure Statement is hereby APPROVED, on a final basis, pursuant to section 1125 of the Bankruptcy Code.

3. Objections. All Objections that have not been withdrawn or resolved prior to the entry of this Order are overruled in all respects for the reasons set forth in the record of the Confirmation Hearing, which record is incorporated herein, and all withdrawn objections, if any, are deemed withdrawn with prejudice.

4. Omission of Reference to Particular Plan Provisions. The failure to specifically describe or include any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be approved and confirmed in its entirety.

5. Implementation. The Debtors and the Plan Administrator, are authorized and directed to take all actions necessary, appropriate, or desirable to enter into, implement, and consummate the contracts, instruments, releases, leases, agreements, or other documents created or executed in connection with the Plan. Without further order or authorization of this Court, the

Proponents and the Plan Administrator, and their successors are authorized and empowered to make all modifications to documents as necessary and consistent with the Plan.

6. Effective Date. The Effective Date of the Plan shall occur on the first business day after the Confirmation Order is entered and all conditions precedent to Plan effectiveness have been satisfied or waived pursuant to the Plan.

7. Modifications or Alterations to Plan. To the extent the Plan has been modified, supplemented, or altered subsequent to solicitation, such modifications, supplements, and alterations constitute clarifications or technical changes, and do not materially adversely affect or change the treatment of any Claims or Equity Interests. Accordingly, pursuant to Bankruptcy Rule 3019, such modifications or alterations, if any, do not require additional disclosure under section 1125 of the Bankruptcy Code or re-solicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

8. Binding Effect of Plan. Subject to the occurrence of the Effective Date, the provisions of the Plan and this Confirmation Order shall be binding upon: (a) the Plan Administrator and any professionals or other parties assisting and supporting the Plan Administrator; (b) the Official Committee and its members and advisors; (d) any Professionals; (e) any and all non-Debtor parties to judicial or administrative proceedings in which any of the Debtors are a party; (f) any and all holders of Claims or Equity Interests (irrespective of (i) whether such Claims or Equity Interests are impaired under the Plan, (ii) whether the holders of such Claims or Equity Interests accepted, rejected, or are deemed to have accepted or rejected the Plan, or (iii) whether such Claims or Equity Interests have been asserted in a filed proof of claim, proof of interest, request for administrative expense payment or other pleading or filing); (g) any and all

non-Debtor parties to executory contracts or unexpired leases with the Debtors; (h) any party that had received or may be deemed to have received notice of the Plan and the Hearing; and (i) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing. All settlements, compromises, releases, waivers, exonerations, and injunctions set forth in the Plan shall be, and hereby are, effective and binding on all entities who may have had standing to assert any settled, released, exculpated, or enjoined causes of action, and no other entity shall possess such standing to assert such causes of action after the Effective Date.

9. Distributions. On and after the Effective Date, the Distributions on account of Allowed Claims and the resolution and treatment of Disputed Claims pursuant to the Plan are authorized to occur and, without limitation on the other provisions of the Plan and this Confirmation Order concerning the powers, duties, and authority of the Plan Administrator, the Plan Administrator shall be authorized to effectuate such Distributions, resolution, and treatment.

10. Executory Contracts and Unexpired Leases. The executory contract and unexpired lease provisions of the Plan, including without limitation the deemed rejection of executory contracts and unexpired leases, are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered.

11. This Order shall constitute an order of the Court, pursuant to section 365 of the Bankruptcy Code, as of and conditioned on the occurrence of the Confirmation Date, approving the rejection of all remaining executory contracts and unexpired leases of the Debtors.

12. Bar Date for Rejection Claims. Claims arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Court on or before thirty

(30) days after the Confirmation Order (the "Rejection Claim Bar Date"). Any such Claims not timely filed shall be forever barred.

13. Vesting of Assets. Unless a cause of action against any entity is expressly waived, relinquished, released, or compromised in the Plan, all causes of action are hereby preserved for the benefit of the Debtors and the Plan Administrator on their behalf, for adjudication, as applicable, by the Plan Administrator, in accordance with the Plan.

14. Without limiting the foregoing, the right of the Plan Administrator on behalf of the Debtors to pursue or adopt any claims alleged in any lawsuit in which the Debtors is a defendant or an interested party, against any entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, are preserved.

15. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp tax or other similar tax, real estate transfer tax, mortgage recording tax, filing fee, or similar tax: (a) the issuance, transfer or exchange of notes, debt instruments and equity securities under or in connection with the Plan; (b) the creation, assignment, recordation or perfection of any lien, pledge, other security interest or other instruments of transfer; (c) the making or assignment of any lease; or (d) the making or delivery of any deed or other instrument of transfer under the Plan or in connection with the Plan.

16. Transfers by Debtors. All transfers of property of the Debtors' estate shall be free and clear of all Liens, Claims, encumbrances, and other interests, except as expressly provided in the Plan or this Confirmation Order, but in all cases subject to the rights of all Holders of Allowed Claims to receive Distributions as provided in the Plan.

17. Injunction. The injunction contained in Article IX of the Plan is approved and authorized in all respects. Following the Effective Date, these injunctions shall remain permanently in full force and effect.

18. Releases. The releases contained in Article IX of the Plan are approved and authorized in all respects.

19. Limitation of Liability. The Plan Proponents shall have all of the benefits and protections afforded under section 1125(e) of the Bankruptcy Code and applicable law.

20. General Administrative Claim Bar Date Provisions. Unless previously filed or as otherwise governed by a bar date order or in another order of the Court, requests for payment of Administrative Claims must be filed with the Court by the Administrative Claim Bar Date, which shall be thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the Administrative Claim Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Estates, the Plan Proponents, or their respective property.

21. Professional Compensation. Each Professional shall file an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases, for the period through the Effective Date, no later than thirty (30) days after the Effective Date. Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Debtors, Plan Administrator, the U.S. Trustee, and the professionals to whose application the objections are addressed no later than twenty-one (21) days after the date the application is filed, or the Bankruptcy Court may enter an order authorizing the fees without a hearing. Any professional fees and reimbursements or expenses incurred by the Debtors, Plan

Administrator, or any of their professionals subsequent to the Effective Date may be paid without application to the Bankruptcy Court.

22. 28 U.S.C. § 1930 Fees. Fees payable pursuant to 28 U.S.C. § 1930 constitute Administrative Claims under the Plan and shall be paid pursuant to the Plan.

23. Appointment of Plan Administrator. Charles Berk, Partner with CBIZ is hereby appointed to serve as the Plan Administrator on the terms set forth in the Plan, which terms are hereby authorized and approved in their entirety.

24. Authorization, Duties, and Powers of Plan Administrator. The Plan Administrator is hereby authorized to take any and all actions necessary or appropriate in furtherance of, and to implement, effectuate and consummate the Plan and this Confirmation Order and shall not be required to post a bond or other security in connection with its obligations.

25. Directive in Furtherance of Plan. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents, mortgages and instruments necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan and this Confirmation Order.

26. Final Order. The stay of this Confirmation Order imposed by Bankruptcy Rule 3020(e) is hereby waived in accordance with Bankruptcy Rule 3020(e). This Confirmation Order is a final order, and the period in which an appeal must be filed shall commence immediately upon the entry hereof.

27. Notice of Confirmation and Effective Date. Promptly following the occurrence of the Effective Date, pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Plan Administrator is directed to serve a notice of the entry of this Confirmation Order (the "Confirmation and Effective Date Notice"), on all parties that received the Combined Hearing

Notice. The Plan Administrator is also directed to make copies of the Confirmation and Effective Date Notice available on the Omni Website.

28. Committee Dissolution. On the Effective Date, the Committee will dissolve, and the members of the Committee and their respective Professionals will cease to have any duty, obligation, or role arising from or related to the Chapter 11 Cases.

29. Plan and Confirmation Order Govern. Without intending to modify any prior order of this Court (or any agreement, instrument, or document addressed by any prior order), in the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan, on the other, the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement, instrument, or document); provided, further, that, for the avoidance of doubt, in the event of any inconsistency between the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall govern; provided, however, that notwithstanding the foregoing, in the event of any inconsistencies between the Plan, the Plan Supplement, or this Confirmation Order, on the one hand, and the terms of the CVG Letter Agreement, on the other, the terms of the CVG Letter Agreement shall govern.

30. Jurisdiction. The assets and affairs of the Debtors shall remain subject to the jurisdiction of this Court until the Effective Date. Notwithstanding the entry of this Confirmation Order, from and after the Effective Date, the Court shall retain such jurisdiction over the Chapter 11 Cases to the fullest extent that is legally permissible.

Dated: June 24th, 2020
Wilmington, Delaware


BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

(Amended Plan of Liquidation)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SOUTHEASTERN METAL PRODUCTS
LLC, et al.,

Debtors.¹

Chapter 11

Case No. 19-10989 (BLS)

Jointly Administered

**AMENDED JOINT PLAN OF ORDERLY LIQUIDATION OF THE DEBTORS AND
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

WEIR & PARTNERS LLP
Jeffrey S. Cianciulli, Esquire (#4369)
Bonnie R. Golub, Esquire
824 Market Street, Suite 800
Wilmington, DE 19899
Telephone: (302) 652-8181
Telecopy: (302) 652 8909
jcianciulli@weirpartners.com
bgolub@weirpartners.com
Counsel to Debtors and Debtors-in-Possession

LOWENSTEIN SANDLER LLP
Jeffrey D. Prol, Esquire
Bruce N. Nathan, Esquire
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2500
jprol@lowenstein.com
bnathan@lowenstein.com
*Counsel to the Official Committee of Unsecured
Creditors*

Dated: May 5, 2020

¹ The Debtors and the last four digits of their respective federal tax identification numbers are: Southeastern Metal Products LLC (9192) and SEMP Texas, LLC (3419).

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PRELIMINARY STATEMENT

Southeastern Metal Products LLC ("SEMP") and SEMP Texas LLC ("SEMP Texas", and collectively with SEMP, the "Debtors" and each a "Debtor") together with the Official Committee of Unsecured Creditors (the "Committee" and collectively with the Debtors, the "Plan Proponents"), respectfully file and propose to the creditors of the Debtors and other parties in interest this joint Chapter 11 plan of orderly liquidation (as may be further amended, the "Plan"), which is proposed pursuant to the provisions of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Code" or "Bankruptcy Code").

