

Procedures for Subchapter V Cases filed in the Western District of Texas (All Divisions)

The “Subchapter V Procedures” set forth below shall govern the administration of Subchapter V-Small Business Debtor reorganization cases (a “Subchapter V Case”). These Procedures for Subchapter V Cases filed in the Western District of Texas (All Divisions) may be referred to as the “Subchapter V Procedures”.

A Subchapter V Case includes any “debtor” as defined under 11 U.S.C. § 1182 that elects to proceed under Subchapter V.

The Subchapter V Procedures do not alter the requirements of the Bankruptcy Code (“Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), or the Western District Bankruptcy Local Rules (“Local Rules”). If there is a conflict between the Subchapter V Procedures herein and the Bankruptcy Code, Bankruptcy Rules, or Local Rules that is unable to be reconciled, then the Code, Bankruptcy Rules, or Local Rules shall govern unless otherwise ordered by the Court.

The forms included in the Appendix are required to be used in all Subchapter V Cases filed in the Western District of Texas after **February 3, 2025**. The forms in the Appendix may be revised periodically or supplemented by standing order. The Clerk shall make available to the public the then applicable Subchapter V forms on the court’s website.

The forms in the Appendix are not an exhaustive list of the forms, documents, and/or pleadings that may be required to administer a Subchapter V Case.

I. Petition and Filing

A. Notice to Courtroom Deputy for Judge assigned to Case

Proposed counsel for the debtor in a Subchapter V Case (or the *pro se* individual in a Subchapter V Case) should contact the assigned Bankruptcy Judge’s Courtroom Deputy by email, copying the Office of the U.S. trustee as well as counsel for any known interested parties, as early as possible after the filing of a Subchapter V Case (the “Petition Date”) to obtain a date and time for necessary emergency relief and to request a setting for first day hearings. The Courtroom Deputy will advise of the Court’s available hearing date and time.

B. Election and Objections under Bankruptcy Rule 1020

1. When commencing a voluntary Subchapter V Case, the debtor shall check the box(es) designating the case as a Subchapter V Case on the voluntary petition Official Form

101 or 201 and on the CM/ECF PACER filing system in the Western District of Texas Bankruptcy Courts.

2. A debtor that did not elect in the original petition to have Subchapter V of chapter 11 apply, may make the election by filing an amended petition within fourteen days of the date of the order of relief. After the initial fourteen day period, the debtor must file a motion seeking permission to have Subchapter V of chapter 11 apply. If the debtor needs to seek relief from certain deadlines in the Subchapter V proceeding related to the late-filed election to Subchapter V, such request may be included in the same motion, and shall be served on the parties designated in FRBP 1020(c). If no extensions are sought, all relevant Subchapter V deadlines shall run from the date of the order of relief, and not the date of the election to proceed under Subchapter V.

3. For purposes of electing to proceed under Subchapter V or a party's objection to such election, the deadlines set forth in FRBP 1020 shall apply.

4. If a debtor seeks to amend their petition to remove the Subchapter V designation, the Debtor must file a motion seeking permission to withdraw the designation and proceed without such designation. Any proposed order granting the debtor's redesignation must include a provision that discharges the Subchapter V trustee of their duties and directs the Subchapter V trustee to file any final report and application for fees under 11 U.S.C. § 330.

C. Resolution for Nonindividual Debtor Authorizing the Filing of the Petition

Simultaneously with the filing of the Subchapter V Petition by a nonindividual debtor, the nonindividual debtor shall file with the Court the written resolution adopted and executed by the debtor or the proper party under its governing instruments authorizing the filing of the Subchapter V Petition.

D. Compliance with 11 U.S.C. § 1187 and FRBP 2015.3

1. Proposed counsel for the debtor, and the debtor or debtor representative should carefully review the Voluntary Subchapter V Petition to ensure that all the materials required by 11 U.S.C. § 1187(a) are included.

2. A debtor in a Subchapter V Case shall comply with FRBP 2015.3 by filing Official Bankruptcy Form B426, the periodic financial report of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. Note that this procedure requires reporting with Official Bankruptcy Form B426 to be first filed no later than seven days before the first date set for the meeting of creditors under 11 U.S.C. § 341, and subsequent reports should be filed no less frequently than every six months thereafter. Additionally, the debtor must attach an updated and current Official Bankruptcy Form B426 as an exhibit to any proposed plan.

E. Application to Employ

An Application to Employ shall be made in accordance with L. Rules 2014-1 and 2016-1. The Application to employ shall be detailed and shall describe (1) any pre-petition advance deposit paid for the bankruptcy matter, draws on such deposit prior to filing, and the balance therein on the petition date; (2) any agreement with the debtor to replenish the funds held by counsel during the course of the bankruptcy case; and (3) any payments made to counsel by the debtor or on the debtor's behalf in contemplation or in connection with the bankruptcy case. An Application to Employ shall include a proposed form of Order, and the Application to Employ and proposed form of Order shall clearly indicate statutory basis for retention, describe whether such retention is hourly, fixed fee, contingency, or some other method, describe in detail any payment procedure that is proposed to be utilized, and provide for the filing of fee applications under 11 U.S.C. §§ 330 and 331, FRBP 2016, and the Local Rules.

F. Notice of Budget

Within fourteen days after the Petition Date, any nonindividual debtor who has not filed a Motion to Use Cash Collateral shall file a Notice of Preliminary Budget that summarizes the debtor's proposed use of existing cash and postpetition income and/or earnings. The Notice of Preliminary Budget shall include a detailed ninety day budget showing expected income and expenditures from the Petition Date and is **required** to be in the form attached hereto as **Appendix SubV-1**. Any party opposed to the Preliminary Budget may file an appropriate motion to raise any concerns therewith; however, the failure to object to the Notice of Preliminary Budget does not constitute the Court's approval thereof or preclude any future argument by the parties regarding the propriety of the debtor's expenditures.

II. Motions and Hearings for First Day Matters, Cash Collateral, and Financing

A. First Day Matters Motions and Hearings

1. If the debtor has any matters related to the debtor's transition to chapter 11 (such as those described below in II(B) and II(C)) that require emergency consideration by the Court ("First Day Matters"), the debtor should file a Motion for Emergency Consideration of Certain First Day Matters in the same form set forth in the Complex Chapter 11 Procedures that are available at www.txwb.uscourts.gov/complex-chapter-11-procedures.

2. The debtor should serve electronically, if the e-mail address is available (or by facsimile or immediate hand-delivery) a copy of the notice of hearing on First Day Matters on all affected parties, including the U.S. trustee and Subchapter V trustee, if one has been appointed, simultaneously with its filing.

3. Unless otherwise ordered by the Court, a hearing on First Day Matters will be conducted as a hybrid-hearing in accordance with the local rules. Parties in interest may appear either remotely on the court's videoconferencing platform or in person, in the courtroom for any hearing on First Day Matters. Nonparty observers may only appear in accordance with the local rules. Instructions for accessing the virtual courtroom are available at www.txwb.uscourts.gov/txwbvirtualhearings. To minimize technical difficulties, parties are required to utilize telephone landlines rather than computer audio where possible.

B. Final Orders at Hearings on First Day Matters Hearings

At the hearing on First Day Matters, a final order, rather than an interim order, may be sought for the following types of relief:

1. Motions to pay employee wages and benefits to the extent all proposed payments are below the limits enumerated in 11 U.S.C. § 507(a)(4), does not include relief of the nature specified in 11 U.S.C. § 503(c), and does not otherwise contain a request for payments outside the ordinary course of the debtor's business. If the debtor seeks to make payments outside of the ordinary course of business or payments that implicate 11 U.S.C. § 503(c), a separate motion seeking that additional relief should be filed.

2. Motions to pay pre-petition and post-petition taxes that are: (i) secured by property of the estate; (ii) held in trust by the debtors pursuant to state or federal law; or (iii) entitled to priority pursuant to 11 U.S.C. § 507(a)(8).

3. Motions to pay: (i) oil and gas royalties; (ii) mineral liens, or mechanic and material liens that meet the criteria of 11 U.S.C. § 546(b); (iii) joint interest billing disbursements to joint interest parties; claims arising under 11 U.S.C. § 503(b)(9); or (iv) claims arising under the Perishable Agricultural Commodities Act of 1930, the Packers and Stockyards Act of 1921, or any state statutes of similar effect.

4. Motions to limit or modify the notice requirements of Bankruptcy Rule 2002.

5. Motions to approve adequate assurance procedures under 11 U.S.C. § 366 that: (i) do not prejudice the right of a utility to propose alternative procedures; and (ii) provide for a hearing not later than thirty (30) days after the petition date upon any timely filed objection to the adequate assurance procedures.

6. Motions to pay insurance premiums.

7. Motions to approve bar dates and bar date notices.

8. Motion to approve payment of monthly deposit to the subchapter V trustee.

9. Motions that are procedural in nature and do not affect the substantive rights of creditors and other parties-in-interest.