The Debtors have been consolidated for procedural purposes only for these Chapter 11 Cases. Holders of Claims and Interests may refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, operations, and historical financial information. The Disclosure Statement also includes a summary and description of the Plan. Each of the Debtors is a proponent of the Plan within the meaning of 11 U.S.C. § 1129.

ARTICLE I **DEFINITIONS AND RULES OF CONSTRUCTION**

For purposes of this Plan, and unless the context otherwise requires, the terms set forth below shall have the following meanings:

1. **Actions** means any and all claims, causes of action or choses in action of the Debtors or the Estates which are not released hereunder, whether legal, equitable or otherwise, against any other party, whether arising before or after the Petition Date, including, but not limited to, Avoidance Actions and all other claims, causes of action, choses in action, counterclaims, and cross-claims, whether arising under state or federal law.

2. **Administrative Claim** means, except as otherwise specified in the Plan, a Claim for payment of an administrative expense of a kind specified in Bankruptcy Code § 503(b) and referred to in Bankruptcy Code § 507(a), including, without limitation, compensation for legal and other professional services rendered to or on behalf of the Estates, reimbursement of expenses awarded under Bankruptcy Code §§ 330(a) or 331, other post-Petition Date accounts payable arising in the ordinary course of business which are accrued as of the Effective Date in accordance with generally accepted accounting principles, consistently applied, and all fees and charges assessed against the Estates pursuant to 28 U.S.C. § 1930, including, without limitation, the United States Trustee Fees and the fees to the Clerk of Court.

3. **Administrative Claims Bar Dates** shall mean, for any Administrative Claim not otherwise addressed in the Bar Date Order as to which a different Bar Date has been established, the date which is thirty (30) days following the Effective Date for all Administrative Claims, other than any fees arising under 28 U.S.C. § 1930 or claims arising under Bankruptcy Code § 503(b)(1)(D), arising, accruing or otherwise due and payable at any time during the period from the Petition Date through and including the date on which the Confirmation Order becomes a Final Order.

4. **Allowed Administrative Claim** means all or a portion of any Administrative Claim that is or has become an Allowed Claim.

5. **Allowed Claim** means a Claim against the Debtors or their Estates, to the extent that a proof of claim (i) was filed with the Court and no objection to the Claim is filed within the time fixed either by the Court or this Plan for such objections, or (ii) is deemed filed pursuant to Bankruptcy Code § 1111(a) and no objection to the Claim is filed within the time fixed either by the Court or this Plan for such objections, (iii) is, or is deemed to be, an Allowed Claim pursuant to a Final Order or this Plan, or (iv) A claim is listed in the Schedules as other than contingent, unliquidated or disputed". A Claim that appears on the Schedules as "disputed", "contingent", or "unliquidated" and for which a proof of claim has not been filed is deemed to be a disallowed Claim and such person or entity shall not be treated as a creditor with respect to such Claim for the purposes of voting and distributions under the Plan.

6. **Allowed Priority Claim** means all or that portion of any Priority Claim that is or has become an Allowed Claim.

7. **Allowed Priority Tax Claim** means all or that portion of any Priority Tax Claim that is or has become an Allowed Claim.

8. **Allowed Professional Fees** means all or the portion of a Claim for Professional Fees that is approved by the Court for payment.

9. **Allowed Unsecured Claim** means all or that portion of any Unsecured Claim that is or has become an Allowed Claim, including any Tax Claim that is not a Priority Tax Claim.

10. **Allowed Secured Claim** means all or that portion of any Secured Claim that is or has become an Allowed Claim.

11. **Assets** means any and all of the right, title and interest of the Debtors in and to property of any nature whatsoever, real or personal, tangible or intangible, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in progress, accounts, chattel paper, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Claims, Causes of Action, and any general intangibles.

12. **Avoidance Action** means any claim or cause of action of the Debtors or their respective Estates that is or may be the subject of an adversary proceeding under §§ 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code or other applicable law that have not been deemed settled by the Plan.

13. **Bar Date** means as to a particular claimant, including that part of such claims asserted as having administrative status under 11 U.S.C. §503(b)(9), that date established in the Bar Date Order.

14. **Bar Date Order** means the *Order Granting Debtors' Motion for Order Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [D.I. 174]. Pursuant thereto, the General Bar Date was October 21, 2019 and the Governmental Bar date was November 4, 2019.

15. **Bankruptcy Rules** mean the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Court, as applicable and in force at the commencement of this Debtors' Cases, and as amended from time to time.

16. **Business Day** means any day, except Saturday, Sunday, Memorial Day or any other day on which national commercial banks in the State of Delaware are closed.

17. **Cases or Chapter 11 Cases** means the within bankruptcy cases commenced by the Debtors by virtue of the filing of petitions for relief under Chapter 11 of the Code on the Petition Date.

18. **Cash** means all cash and cash equivalents, including, but not limited to, bank deposits, checks and other similar items in whatever form, wherever located, and by whomsoever held.

19. **Claim** means, as against the Estate, whether incurred prior to or after the Petition Date: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured or as otherwise defined in Bankruptcy Code § 101(5).

20. **Claims Register** means the official register of Claims maintained by the Notice, Claims and Balloting Agent.

21. **Class** means each class of Claims or Interest established pursuant to this Plan.

22. **Code or Bankruptcy Code** means title 11 of the United States Code, 11 U.S.C. §§ 101-1330 as may from time to time be amended.

23. **Collateral** means any property or interest in property of the Estates or a Debtor subject to a Lien to secure a Claim to the extent such Lien is not subject to avoidance under the Bankruptcy Code or such avoidance has been settled by this Plan, nor otherwise invalid under the Bankruptcy Code or applicable state law.

24. **Confirmation Date** means the date on which the Clerk of the Court enters

the Confirmation Order on the docket in the Cases.

25. **Confirmation Hearing** means the hearing scheduled by the Court to consider confirmation of the Plan pursuant to Bankruptcy Code § 1129, as such hearing may be adjourned or continued from time to time.

26. **Confirmation Hearing Date** means the date set by the Court for the commencement of the Confirmation Hearing, as may be adjourned or continued from time to time.

27. **Confirmation Order** means the order of the Court confirming the Plan pursuant to Bankruptcy Code § 1129.

28. **Consummation** means the occurrence of the Effective Date.

29. **Court** means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Cases.

30. **Creditors** has the same meaning as set forth in Bankruptcy Code § 101(10).

31. **Creditors' Committee** means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases by the Office of the United States Trustee.

32. **Debtors** means Southeastern Metal Products, LLC and SEMP Texas, LLC, each of which is a Debtor and a debtor-in-possession in the Chapter 11 Cases.

33. **Disbursing Agent** means the Plan Administrator, who shall effectuate this Plan and hold and distribute consideration to be distributed to holders of Allowed Claims pursuant to the provisions of the Plan and Confirmation Order.

34. **Disclosure Statement** means that certain Disclosure Statement, dated April 30, 2020, as may be amended, filed by the Plan Proponents in respect of this Plan, as may be amended, and approved by the Court on April 30, 2020, as containing adequate information pursuant to Bankruptcy Code § 1125.

35. **Disputed Claim** means any Claim, or portion thereof, for which no Final Order has Allowed or disallowed such Claim or portion thereof and as to which (i) a proof of claim has been filed in an unliquidated amount; or (ii) an objection, or request for estimation, has been filed (and not withdrawn) by any party in interest. In the event that any part of a Claim is disputed, such Claim in its entirety shall be deemed to constitute a Disputed Claim for purposes of distribution under this Plan unless the Plan Proponents and the Holder thereof agree otherwise. Without limiting any of the above, a Claim that is the subject of a pending application, motion, complaint or any other legal proceeding seeking to disallow, subordinate or estimate such Claim shall be deemed to constitute a Disputed Claim.

36. **Effective Date** means the first (1st) business day following the date on

which the Confirmation Order becomes a Final Order and all conditions precedent set forth herein and therein have been satisfied. However, at the option of the Plan Proponents, a Confirmation Order subject to a pending appeal or certiorari proceeding may be considered a Final Order provided no order has been entered by any court of competent jurisdiction staying the effect of the Confirmation Order.

37. **Estate or Estates** means the estate of a Debtor or the estates of the Debtors, as the case may be, within the meaning of Bankruptcy Code § 541.

38. **Exculpated Claim** means any Cause of Action related to any act or omission derived from, based upon, related to or arising from (a) the Chapter 11 Cases; (b) the formulation, preparation, dissemination, or negotiation of any document in connection with the Chapter 11 Cases; (c) any contract, instrument, release, and/or other agreement or document created or entered into in connection with the Chapter 11 Cases; and/or (d) the pursuit of Consummation.

39. **Exculpated Party or Exculpated Parties** means each of: (a) the Debtors and Weir & Partners LLP and its individual attorneys; (b) the members of the Creditors' Committee (excluding any member who resigned therefrom) solely in their capacities as such, the Creditors' Committee's counsel and financial advisor; (c) Fairview, and (d) with respect to each of the foregoing Entities in clauses (a), (b), and (c), such Entity's successors and assigns, current or former officers, directors, managers, principals, direct and indirect equity holders, members, employees, agents, , in each case in their capacity as such.

40. **Fairview** means Fairview Loans IV, LLC.

41. **Fairview Claim** has the meaning in Section IV.C.2 below.

42. **Final Order** means an order or judgment (i) as to which the time to appeal, petition for certiorari or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending; or (ii) as to which any right to appeal, move for a stay pending appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Plan Proponents or, (iii) in the event that an appeal, writ of certiorari or reargument or rehearing thereof has been sought, such order shall have been denied by the highest court to which such order was appealed, or certiorari reargument or rehearing shall have been taken and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rules 9023 or 9024 may be filed with respect to such order shall not cause such order not to be a Final Order.

43. **Holder** means the beneficial owner or holder of any Claim or Interest also sometimes referred to as a "Claim Holder" or "Interest Holder".

44. **Interests** means any equity security in a Debtor as defined in Bankruptcy

Code § 101(16).

45. **Juno** means Juno Investments LLC.
46. **Lien** means a "lien" as defined in Bankruptcy Code § 101(37).
47. **Notice, Claims and Balloting Agent** means Omni Management.
48. **Person** shall have the same meaning as provided in Bankruptcy Code § 101(41).
49. **Personal Property** means all of the Debtors' personal property as scheduled on Schedule B of each Debtor's Schedules.
50. **Petition Date** means May 6, 2019.
51. **Plan Administrator** means Charles Berk, a partner at CBIZ, financial advisor to the Committee.
52. **Plan Proponents** means the Debtors and the Committee.
53. **Plan Supplement** means the additional documents, if any, filed with the Court by the Plan Proponents not later than seven (7) days prior to the deadline to object to the Plan and in accordance with LBR 3016-2.
54. **Priority Tax Claim** means any Claim which may be validly asserted by federal, state or local governmental tax authorities pursuant to Bankruptcy Code §507(a)(8).
55. **Professional Fees** means Claims by professional persons employed pursuant to Bankruptcy Code §§ 327 and 1103 for compensation and reimbursement of expenses pursuant to Bankruptcy Code §§ 330 and 331 or other provisions of the Bankruptcy Code.
56. **Quarterly Fees** means the sums that the Debtors are required to pay to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6).
57. **Rejection Claim** means any Claim, proof of which is timely filed, arising under Bankruptcy Code § 502(g) as a result of the rejection of an executory contract or unexpired lease.
58. **Reorganized Debtors** shall mean the Debtors once the Effective Date occurs under this Plan.
59. **Schedules** mean each of the Debtor's schedules of assets and liabilities and statement of financial affairs, as amended from time to time, filed by each of the Debtors with the Court pursuant to Bankruptcy Rule 1007.

60. **Secured Claim** means the portion of any Claim determined in accordance with §§ 506(a) and 1111(b) of the Bankruptcy Code, as of the Confirmation Date, that is (a) secured by a valid, perfected and unavoidable Lien, to the extent of the value of the Holder's interest in a Debtor's interest in the Collateral or (b) subject to offset under § 553 of the Bankruptcy Code, to the extent of the amount subject to offset.

61. **South State Bank or SSB** means South State Bank, a South Carolina banking corporation.

62. **Tax Penalty Claim** means any Claim arising from or based upon interest, penalties, or additions attributable to or imposed on or with respect to one or more assessments of Taxes.

63. **Taxes** means all taxes, charges, fees, levies, or other assessments by any federal, state, local or foreign taxing authority, including, without limitation, income, excise, property, sales, transfer, use and occupancy, business privilege, net profits, occupation, intangible and withholding taxes, license, severance, and franchise taxes. This definition shall not preclude the Debtors or the Plan Proponents from any right to object to any other or further Claim either timely or tardily filed by any claimant for any Taxes which includes a claim for interest or penalties or additions attributable thereto.

64. **United States Trustee Fees** means the Quarterly Fees.

65. **Unclaimed Property** means any distributions to creditors that are unclaimed, including, without limitation, (i) Cash and checks (and the funds represented thereby) that have been mailed to creditors and returned as undeliverable without a forwarding address; and (ii) checks (and the funds, represented thereby) that were not mailed or delivered because of the absence of a proper address to which to mail or deliver such property.

66. **Unsecured Claim** means any Claim, whether or not disputed, liquidated or contingent, which is not an Administrative Claim, a Priority Claim, a Priority Tax Claim, or a Secured Claim.

67. **Voting Deadline** means the date set by the Court as the last date for receipt of ballots for acceptance or rejection of the Plan.

Rules of Interpretation and Computation of Time

1. **Rules for Interpreting Undefined Terms.** All terms used in this Plan and not defined herein but that are defined in the Code shall have the respective meanings assigned to such terms in the Code. All terms used in this Plan and not defined herein or in the Code but that are defined in the Bankruptcy Rules shall have the respective meanings assigned to such terms in those rules.

2. **Rules of Construction.** The words "herein," "hereof" and "hereunder" and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan unless the context requires otherwise. Whenever from the context it appears appropriate, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender include the masculine, feminine and the neuter.

3. All references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system.

4. All references to statutes, regulations, orders, rules of courts and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated.

5. **Computation of Time.** Unless otherwise stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

ARTICLE II **CLASSIFICATION OF CLAIMS AND INTERESTS**

1. **Unclassified Claims.** Administrative Claims and Priority Tax Claims shall be treated in accordance with the Plan, but are not required to be classified pursuant to Bankruptcy Code § 1123(a)(1).

2. **Classified Claims.** The Holders of Claims and Interest are classified under the Plan, as follows:

Class 1 shall consist of Priority Claims

Class 2 shall consist of the Fairview Claim

Class 3 shall consist of the Juno Claim

Class 4 shall consist of the Unsecured Claims

Class 5 shall consist of the Interest Holders of the Debtors

ARTICLE III **IDENTIFICATION OF CLASSES OF CLAIMS THAT** **ARE AND ARE NOT IMPAIRED UNDER THE PLAN**

1. **Classes of Claims Impaired and Deemed to Reject.** Claims in Class 5 are impaired and are deemed to reject the Plan. Solicitation of acceptance with respect to Class 5 is not required under Bankruptcy Code § 1126(f).

2. **Impaired Classes of Claims and Interests.** Claims in Class 1, 2, 3 and 4 are impaired and are entitled to vote on the Plan.

3. **Impaired Classes To Vote.** Only those Classes holding impaired Claims and not deemed to accept or reject the Plan shall be entitled to vote as a Class to accept or reject the Plan.

4. **Acceptance By Class Of Claims.** A Class of Claims shall have accepted the Plan if the Plan is accepted by Holders in such Class that hold at least two-thirds of the aggregate dollar amount and more than one-half in the number of the Allowed Claims of creditors of such class that vote to accept or reject the Plan.

5. **One Vote Per Holder.** If a Holder of a Claim holds more than one Claim in any one Class, all Claims of such Holder in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number and amount of Claims in such Class voting on this Plan.

ARTICLE IV **TREATMENT OF CLAIMS AND INTERESTS**

The treatment of and consideration to be received by Holders of Allowed Claims and the rights of Holders with respect to their Claims and Interests following the Confirmation Date shall arise exclusively under the Plan and Confirmation Order and any documents or instruments entered into in connection therewith.

A. Unclassified Claims.

1. **Allowed Administrative Claims; Bankruptcy Code §503(b)(9) Claims.** Except to the extent that a Holder of an Allowed Administrative Claim agrees to less favorable treatment with respect to such holder (including as detailed below), each holder of an Allowed Administrative Claim, including Holders of Bankruptcy Code §503(b)(9) Claims, and Allowed Professional Fee Claims, shall be paid in full in Cash on the earlier of the date that is (a) on or as soon as reasonably practicable after the Effective Date if such Administrative Claim is Allowed as of the Effective Date or (b) on or as soon as reasonably practicable after the date such Administrative Claim is Allowed, if such Administrative Claim is not Allowed as of the Effective Date. A list of Allowed 503(b)(9) Claims shall be included in the Plan Supplement. In the event that any Administrative Claim is a Disputed Claim on the Effective Date, such disputed amounts (or amounts pending allowance by the Court) shall be reserved by the Reorganized Debtors until the dispute is resolved and paid promptly, upon final resolution.

2. **Professional Fee Claims.** Any Person asserting a Professional Fee Claim for services rendered before the Effective Date must file and serve on the Debtors, the Committee, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or any other applicable order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim no later than the Administrative Claims Bar Date. Objections to any Professional Fee Claim must be filed and served on the requesting party no later than twenty-one (21) days from the service of an application for final allowance of a Professional Fee Claim. Upon

entry of a Final Order approving any such application for such Professional Fee Claim, the Reorganized Debtors shall promptly distribute any due and unpaid portion of such Allowed Professional Fee Claim and continue such payment thereafter in accordance with the terms of this Plan.

3. **Administrative Claim Bar Dates.** Requests for payment of Administrative Claims must be filed on or before the applicable Bar Date or the Administrative Claims Bar Dates. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such applicable dates shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or their property and such Administrative Claims shall be deemed discharged as of the Effective Date.

B. Priority Tax Claims.

Allowed Priority Tax Claims. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the option of the Plan Administrator, either: (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, plus allowed interest at the rate determined under applicable non-bankruptcy law and to the extent provided for by Bankruptcy Code § 511 and penalties; (ii) sixty (60) equal monthly installments beginning on the first Business Day of the first month following the date on which the Court enters an order that becomes a Final Order allowing such claim; or (iii) such other treatment as may be agreed upon by such holder and the Plan Administrator or otherwise determined by the Bankruptcy Court. Allowed Priority Tax Claims shall be paid as detailed below beginning as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim against the Debtors becomes an Allowed Priority Tax Claim, or (iii) such other date as may be ordered by the Bankruptcy Court.

C. Treatment of Claims and Interests.

1. Class 1 (Priority Claims– Non Tax Priority Claims)

(a) This class is for Priority Claims other than any Priority Tax Claim. All Allowed Priority Claims shall be paid in full through equal monthly payments over a period of one (1) year beginning on the first Business Day of the first month following the Effective Date, unless the Holder agrees to different treatment. The Plan Proponents and Plan Administrator also reserve the right to object to any Class 1 claim and to the extent that such claim should be treated as unsecured, the Plan Proponents or the Plan Administrator will object thereto for purposes of reclassification. If Class 1 votes to reject the Plan, the Holders of Allowed Class 1 claims must be paid on the Effective Date, unless a Holder agrees to different treatment.

(b) Any portion of a Priority Claim that is determined by the Court or agreed to be an Allowed Unsecured Claim shall be treated in Class 4 hereof.

(c) Holders of Class 1 Claims are impaired by the Plan and are entitled to vote on the Plan.

2. Class 2 (Fairview Loans IV, LLC Secured Claim)

(a) Class 2 consists of the Allowed Secured Claim of Fairview, which is the successor in interest to SSB, effective as of July 8, 2019. As set forth in more detail below, the Allowed Secured Claim of Fairview is secured by, among other things, a first priority Lien upon substantially all of SEMP's Assets, pursuant to the terms of certain pre-petition loan documents (collectively, the "Pre-Petition Loan Documents"). Fairview does not have a lien on the assets of SEMP Texas. Fairview shall retain its Lien on substantially all of SEMP's Assets under this Plan to secure its Secured Claim. Fairview's Allowed Secured Claim shall be paid as follows:

(i) **Claim Amount.** Fairview shall have an Allowed Secured Claim in an amount equal to the outstanding balance of the indebtedness owed under the Pre-Petition Loan Documents as of the Effective Date, including without limitation, principal, accrued and accruing interest (at the rate set forth below), and costs and expenses (including unreimbursed legal fees and expenses) (collectively, the "Fairview Claim"). Fairview and the Plan Proponents agree that, for the purposes of this Plan, the Fairview Claim was \$3,675,496.68 as of April 30, 2020. The Fairview Claim shall include all interest, fees, costs and expenses (including unreimbursed legal fees and expenses) which are incurred or accrue from and after the date above.