C. Cash Collateral and Financing Motions and Hearings

1. On motion by the debtor, a hearing will be conducted as a First Day Matter (or promptly after filing if such motion is not filed as a First Day Matter) to consider interim cash collateral use and/or interim debtor-in-possession financing. The debtor's motion shall contain a summary of all parties that hold a pre-petition lien or security interest in the cash collateral or proposed collateral (including any liens of the Internal Revenue Service or other taxing

authorities). The debtor must introduce a detailed, line-item budget/cash flow projection showing sources of cash and uses of cash necessary for ongoing operations on a weekly basis for not less than thirty days of the Subchapter V Case including, as applicable, adequate protection payments, insurance, taxes, professional fees, and subchapter V trustee deposits. Financing motions shall also include in the body of the motion and in an attached summary all terms and provisions including: amount, rate, payment, adequate protection, cross-collateralization, default provisions, carve-outs, roll-ups, releases, limits on the debtor's rights, priming liens, and any other term or provision that impacts the rights, duties, or obligations of the debtor, the Bankruptcy Estate, the subchapter V trustee, the U.S. trustee, the Court, any secured creditor, and/or any other parties.

2. Simultaneously with the filing of any motion to use cash collateral and/or motion for debtor-in-possession financing, the debtor shall file with the Court a UCC Lien Search conducted within ten days prior to the Petition date. The UCC Lien Search may be a printout from an online search on the applicable state filing database(s) or through a national third-party service.

3. At least five days prior to the final hearing on cash collateral and/or financing, the debtor shall file a detailed, line-item budget/cash flow projection showing sources of cash and uses of cash necessary for ongoing operations on a monthly basis for not less than one hundred twenty days of the Subchapter V Case including, but not limited to, adequate protection payments (if any), insurance, taxes, professional fees, and subchapter V trustee deposits.

4. At least five days prior to the final hearing on cash collateral and/or financing, the debtor shall file a proposed form of final order along with a redline showing edits compared to the interim order.

III. Case Scheduling, Status Reporting, and Other Compliance Requirements

A. Notice of Bankruptcy

The Court will issue a Notice of Bankruptcy in form approved by the Court. The deadlines set forth in the Notice of Bankruptcy may not be shortened or extended except by further order of the Court.

B. Subchapter V Scheduling Order

The Court will issue a Subchapter V Scheduling Order in form approved by the Court. The deadlines set forth in the Scheduling Order may not be shortened or extended except by further order of the Court. The deadline to file a Subchapter V Plan may only be extended as set forth in 11 U.S.C. § 1189.

C. Monthly Operating Reports

A debtor in a Subchapter V Case shall attach to its monthly operating reports: (i) all applicable documents required by Parts 1–8 of Official Bankruptcy Form 425C; (ii) the monthly bank statements for all Controlled Non-Debtor Entities as defined in Official Bankruptcy Form B426; and (iii) the most recently filed periodic report, Official Bankruptcy Form B426, as required

by FRBP 2015.3.

IV. Status Report and Status Conference Requirements

A. Status Report Form

The debtor shall timely file a Subchapter V Case Status Report (“Status Report”) in the **required** form attached hereto as **Appendix SubV-2**. The Status Report should not disclose any confidential, secret, and/or privileged information.

B. Status Conference Hearing

The debtor (if the debtor is an individual) or an authorized debtor representative (if the debtor is a nonindividual), debtor’s counsel, and the subchapter V trustee shall be present for the Subchapter V Case status conference hearing. The debtor, debtor representative, debtor’s counsel, and the subchapter V trustee are required to provide the Court an update on the status of the Subchapter V Case and answer questions regarding the debtor’s assets, liabilities, budget, operations, finances, insurance, communications with creditors, activity in the bankruptcy case, the debtor’s efforts to formulate a plan of reorganization, and status of a proposed plan.

Unless otherwise ordered by the Court, status conference hearings will be conducted as a hybrid-hearing in accordance with the local rules. Parties in interest may appear either remotely on the court’s videoconferencing platform or in person, in the courtroom. Nonparty observers may only appear in accordance with the local rules.

V. Proof of Claims and 11 U.S.C. § 1111(b) Election

A. Proof of Claim Deadline

Unless a different date is ordered by the Court, the bar date for the filing of proofs of claim and proofs of interest is the date set forth in the Notice of Bankruptcy issued by the Clerk of the Court.

B. 11 U.S.C. § 1111(b) Election Deadline

Unless a different date is ordered by the Court, a secured creditor shall make its election under 11 U.S.C. § 1111(b) within twenty days after the filing of the debtor’s first proposed Plan.

VI. Subchapter V Trustee

A. Verified Statement of Subchapter V Trustee

Prior to appointment, the subchapter V trustee shall review the debtor’s filings set forth on the docket sheet and provide to the U.S. trustee a verified statement of disinterestedness including

the anticipated rate of compensation and shall accept the appointment as provided in Bankruptcy Rule 2008.

B. Monthly Deposit

Within ten days after appointment of a subchapter V trustee, the debtor shall confer with the subchapter V trustee about the appropriate amount for a monthly postpetition deposit to be paid directly by the debtor to the subchapter V trustee. If an agreement is reached, the debtor shall seek Court approval of the postpetition deposit payment agreement in a cash collateral motion or other appropriate motion and shall file a stipulated motion to obtain approval of the agreed amount of the monthly deposit. The stipulated motion may be granted by the Court without hearing. A party in interest who opposes the stipulated motion may file an objection within 21 days after the date of service, and such objection shall be set for hearing notwithstanding the Court's order granting the stipulated motion.