(ii) **Payments.**

(a) SEMP shall continue to make monthly payments to Fairview in the amount of \$62,460.00 through the Effective Date, provided that Fairview acknowledges and agrees that the accrued interest component of such payments shall be based upon the agreed-upon rate of 7% per annum.

(b) From and after the Effective Date, SEMP shall make the following payments in cash for application in reduction of the Fairview Claim:

i. On the Effective Date - \$1,000,000.00

ii. On or before July 31, 2020 - \$500,000.00

iii. On or before September 30, 2020 - \$300,000.00

(c) All proceeds of the sale of any personal property assets that are collateral of Fairview, shall be paid to Fairview until the Fairview Claim is paid in full, provided that if SEMP has made all payments to Fairview required herein as and when due, the proceeds paid to Fairview from such sale may be net of sums necessary to pay Allowed Administrative Claims and Allowed Priority Claims in amounts not to exceed those shown on the projections attached hereto as **Plan Attachment "A"**.

(d) All proceeds of the sale of SEMP's real estate and fixtures, net only the actual and reasonable costs of such sale, shall be paid to Fairview until the Fairview Claim is paid in full.

(e) The Fairview Claim shall be paid in full in cash on or before December 31, 2020, provided that if Fairview receives at least \$1,800,000.00 in aggregate cash payments from and after the Effective Date but on or before December 31, 2020, the maturity date for the Fairview Claim shall be extended to June 30, 2021, and provided further that the maturity date for the Fairview Claim may be further extended from June 30, 2021 to December 31, 2021 if on June 30, 2021 (i) all interest accrued on the Fairview Claim has been indefeasibly paid in full in cash, and (ii) Fairview has received a cash payment of at least \$100,000.00 for application to the outstanding principal balance of the Fairview Claim.

(iii) **Interest.** From and after the Effective Date, interest shall accrue on the Fairview Claim at a rate of 10.5% *per annum*.

(iv) **Interest Credit.** Provided that the Debtors have complied with the terms herein regarding the Fairview Claim, so long as the Fairview Claim is indefeasibly paid in full in cash on or before December 31, 2020, then, upon payoff, SEMP shall receive a credit against the payoff amount equal to the difference between the full payoff amount less the amount of the Fairview Claim if it had accrued interest for the six (6) month period immediately preceding the payoff date at the rate of 5.5% *per annum*.

(v) **Collateral and Priority.** Fairview shall have a first priority perfected security interest on all assets of SEMP to secure the repayment in full of the Fairview Claim. SEMP shall provide Fairview with all such documents, instruments, and agreements as may be reasonably requested by Fairview in order to effectuate the terms of this Plan, including without limitation, a deposit account control agreement for all of SEMP's deposit accounts in a form and substance acceptable to Fairview in all respects.

(vi) **Reporting.** SEMP shall further agree to allow for and cooperate with an appraisal and survey of Fairview's collateral at Fairview's cost and expense (which cost and expense shall not be added to Fairview's Allowed Secured Claim), and provide periodic reporting, including:

(a) Updated accountings of remaining equipment and inventory;

(b) Monthly certified statements of accounts receivable aging aged by invoice date;

(vii) **Guaranty Ratification.** Juno shall ratify the terms and conditions of its existing guaranty, and confirm that such guaranty remains in full force and effect for the Fairview Claim.

(viii) **Lien Discharge.** Upon payment of the Allowed Secured Claim of Fairview in full in cash, Fairview shall cause to be recorded a satisfaction regarding its Liens on the Assets of the Reorganized Debtor as required by applicable non-bankruptcy law and shall mark the Pre-Petition Date Loan Documents as satisfied. All costs and expenses of such satisfactions and releases shall be paid by the reorganized Debtor.

(ix) **Deadline for Confirmation.** Fairview's agreements hereunder are conditioned upon the Effective Date occurring on or before July 15, , 2020.

(b) The Holder of the Fairview Claim has consented to this treatment but nonetheless the Fairview Claim is impaired by the Plan and Fairview is entitled to vote on the Plan.

3. Class 3 (Juno Claim)

Class 3 consists of the Juno Claim. The Juno Claim arises from loans made by Juno to SEMP prior to the Petition Date and is evidenced by certain loan documents, including a promissory note and security agreement (collectively, the "Juno Loan Documents"). As of the Petition Date, SEMP was indebted to Juno in the sum of \$5,194,806.62. In consideration for a release of all claims and causes of action against Juno and its officers, directors, and affiliates, Juno has agreed that its Claim shall be Allowed as an Unsecured Claim in the sum of \$5,194,806.02, and that its Allowed Unsecured Claim shall be treated for distribution purposes as a Class 4 Unsecured Claim in the amount of \$4,155,849.29 under this Plan, or as an Unsecured Claim under any other plan or in any subsequent liquidation. Nothing herein shall limit or release any rights or claims of Juno against any third party not otherwise exculpated or released in this Plan. Nothing herein, whether in this section or in the Plan, shall be construed to be a release or waiver by Juno of any claim Juno may have against the law firm of Rayburn, Cooper & Durham, PA. Juno further agrees that it will vote to accept the Plan, and that it shall not file any further pleadings or contest any relief sought by the Debtors in these Chapter 11 Cases provided that such relief is not inconsistent with the treatment of Juno's claims as provided herein.

4. Class 4 (Unsecured Claims)

(a) Class 4 consists of the Allowed Unsecured Claims. As of the Petition Date, the total scheduled claims of Class 4 and Class 5 creditors was \$6,206,027.40, of which approximately \$685,000.00 relates to claims that may be entitled to treatment in accordance with Bankruptcy Code § 503(b)(9). As of the Bar Date, the total filed unsecured claims (other than the Juno Claim and rejection claims, if any) is in the amount of \$7,294,562.43. The Debtors believe that the Allowed amount of pre-Petition Date Class 4 claims will not differ substantially from the scheduled amounts, though after negotiation and/or objection, may the Debtors anticipate the Allowed amount of pre-Petition Date Class 4 claims will be lower than as stated in the schedules.

(b) Each such Holder of an Allowed Class 4 Claim shall receive, except to the extent that a Holder of an Allowed Class 4 Unsecured Claim agrees to a less favorable treatment, a Cash payment equal to its Pro Rata share of the distributable cash available after the payment in full of all Allowed Unclassified Claims and Allowed Class 1 and Class 2 Claims. Allowed Class

4 Unsecured Claims need not be paid until after the reconciliation of all Disputed Class 4 Unsecured Claims; provided, however, that in the discretion of the Plan Administrator, Allowed Class 4 Unsecured Claims may receive distributions before the reconciliation of all Disputed Class 4 Unsecured Claims provided that (i) reserves are maintained for any Class 4 Unsecured Claim that is Disputed at the time of such distribution and (ii) the Plan Administrators shall make a corrective Distribution following the resolution of any Disputed Claim within thirty (30) days of such resolution.

- (c) Holders of Allowed Class 4 Claims are impaired by the Plan and may vote.

5. Class 5 (Interest Holders of the Debtor)

(a) Class 5 consists of all equity ownership interests of the Interest Holders of the Debtors.

(b) The Interest Holders shall not retain their interest in the Debtors, which shall instead be cancelled effective as of the Effective Date, and any associated management rights held by the Interest Holders will be void and of no force and effect as of the Effective Date. Holders of Interests will have a contingent interest in any remaining cash after all Allowed Claims have been paid or otherwise satisfied in full (unless otherwise agreed to by the applicable creditor) in accordance with this Plan. Because there are Classes of Claims that are projected not to be paid in full, Interest Holders are not expected to realize any recovery under this Plan.

- (c) The Holders of Class 5 Interests are deemed to reject the Plan.

ARTICLE V
IMPLEMENTATION OF THE PLAN

1. Plan Administrator. On the Effective Date, the Plan Administrator shall assume all authority and power to manage the Reorganized Debtors. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Reorganized Debtors in carrying out the intent and purposes of the Plan.

2. Powers of the Plan Administrators. The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to make distributions thereunder and wind down the businesses and affairs of the Debtors and the Reorganized Debtors, as applicable, including: (1) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Reorganized Debtors; (2) executing all instruments and documents necessary to effectuate the distributions to be made under the Plan; (3) making distributions as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Reorganized Debtors; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing employees of the Reorganized Debtors and professionals to represent the Plan Administrator and the Reorganized Debtors with respect to any responsibilities thereof or otherwise effectuating or affecting the Plan; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Reorganized Debtors; (7) administering and paying taxes of the Reorganized Debtors, including

filing tax returns; (8) representing the interests of the Reorganized Debtors before any taxing authority in all matters, including any action, suit, proceeding, or audit; (9) creating such reserves from the assets of the Reorganized Debtors as may be necessary to fund the activities of the Plan Administrator and his professionals; and (10) exercising such other powers as may be vested pursuant to an order of the Bankruptcy Court or pursuant to the Plan, or as is reasonably deemed to be necessary and proper to carry out the provisions of the Plan. The Plan Administrator may resign at any time upon 30 days' written notice delivered to the Reorganized Debtors; provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of the predecessor and all responsibilities of the predecessor Plan Administrator relating to the Reorganized Debtors shall be terminated.

3. Wind Down. On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Reorganized Debtors. As soon as practicable after the Effective Date, the Plan Administrator shall take any and all actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date the Debtors and Reorganized Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. The filing of the final monthly report (for the month in which the Effective Date occurs) and all subsequent quarterly reports shall be the responsibility of the Plan Administrators.

4. Plan Administrator Exculpation, Indemnification, Insurance, and Liability Limitation. The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, or willful misconduct, in all respects by the Reorganized Debtors. The Plan Administrator may obtain, at the expense of the Reorganized Debtors, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Reorganized Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

5. Possession of Assets. The Reorganized Debtors shall remain in possession of all of their Assets until disposition in accordance with the Plan.

6. Execution of Documents. Prior to the Effective Date, the Debtors are authorized and directed to execute and deliver all documents and to take and to cause to be taken all actions necessary or appropriate to execute and implement the provisions of this Plan.

7. Employment of Professionals. Following the to the Effective Date, the Plan Administrator may employ professionals, including legal counsel and accountants without seeking Court approval to assist the Plan Administrator in performing his duties hereunder and pay such reasonable fees as and when such fees become due for payment. As of the Effective Date, the Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his duties. The reasonable fees and expenses of such professionals shall be paid by the Plan Administrator from the assets of the Reorganized Debtor, upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court.

8. Final Decree. After the Effective Date, the Reorganized Debtors may file a motion to close the case and request that a final decree be issued. The Debtors shall file all required reports and pay any required fees to the Office of the United States Trustee.

9. Retention and Enforcement of Claims. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce any and all claims of the Debtors on behalf of, and as a representative of, the Debtors or their estates, including, without limitation, all claims arising or assertible at any time under the Bankruptcy Code, including under 11 U.S.C. §§ 510, 542, 543, 545, 550, 552 and 553 thereof. Notwithstanding the foregoing, the Debtors expressly waive and disclaim any right to commence any claims for recovery under 11 U.S.C. §§ 544, 547, 548 and 549 and expressly release all claims pursuant to 11 U.S.C. §§ 544, 547, 548 and 549. Based on an analysis by the Plan Proponents of payments made by the Debtors during the applicable preference period, and giving due consideration to potential defenses that likely would be available to any potential defendant in a Cause of Action under 11 U.S.C. §547, the Plan Proponents have determined that the costs associated with such Causes of Action likely would exceed any anticipated recovery for the benefit of the Debtors' estates.

10. Disbursing Agent. The Plan Administrator shall be the Disbursing Agent ("**Disbursing Agent**") herein. The Disbursing Agent shall have the sole and exclusive right to make the distributions required by the Plan. The Disbursing Agent may hold or invest the funds entrusted to him in one or more accounts, provided that all investments shall be made in accordance with 11 U.S.C. §345.

12. Tax Returns. After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Cases, as determined under applicable tax laws.

ARTICLE VI
PROVISIONS GOVERNING DISTRIBUTIONS
AND GENERAL PROVISIONS

1. Distributions. Distributions pursuant to this Plan shall be made by the Plan Administrator as provided herein and shall be made, unless otherwise provided herein, on the Effective Date, or as soon as practicable thereafter or as may be otherwise ordered by the Court or agreed to by the applicable party.

a. Delivery of Distributions. Distributions and deliveries to each Holder of an Allowed Claim as provided by the Plan shall be made: (i) at the address set forth on the Schedules; or (ii) at the address set forth on the proof of claim or any amendment thereof filed by or on behalf of such Holder, if different from clause (i). If any Holder's distribution is returned as undeliverable, no further distributions to the Holder will be made unless and until the Debtors are notified of the Holder's then current address, at which time all missed distributions will be made to the Holder without interest. All Claims for undeliverable distributions must be made to the Plan Administrator on or before the ninetieth (90th) day after a distribution is made. After that date, all unclaimed property will become property of the Reorganized Debtors, and the Claim of any Holder with respect to such property will be discharged and forever barred.

b. Means of Cash Payment. Cash payments made pursuant to the Plan will be in United States funds, by check drawn on a domestic bank or by wire transfer from a domestic bank. All cash distributions will be made by the Reorganized Debtors.

c. Setoffs. Except as otherwise provided by order of the Court, the Plan Administrator may, but will not be required to, set off against any Claim and the payments to be made pursuant to the Plan in respect of the Claim, any claims of any nature whatsoever the Debtors or Reorganized Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder will constitute a waiver of release by the Debtors or Reorganized Debtors of any such claim the Debtors or Reorganized Debtors may have against such claimant. Any claimant as to which a Debtor or Reorganized Debtor seeks a setoff may challenge any such setoff in the Bankruptcy Court.

d. De Minimis Distributions. No cash payment of less than twenty-five dollars (\$25.00) will be made to any creditor unless a request is made in writing to Plan Administrator to make such a payment.

e. Saturday, Sunday or Legal Holiday. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but will be deemed to have been completed as of the required date.

f. Time for Payment of Disputed Claims. Notwithstanding any of the provisions of the Plan specifying a date or time for the payment or distribution of consideration hereunder, payments and distributions in respect of any Claim or Interest which at such date or time are disputed, unliquidated or contingent shall not be made until such Claim or Interest

becomes an Allowed Claim, whereupon such payment and distribution shall be made promptly pursuant to and in accordance with this Plan.

2. Notices. Any notice described in or required by the terms of this Plan or the Code and Rules shall be deemed to have been properly given when actually received, or if mailed, five (5) days after the date of mailing as such may have been sent by certified mail, return receipt requested, and if sent to:

(a) If to the Debtors, Reorganized Debtors, or Plan Administrator,
addressed to:

Southeastern Metal Products LLC
c/o CBIZ
5 Bryant Park at 1065 Avenue of the Americas
New York, NY 10018
Attn: Charles Berk

(b) With copies to Counsel:
Jeffrey D. Prol, Esq.
Lowenstein Sandler, LLP
One Lowenstein Drive
Roseland, NJ 07068

(c) With copies to Counsel to Fairview:

Morrison & Foerster LLP
200 Clarendon Street, 20th Floor
Boston, Massachusetts 02116
Attn: Alexander G. Rheaume, Esq.
Email: arheaume@mof.com

3. Default. Except as otherwise set forth below with respect to the Fairview Claim, no default shall be declared under this Plan unless and until the Plan Administrator and his counsel shall have received written notice of default setting forth the specific provision of the Plan and the method of cure sought, and the Plan Administrator has failed to cure such default within (30) days of receipt of the written notice. Notwithstanding the foregoing, the failure by the Debtor or the Plan Administrator to (a) make any payment due to Fairview within five (5) days of the date required herein, (b) maintain property and liability insurance on Fairview's collateral in accordance with the Pre-Petition Loan Documents, or (c) pay all taxes and municipal charges as and when due, shall constitute an immediate default hereunder, at which point Fairview shall have the right to commence enforcing its rights and remedies in accordance with the Pre-Petition Loan Documents and applicable non-bankruptcy law.

ARTICLE VII
PROVISIONS FOR TREATMENT OF DISPUTED CLAIMS

1. **Disputed Claims.** Except as otherwise provided in the Plan, no payments shall be made with respect to any portion of a Disputed Claim unless and until any and all objections to such Disputed Claim or Actions against the Holder of a Disputed Claim have been determined by a Final Order. The Plan Administrator shall establish such reserves as may be necessary for payment of Disputed Claims, provided that the funding of such reserves and payment of Disputed Claims remains at all times subject to the prior payment of the Fairview Claim as set forth in Class 2 above. Payments and distributions, to each Holder of a Disputed Claim, to the extent that the Disputed Claim ultimately becomes an Allowed Claim, shall be made/issued in accordance with the provisions of the Plan. Any payments that would have been made or interests issued prior to the date on which a Disputed Claim becomes an Allowed Claim shall be made/issued as soon as practicable after the date that the order or judgment of the Court determining such Claim to be an Allowed Claim becomes a Final Order. Any reserved amounts or interests on account of a Disputed Claim that is disallowed by a Final Order shall be distributed in accordance with the provisions of this Plan.

2. **Post-Effective Date Objections.** After the Effective Date, the Plan Administrator may make and file objections to proofs of claim for any claims that are not deemed allowed under this Plan. Any such objections to Claims shall be filed with the Court at any time within one hundred eighty (180) days after the Confirmation Date.

ARTICLE VIII
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Executory Contracts and Unexpired Leases.

On the Effective Date, except as otherwise provided herein, each of the Debtors' Executory Contracts and Unexpired Leases not previously rejected, including pursuant to an order of the Bankruptcy Court will be deemed rejected by the Reorganized Debtors as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code.

Claims Based on Rejection of Executory Contracts and Unexpired Leases

To the extent that any executory contracts and unexpired leases are deemed rejected, any Allowed Claims arising out of the rejection of any executory contract or unexpired lease shall be treated in accordance with the provisions relating to Class 4 Claims (Unsecured Claims).

A proof of claim evidencing any Rejection Claim shall be filed in accordance with the Order setting the deadline for the filing of claims in these Chapter 11 Cases, which states ". . . **proofs of claim in connection with rejection damages shall be filed so that they are received by the Clerk of Court on or before the later of (a) the General Bar Date; or (b) any date the**

Court may fix in the applicable order authorizing such rejection or, if no such date is provided, 30 days from the date of entry of such order (the "Rejection Bar Date"). Rejection Claims for rejections pursuant to the Plan shall be filed within 30 days of the Confirmation Date.

Objections to Rejection Claims may be filed with the Court at any time prior to the thirtieth (30th) day following the Effective Date. Such objections shall be served upon the Holder of the Claim to which an objection is made. Any objection not timely filed shall be deemed waived by all parties-in-interest.

Unless otherwise indicated, rejection of Executory Contracts and Unexpired Leases pursuant to the Plan shall be effective as of the Effective Date.

ARTICLE IX

EXCULPATION, RELEASE AND INJUNCTION

1. **Exculpation.** Effective as of the Effective Date, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim or liability for any Exculpated Claim; provided, however, that the foregoing exculpation shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of fraud or willful misconduct. The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan and the making of distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

2. **Other Documents And Actions.** The Reorganized Debtors may cause any other party to execute documents that are or may be necessary to effectuate the transactions provided for in this Plan. The Reorganized Debtors or their representatives or agents shall take such other actions as may be necessary or appropriate to effectuating the terms of the Plan.

3. **Effect of Confirmation Order.** Except as provided in the Plan, the provisions of the Plan and the Confirmation Order shall bind the Reorganized Debtors and all holders of claims or interests that arose before the Confirmation Date and any liability on a Claim that is determined under Section 502 of the Bankruptcy Code as if such Claim had arisen before the Confirmation Date, whether or not a proof of claim based on any such debt or liability is filed under Section 501 of the Bankruptcy Code and whether or not a Claim based on such debt or liability is allowed under Section 502 of the Bankruptcy Code and whether or not such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

4. **Injunction.** Except as otherwise provided in the Plan or the Confirmation Order, as of the Confirmation Date, all Entities that have held, hold or may hold a Claim or other debtor liability against the Debtors or Interest in the Debtors are (a) permanently

enjoined from taking any of the following actions against the Debtors or any of their property on account of such Claims or Interests and (b) permanently enjoined from taking any of the following actions against any of the Debtors or their respective successors and assigns, Affiliates, current (as of the Effective Date) directors, officers, principals, members, employees, agents, and attorneys, solely in their respective capacities as such or their property with respect to any claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, Causes of Action or liabilities released pursuant to the Plan: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Lien or encumbrance; (iv) asserting any right of setoff, subrogation or recoupment of any kind against any debt, liability or obligation including, but not limited to, on account of or in connection with or with respect to any Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (c) commencing or continuing in any manner or in any place, any action that does not comply with or is inconsistent with the provision; provided, however, that the foregoing injunction shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.

5. **Release of Fairview, SSB and Juno.** Effective as of the Effective Date, the Debtors and Reorganized Debtors hereby stipulate and agree that they forever, unconditionally and irrevocably release, discharge and acquit Fairview, SSB and Juno and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys, and agents, past, present, and future, and Fairview's, SSB's and Juno's and their respective heirs, successors, and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys' fees), debts, liens, actions, and causes of action of any and every kind whatsoever, whether arising in law or otherwise, and whether or not known or matured, including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of Fairview. SEMP further waives and releases any defense, right of counterclaim, right of set-off, or deduction to the payment of the Indebtedness, which SEMP now has or may claim to have, directly or indirectly against the Releasees, arising out of, connected with or relating to any and all acts, omissions, or events occurring prior to the Court confirming this Plan.

6. **Release of Debtor, Committee and Professionals.** Except as otherwise provided in the Plan, effective as of the Effective Date, Juno and SSB hereby stipulate and agree that they forever, unconditionally and irrevocably release, discharge and acquit the following (a) Debtors, Reorganized Debtors and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors and employees, past, present, and future, and their respective heirs, successors, and assigns; (b) Weir & Partners LLP and its individual attorneys and employees; and (c) Committee, its members (other than those that resigned), attorneys financial advisors and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers,

shareholders, directors, employees and agents, past, present, and future, and their respective heirs, successors, and assigns (collectively, the “Plan Proponent Releasees”) of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, reasonable attorneys’ fees), debts, liens, actions, and causes of action of any and every kind whatsoever, whether arising in law or otherwise, and whether or not known or matured.

7. **Release of Avoidance Actions.** Effective as of the Effective Date, the Debtors and Reorganized Debtors hereby stipulate and agree that they forever, unconditionally and irrevocably release, discharge, waive and acquit all Avoidance Actions against all third-parties.

ARTICLE X **MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN**

1. **Modification Before The Confirmation Date.** The Plan Proponents, exclusively, may modify the Plan at any time before the Confirmation Date provided that the Plan, as modified, meets the requirements of Bankruptcy Code §§ 1122 and 1123. Once the Plan Proponents file a modification with the Court in accordance with this section 10.1 of the Plan, the Plan, as modified, becomes the Plan. **If any material modification to the Plan is made after the solicitation package is sent out, but before the confirmation hearing, the Plan Proponents will comply with Bankruptcy Code §1127. Notwithstanding the foregoing, no modifications shall be made to the treatment of Class 2 or Class 3 without the prior consent of Fairview.**

2. **Modification After The Confirmation Date.** The Plan Proponents, exclusively, may modify the Plan at any time after the Confirmation Date and before the Effective Date, provided that the Plan, as modified, meets the requirements of Bankruptcy Code §§ 1122 and 1123 and so long as it does not materially or adversely affect the interest of any creditors. After the Effective Date and before substantial consummation of the Plan, only the Plan Proponents may modify the Plan (and, in accordance with Bankruptcy Code §1127(e), whether or not the Plan has been substantially consummated), provided that the Plan, as modified, meets the requirements of Bankruptcy Code §§ 1122 and 1123. Any modification addressed in this paragraph may only be made with authorization from the Court after notice and a hearing.

3. **Defects, Omission, And Inconsistencies.** Before the Effective Date, the Plan Proponents may, with the approval of the Court, remedy any defect or omission, or reconcile or correct any inconsistencies in the Plan or amend the Plan in such manner as may be necessary to carry out the purpose and effect of the Plan, so long as it does not materially or adversely affect the interest of any Holders of Allowed Claims and Interests. After the Effective Date, the Plan Proponents may remedy any defect or omission, or reconcile or correct any inconsistencies in the Plan or amend the Plan in such manner as may be necessary to carry out the purpose and effect of the Plan, so long as it does not materially or adversely affect the interest of creditors.

4. **Revocation or Withdrawal of Plan.** The Plan Proponents reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file a subsequent plan. If the

Plan Pronents revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claim or Interest; (b) prejudice in any manner the rights of the Debtors, any holder of a Claim or Interest or any other Entity or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtors, any holder or any other Entity.

ARTICLE XI

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases, the Sale Transaction, and the Restructuring Transactions pursuant to Bankruptcy Code §§ 105(a) and 1142. The Bankruptcy Court shall retain non-exclusive jurisdiction to hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII

SETTLEMENT WITH COMMERCIAL VEHICLE GROUP, INC. (“CVG”)

SEMP is a party to three (3) contracts with CVG, each of which was entered into prior to the Petition Date; (i) a Consignment Agreement dated March 26, 2019 (the “Consignment Agreement”), (ii) a Supply Agreement (the “Supply Agreement”); and (iii) a Bailment Agreement, dated March 17, 2017 (the “Bailment Agreement”). The Consignment Agreement and the Supply Agreement are deemed rejected in accordance with the terms of the Plan and the Bankruptcy Code. CVG and SEMP have agreed to a compromise of certain bankruptcy-related claims of CVG against SEMP as well as the terms for payment by CVG to SEMP of amounts due and owing to SEMP, the terms of which are detailed in a written letter agreement dated and effective as of April 24, 2020 (the “CVG Letter Agreement”), a copy of which is attached hereto as **Plan Attachment B**. The following are the terms for the treatment of the various claims of CVG:

1. **Post-Petition Debt Due From CVG to SEMP.** SEMP and CVG agree that CVG is indebted to SEMP in the sum of \$963,413.93 for post-petition goods delivered by SEMP to CVG, without defense, offset, or counter-claim (the “CVG A/R”). Consistent with the CVG Letter Agreement, CVG’s Allowed Postpetition Claim and CVG’s Allowed 503(b)(9) Claim shall be credited against the CVG A/R, resulting in a net payment due and owing from CVG in the amount of \$574,320, which has or will be paid in accordance with the CVG Letter Agreement.

2. **Post-Petition Debt Due From SEMP to CVG.** SEMP and CVG agree that CVG has an allowed administrative claim against SEMP for purposes of the Chapter 11 Case in the

amount of \$226,503.86 (“CVG’s Allowed Postpetition Claim”) under section 503(b)(1) of the Bankruptcy Code and that CVG’s Allowed Postpetition Claim shall be paid in the form of an offset against the CVG A/R, which amounts exceed CVG’s Allowed Postpetition Claim.

3. **Pre-Petition Debt.** CVG alleges that it has aggregate prepetition claims against SEMP in the amount of \$2,277,054.00 (inclusive of amounts entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code) (“CVG’s Alleged Prepetition Claim”). SEMP disputes the amount of CVG’s Alleged Prepetition Claim. After consideration of the alleged bases for such claim and any defenses, as well as the anticipated costs associated with resolving such dispute, SEMP and CVG have agreed, subject to Bankruptcy Court approval, as follows:

A. 503(b)(9) Claim – CVG shall have an allowed administrative claim in the amount of \$162,910.07 (“CVG’s Allowed 503(b)(9) Claim”) under section 503(b)(9) of the Bankruptcy Code. CVG’s Allowed 503(b)(9) Claim shall be paid in the form of an offset against the CVG A/R, which amounts exceed CVG’s Allowed 503(b)(9) Claim.

B. Remaining Unsecured Claim - An Unsecured Claim shall be Allowed in favor of CVG in the sum of \$160,271.40 (“CVG’s Allowed GUC Claim”).

C. CVG hereby waives the right to assert any additional Claims against SEMP, including, but not limited to, any additional amounts that were included as part of CVG’s Alleged Prepetition Claim.

D. Plan. CVG further agrees that it will vote to accept the Plan, and that it shall not file any further pleadings or contest any relief sought by the Debtors in these Chapter 11 Cases, provided that such relief is not inconsistent with the treatment of CVG’s claims as provided in the CVG Letter Agreement.

E. CVG A/R. Allowance and payment of the foregoing Claims in favor of CVG is conditioned upon CVG paying the remaining CVG A/R consistent with the terms of the CVG Letter Agreement.

F. CVG Tooling. SEMP is in possession of certain CVG owned dyes and tooling (the “Tooling”), which were provided to SEMP in accordance with the terms of the Bailment Agreement. The CVG Tooling shall be returned to CVG in accordance with the terms of the CVG Letter Agreement.

G. In the event of any inconsistencies between the Plan and the terms of the CVG Letter Agreement, the terms of the CVG Letter Agreement shall govern.

ARTICLE XIII **GENERAL PROVISIONS**

1. **Title to Assets.** Except as otherwise set forth in the Plan, and in accordance with

Bankruptcy Code §1141, all Assets of the Estate shall revert in the Reorganized Debtors as of the Effective Date free and clear of all interests, liens, claims and encumbrances; provided, however, that such assets shall be liquidated in accordance with the Plan and distributed in accordance with the Plan..

2. **No Levy.** To the fullest extent allowed by applicable law, the distributions made pursuant to this Plan shall not be subject to levy, garnishment, attachment or like legal process by any Person by reason of any claimed subordination agreement, right to avoid payments or transfers, guaranties or otherwise (unless specifically provided for under this Plan), so that each Holder of an Allowed Claim will have and receive the full benefit, if any, of distributions provided under this Plan.

3. **Control Parties Post Effective Date.** In accordance with Bankruptcy Code §1129(a)(5), David Denton, current President of the Debtors and Glenn Purcell, current Executive Vice President, Finance, shall continue in their respective roles and at the same rates as previously disclosed in the Debtors' Cases.

4. **Filing Of Additional Documents.** On or before the Effective Date, the Plan Proponents, may file with the Court such agreements and other documents which may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan. In addition, the Court, to the extent necessary, shall direct any party or Person to execute all appropriate documents and instruments to implement or further the provisions of the Plan.

5. **Governmental Rights Reserved.** Notwithstanding anything in the Plan to the contrary, nothing in this Plan discharges, releases, precludes, or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") that is not a "claim" as defined in 11 U.S.C. § 101(5) ("Claim"); (ii) any Claim of a Governmental Unit arising on or after the Confirmation Date; (iii) any police or regulatory liability to a Governmental Unit that any entity would be subject to as the owner or operator of property after the Confirmation Date; or (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors. Nor shall anything in this Plan be construed to enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Notwithstanding any provision of the Plan or any implementing or supplementing plan documents, the United States' setoff rights under federal law as recognized in section 553 of the Bankruptcy Code, and recoupment rights, shall be preserved and are unaffected. This Plan does not divest any tribunal of any jurisdiction it may have under police or regulatory law to interpret the Plan or to adjudicate any defense asserted under this Plan.

6. **Quarterly Fees.** The Reorganized Debtors shall pay Quarterly Fees, based upon all post-confirmation disbursements made pursuant to the Plan for post-Confirmation periods within the time periods set forth in 28 U.S.C. § 1930(a)(6) until the earlier of the closing of this Case by the issuance of final decree by the Court, or upon the entry of an order by this Court dismissing the case, or converting this case to another chapter under the Code. The Reorganized Debtors shall provide to the U.S. Trustee upon the payment of each post-Confirmation payment a report indicating disbursement for the relevant periods.

7. **Transfer Taxes; Exemption from Certain Taxes and Fees.** The transfer of any Assets of the Estate, the making or delivery of any instrument of transfer under the Plan, or the recording of any deed, lease, or other instrument executed and delivered in connection with the Plan shall be free and clear of any and all stamp or similar Taxes imposed upon the making or delivery of an instrument of transfer pursuant to Bankruptcy Code § 1146(a).

8. **Compliance.** This Plan is not proposed principally for the purpose of avoidance of Taxes or the avoidance of the application of Section 5 of the Securities Act of 1933. The provisions of Bankruptcy Code §§ 1145 and 1146 shall apply hereto to the fullest extent permitted by law.

9. **Reservation under Bankruptcy Code §1129(b).** If all impaired classes do not vote in favor of the Plan, the Debtors shall seek confirmation of the Plan in accordance with Bankruptcy Code § 1129(b) either under the terms provided herein or upon such terms as may exist if the Plan is modified in accordance with Bankruptcy Code § 1127(a).

10. **Reservation of Rights.** If the Plan is not confirmed by Final Order, or if the Plan is confirmed and the Effective Date does not occur, the rights of all parties in interest in the Case are and will be reserved in full. Any concessions, settlements or statements reflected therein are made for the purposes of the Plan only, and if Confirmation Date or the Effective Date does not occur, no party in interest in the Case shall be bound nor deemed prejudiced by any concession, settlement or statement.

11. **Notices.** All notices shall be deemed given when actually received or refused by the party to whom the same is directed. Each party may designate a change of address or supplemental addressee(s) by notice to the other affected parties given at least five (5) Business Days before such change of address is to become effective or by filing a Plan Supplement prior to or after the Effective Date.

12. **Recordation of Plan and Confirmation.** A true, certified copy of the Plan and/or the Confirmation Order may be recorded in any public place appropriate for such recordation. Pursuant to Bankruptcy Code § 1146(c), the making or delivery of an instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax or similar tax. In order to effectuate Bankruptcy Code § 1146(c), each recorder of deeds or similar official for any county, city or governmental unit in which deeds for transfer of any property of the Estate is to be recorded shall, pursuant to the Confirmation Order, be authorized to accept such deeds for recording and promptly to record such deeds. The Confirmation Order shall provide that the filing of any objection thereto shall not stay the effect of the Confirmation Order and shall not exempt or excuse any recorder of deeds or similar official from promptly accepting and recording any such deeds or title.

13. **Headings.** The article and section headings used in the Plan are inserted for convenience and reference only and neither constitutes a part of the Plan nor in any manner effect the terms, provisions or interpretation of the Plan.

14. **Computation Of Time.** In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

15. **Severability.** If, prior to the Effective Date, any term, provision or portion of any provision of the Plan is held by the Court to be invalid, illegal, void or unenforceable for any reason, the Court shall have the power to alter, amend and/or interpret such term, provision or portion of the provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose and intent of the term, provision or portion of the provision held to be invalid, illegal, void or unenforceable; and, except as may be determined by the Plan Proponents, and any other Person directly and materially affected, (i) such term, provision or portion of the provision will then be applicable and valid as so altered, amended, or interpreted or (ii) such term shall be deemed deleted from the Plan. The remaining terms, provisions or portions of the provisions of the Plan shall remain in full force and effect and will in no way be affected, impaired or invalidated by such alteration, amendment or interpretation.

16. **Governing Law.** Except to the extent that the Code is applicable, the rights and obligations arising under the Plan and any documents, instruments or agreements executed in connection with the Plan (except as otherwise indicated in such documents, instruments or agreements) shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof.

17. **Binding Effect.** The provisions of this Plan and the Confirmation Order shall be binding upon and for the benefit of all parties in interest and all other Persons to the fullest extent permitted by Bankruptcy Code § 1141. The provisions of this Plan and the Confirmation Order shall also inure to the benefit of the Plan Proponents, and the Holders of Claims or Interests, and their respective successors, assigns, heirs and personal representatives, whether or not the Claims or Interests are impaired by the Plan and whether or not such Person or the Holder of any Claim or Interest voted to accept or reject the Plan or was deemed to have accepted or rejected the Plan.

18. **Plan Controls.** In the event that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, the provisions of the Plan shall control.

19. **Committee.** On the Effective Date, the Creditors' Committee shall dissolve and all of its members, Professionals and agents shall have no further duties, responsibilities, obligations, and authority in connection with the Debtors, the Chapter 11 Cases, the Plan, or its implementation, except with respect to applications for Professional Fee Claims.

20. **Entire Agreement.** Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.

21. **No Deemed Waiver.** Except as otherwise specifically provided herein, nothing set forth in this Plan or the Disclosure Statement shall be deemed a waiver or release of any claims, rights or Causes of Action against any Person other than the Debtors. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled

in the Plan or a Bankruptcy Court order, the Debtors reserve any and all Causes of Action, whether arising before or after the Petition Date, and preserve the right to commence, prosecute, or settle such Causes of Action, notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action in their sole discretion. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Reorganized Debtors will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

Respectfully Submitted,

By: /s/ David Denton
David Denton, President
Southeastern Metal Products LLC and
SEMP Texas LLC

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

By: /s/ Frank Q. Cook
Phoenix Corporation d/b/a Phoenix Metals
Company, Chairman, Frank Q. Cook, CCE

Dated: May 5, 2020

**PLAN ATTACHMENT "A"
(PROJECTION)**

	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sept</u>	
	Mar 30-May 1	May 4th-May 29	Jun 1 - June 26	Jun 29 - Jul 31	Aug 3 -Aug 28	Aug 31- Sept 20	TOTAL
BEG BALANCE	\$ 884	\$ 980	\$ 1,598	\$ 1,130	\$ 224	\$ 326	
Trade AR	891	97					989
Future billing		903	538				1,441
Proceed from Fixed Assets		-	550	825	525		1,900
Cash Collected ¹	\$ 891	\$ 1,000	\$ 1,088	\$ 825	\$ 525	\$ -	\$ 4,330
Disbursements							
Payroll	344	113	84	50	47	47	686
Health / Dental / Vision	71	68	17	10	10	10	186
Post-Petition Trade AP	71	60	-	-	-	-	132
Other	208	74	50	56	36	26	450
Operations Cash	694	315	151	116	93	83	1,453
Fairview- Debt service	62	62	-	-	-	-	124
Fairview	-	-	1,000	500	300	-	1,800
OMNI Management	5	5	5	5	5	-	25
503B9 Claims	-	-	-	535	-	-	535
CVG Post Petition Filing	-	-	-	225	-	-	225
US Trustee	35	-	-	-	25	-	60
SSB- Allowed Admin Claims	-	-	50	-	-	-	50
Allowed Professional Fees	-	-	350	350	-	-	700
Retention Payments	-	-	-	-	-	225	225
Re-organization Cost	102	67	1,405	1,615	330	225	3,744
Total Disbursements	796	382	1,556	1,731	423	308	5,197
NET CHANGE in CASH	\$ 95	\$ 618	\$ (468)	\$ (906)	\$ 102	\$ (308)	\$ (867)
ENDING BALANCE ¹	\$ 980	\$ 1,598	\$ 1,130	\$ 224	\$ 326	\$ 17	

¹ Does not reflect proceeds from sale of real estate

PLAN ATTACHMENT "B"
(CVG Agreement)



Michael J. Merchant

Director
302-651-7854
Merchant@rlf.com

April 28, 2020

VIA E-MAIL DELIVERY

Mr. Jeffrey S. Cianciulli, Esquire
Weir & Partners LLP
The Widener Building, Fifth Floor
1339 Chestnut Street
Philadelphia, PA 19107-3519

Re: Letter Agreement Regarding Return of CVG's Tooling, Treatment of CVG's Administrative Claims and Payment of Certain Accounts Payable

Dear Mr. Cianciulli:

As you are aware, my firm represents Commercial Vehicle Group, Inc. ("CVG") in the chapter 11 case (the "**Chapter 11 Case**") of Southeastern Metal Products LLC ("**SEMP**" or the "**Debtor**", and together with CVG, the "**Parties**") that was commenced on May 6, 2019 (the "**Petition Date**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). This Letter Agreement is intended to document an agreement amongst the Parties, which will ultimately be incorporated into the terms of the Debtor's chapter 11 plan, as to (i) the treatment of certain of CVG's administrative claims against the Debtor for purposes of the Chapter 11 Case, (ii) the return of certain goods and tooling to CVG that are currently in SEMP's possession, and (iii) CVG's payments to SEMP on account of certain outstanding payables and the acquisition of SEMP's remaining inventory.

Prior to the Petition Date, CVG and SEMP were parties to the following agreements: (i) a Five Year Supply Agreement, dated as of March 28, 2017 (the "**LTA**"); (ii) a Consignment Agreement, dated as of March 26, 2019 (the "**Consignment Agreement**"); and (iii) a Bailment Agreement, dated March 17, 2017 (the "**Bailment Agreement**", and together with the LTA and the Consignment Agreement, the "**CVG Agreements**"). In addition to having filed a prepetition general unsecured claim (the "**CVG Prepetition Claim**") on September 19, 2019 on account of amounts due and owing under the CVG Agreements, CVG has asserted the following administrative claims: (i) a claim in the amount of \$191,024.42 for amounts entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code (the "**CVG 503(b)(9) Claim**"); and (ii) a claim in the amount of \$226,503.86 on account of postpetition amounts owed by the Debtor to CVG (the "**CVG Postpetition Claim**" and, together with the CVG Alleged 503(b)(9) Claim, the "**CVG Administrative Claims**").

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On August 20, 2019, the Debtor filed a proposed chapter 11 plan of reorganization (the “**Plan**”) and the Parties were the process of negotiating a new Two Year Supply Agreement, which would have governed the business relationship between the Parties moving forward. After good faith efforts to move forward with a proposed reorganization of the business, the Debtor informed CVG that it will no longer be pursuing a plan of reorganization and, instead, will be amending the Plan to provide for an orderly liquidating of the business.

SEMP is currently in possession of certain of CVG’s tooling, molds, dies, jigs, fixtures, and associated manufacturing equipment (collectively, the “**CVG Tooling**”) that were provided to SEMP pursuant to the Bailment Agreement. Likewise, CVG has certain current accounts payable (the “**CVG Payable**”) due and owing to SEMP in the approximate amount of \$243,000. SEMP is also in possession of certain goods, inventory, materials, parts, and products (the “**SEMP Remaining Inventory**”) that CVG has expressed an interest in acquiring, which the parties have valued at a negotiated amount of \$726,820. Consistent with the Parties’ cooperation throughout SEMP’s reorganization efforts, the Parties have reach an agreement that will provide for the immediate return of CVG’s Tooling, the payment of the CVG Payable and CVG’s acquisition of the SEMP Remaining Inventory (through a credit of the CVG Administrative Claims and the payment of additional cash amounts pursuant to an agreed payment structure). While the Parties anticipate modifying the Plan to incorporate the terms of this agreement, they seek to enter into this Letter Agreement to memorialize the terms of their agreement and to provide for the immediate return of the CVG Tooling and transfer of the SEMP Remaining Inventory.

As such, CVG and the Debtor, as evidenced by counsel’s executed agreement and acceptance below, hereby agree as follows:

- A. The CVG Postpetition Claim – SEMP and CVG agree that the CVG Postpetition Claim shall be an allowed administrative claim under section 503(b)(1) of the Bankruptcy Code in the amount of \$226,503.86 for all purposes of the Chapter 11 Case.
- B. The CVG 503(b)(9) Claim – SEMP and CVG agree that the CVG 503(b)(9) Claim shall be allowed administrative claim under section 503(b)(9) of the Bankruptcy Code in the amount of \$169,000.00 for all purposes of the Chapter 11 Case.
- C. Payment to SEMP and Crediting of the CVG Administrative Claims – The sum of the CVG Payable and the agreed negotiated value of the SEMP Remaining Inventory results in a gross amount due and owing to SEMP in the amount of \$969,820. The Parties have agreed that CVG shall be able to credit the full allowed amount of the CVG Administrative Claims (*i.e.*, \$395,503.86) against this amount, resulting in a net payable due and owing to SEMP in the amount of \$574,320 (the “**SEMP Net Receivable**”). CVG shall pay the SEMP Net Receivable to SEMP by wire transfer to a SEMP

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bank account as specified below (the “**SEMP Bank Account**”) in accordance with the payment structure set forth in Paragraph D of this Letter Agreement:

Bank:	Signature Bank
Routing Code:	026013576
Account Number:	1503849344
Account Name:	SEMP LLC

D. Payment Structure for SEMP Net Receivable – The payment schedule with regards to the SEMP Net Receivable shall be in accordance an agreed **3 Phase Transition Agreement** (the “**Transition Agreement**”), which is attached hereto as Exhibit A. The Transition Agreement provides for the removal of the CVG Tooling and transfer of the SEMP Remaining Inventory in three phases, with the following payments being made at the conclusion of each phase (other than the initial April 24, 2020 payment):

- **Initial April 24, 2020 Payment:** CVG shall pay \$85,000 by wire transfer to the SEMP Bank Account on April 24, 2020 in recognition of the four truckloads of CVG Tooling that has been removed through April 23, 2020;
- **Phase One Payment:** Upon completion of Phase One of the Transition Agreement (which is to be completed by April 30, 2020), CVG shall wire \$106,356 to the SEMP Bank Account on or before April 30, 2020;
- **Phase Two Payment:** Upon completion of Phase Two of the Transition Agreement (which is to be completed by May 5, 2020), CVG shall wire \$191,487 to the SEMP Bank Account on or before May 5, 2020; and
- **Phase Three Payment:** Upon completion of Phase Three of the Transition Agreement (which is to be completed by May 15, 2020), CVG shall wire \$191,487 to the SEMP Bank Account on or before May 15, 2020.

If through unforeseen circumstances the Parties are unable to complete any of the Phases set forth in the Transition Agreement by the contemplated completion deadlines, the Parties shall work in good faith to agree upon any appropriate extension of such deadlines and the related payment schedule contained herein.

E. Pick-Up of the CVG Tooling and SEMP Remaining Inventory – CVG and/or its agents shall be permitted reasonable access to SEMP’s premises

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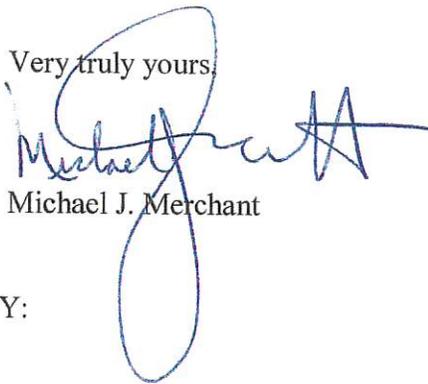
- to obtain and recover the CVG Tooling and/or SEMP Remaining Inventory. SEMP hereby waives any notice to which it may otherwise be entitled under the Bailment Agreement or applicable law with respect to CVG's entry to SEMP's premises for the foregoing purposes of removing CVG's Tooling.
- F. Satisfaction of the CVG Administrative Claims – Upon the satisfaction of all conditions precedent in this Letter Agreement, including the actions and obligations described in paragraphs A through E herein, CVG agrees that that the CVG Administrative Claims shall be satisfied in full and that no further amounts shall be due and owing to CVG under the Plan or otherwise on account of the CVG Administrative Claims and CVG waives the right to assert any additional postpetition administrative expenses claims against SEMP in the Chapter 11 Case.
- G. Bankruptcy Court Approval – The Parties agree that Bankruptcy Court approval is unnecessary with regards to the return of the CVG Tooling or the transfer of the SEMP Remaining Inventory and that the Parties may therefore implement these aspects of the agreement immediately upon the execution of this Letter Agreement.
- H. Treatment of the CVG Prepetition Claim – The CVG Prepetition Claim shall be reduced and allowed as a general unsecured claim in the amount of \$160,271.40 (the “**CVG Allowed GUC Claim**”) and treated as a Class 4 Allowed Unsecured Claim under the terms of the Plan. CVG waives the right to file any additional general unsecured claims in SEMP's chapter 11 cases, including, but not limited to, any claim relating to the rejection of the CVG Agreements.
- I. Waiver of Avoidance Actions Against CVG – Pursuant to the Plan, SEMP shall release CVG from any and all avoidance actions arising under sections 541 through 550 of the Bankruptcy Code or applicable state law (collectively, the “**Avoidance Actions**”).
- J. CVG Support for the Plan – The Parties further confirm that the agreements set forth herein regarding the treatment of CVG's claims and the waiver of any Avoidance Actions against CVG will be incorporated into the terms of the Plan. CVG agrees that, provided that the modified Plan is consistent with the terms of this Letter Agreement, it will vote the CVG Allowed GUC Claim to accept the Plan, will not object to the Plan and will affirmatively support the Debtor's efforts in seeking to have the Plan confirmed.
- K. Storage of SEMP Remaining Inventory. To the extent that CVG is unable to remove all SEMP Remaining Inventory prior to May 15, 2020, for whatever reason, SEMP agrees that CVG can elect to continue to store such

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inventory at SEMP's premises for a reasonable period of time agreed to by the Parties, provided that such election shall not extend the deadline by which CVG must wire the payment associated with completion of Phase Three under the Transition Agreement.

The Debtor and CVG represent and warrant that the signatories to this Letter Agreement, as indicated below, have the full power and authority to enter into this Letter Agreement on behalf of the Parties and to bind the Debtor and CVG to the terms of this Letter Agreement.

Very truly yours,



Michael J. Merchant

AGREED TO AND ACKNOWLEDGED BY:

SOUTHEASTERN METAL PRODUCTS LLC

By: 
Name: *David Denton*
Title: *President*

CVG / SEMP - 3 Phase Transition Agreement

As of 4/23/2020 SEMP has shipped four truckloads of Tooling and will be paid \$85,000 on 4/24/2020. This will be removed from the one-third of the first phase.

Phase One will consist of:

- Loading Six truckloads of Tooling - SEMP
- Inspecting Finished Goods- CVG
- Inspecting Work-In-Progress (WIP) for 1A064x series of product - CVG
- Loading Two truckloads of Raw Material - SEMP
- Grouping of various Fasteners – SEMP/CVG

Phase One is to be completed by 4/30/2020 and the amount paid by 4/30 of \$106,355.

Phase Two will consist of:

- Loading Seven truckloads of Tooling - SEMP
- Inspecting WIP - CVG
- Loading Three truckloads of Raw Material - SEMP

Phase Two is to be completed by 5/5/2020 and the amount paid by 5/5 of \$191,487.

Phase Three will consist of:

- Loading Three truckloads of Tooling - SEMP
- Inspecting Finished Goods Products - CVG
- Load any remaining Balance of WIP, Fasteners, Fixtures, Finished Product and Tooling that becomes identified as CVG property. – SEMP/CVG

Phase Three is to be completed by 5/15/2020 and the amount paid by 5/15 of \$191,488.