If no agreement is reached, the subchapter V trustee may file a motion with the Court requesting a monthly postpetition deposit and seek expedited consideration of the same. The subchapter V trustee may seek to increase the amount of the postpetition deposit for cause shown and based on the equities of the case.

C. Compensation and Expenses

The subchapter V trustee shall file fee applications in accordance with 11 U.S.C. § 330, FRBP 2016, and L. Rule 2016-1.

D. Discharge of the Subchapter V Trustee

Any order dismissing, converting, or closing a Subchapter V Case shall include language discharging the subchapter V trustee immediately upon entry of the order.

E. Subchapter V Fee Applications Upon Case Dismissal

If a Subchapter V Case is dismissed, the Court shall retain jurisdiction to consider and to determine the amount and reasonableness of professional fee applications (including the subchapter V trustee's fee application) under 11 U.S.C. § 330 (or other applicable law) and the FRBP, and to enter final orders/judgments on professional fee applications, and to enforce orders/judgments authorizing and awarding professional fees.

VII. Subchapter V Plan

A. Disclosure Statement

Any party in interest may seek an order of the Court for cause requiring the debtor to file a disclosure statement. If a disclosure statement is required by the Court, the debtor may seek conditional approval of a disclosure statement, subject to final approval after notice and hearing, by filing a request with the Court contemporaneously with the filing of the proposed Subchapter

V Plan of Reorganization (the “Plan”).

B. Plan

1. Attached hereto as **Appendix SubV-3** is the **required** form Subchapter V Plan.

2. Debtor as Disbursing Agent

(a) The debtor shall be the disbursing agent in a Consensual Plan unless otherwise ordered by the Court.

(b) The debtor may be appointed as the disbursing agent under a Nonconsensual Plan for cause shown as determined by the Court after notice and hearing. The Plan must propose to appoint the debtor as the disbursing agent and set forth cause for such requested relief. The debtor’s proposal to serve as the disbursing agent in a Nonconsensual Plan must be included in the Notice of Confirmation Hearing and Related Deadlines.

C. Notice, Balloting, Objections, and Confirmation Hearing

1. If the debtor wants to provide a proposed scheduling order regarding the confirmation process dates and confirmation hearing date, then the debtor should file a Motion for Status Conference regarding Confirmation Process simultaneously with the filing of the Plan.

2. If a Motion for Status Conference regarding Confirmation Process is not filed, then the Court will enter its own scheduling order regarding confirmation.

3. The debtor shall file and serve a Notice of Confirmation Hearing and Related Deadlines in the **required** form attached hereto as **Appendix SubV-4**.

D. Pre-Confirmation Modifications of the Plan

Any proposed modification of the Plan made before confirmation, shall be filed with the Court as an Amended Plan and the debtor shall also simultaneously file a notice of plan modification that specifies the precise changes sought by the modification including, but not limited to, the following:

1. The purpose of, or the necessity for, the modification, together with a sufficient description of all circumstances, including financial information, that establishes a legitimate need for the modification;

2. The specific changes being made as to any plan payment, the term of the plan; the proposed distribution to any class, and/or any other substantive provision;

3. Whether, in the debtor's opinion, the changes to the modified plan necessitate the re-balloting of the plan and continuation of any scheduled deadlines; and

4. A redline of the proposed modified Plan against the previously filed Plan.

E. Confirmation Order

Attached here to as **Appendix SubV-5 and Appendix SubV-6** is the required form Confirmation Order for a consensual or nonconsensual Plan, as applicable.

VIII. Post-Confirmation Matters

A. Post Confirmation Requirements for Nonconsensual Plans

1. The debtor shall provide monthly reporting to the subchapter V trustee to provide status of the debtor's operations and ensure plan compliance as set forth in the plan confirmation order.

2. The debtor shall provide written notice to the subchapter V trustee of any significant after-acquired property within thirty days' of acquiring such property.

3. In cases in which the subchapter V trustee is acting as the disbursing agent, the court may require the trustee to file with the court periodic post-confirmation reports. The form, content, and frequency of any post-confirmation reports may vary depending upon the reporting requirements that are specified in the confirmed plan, the plan confirmation order, and/or local rule or practice. Any such reports should be served on the parties as required by the plan and a copy should be submitted to the U.S. trustee.

4. After confirmation of a nonconsensual Plan, the subchapter V trustee may file with the court a monthly notice of post-confirmation fees and expenses related to the trustee's services under the confirmed plan. If no objection is filed within fourteen days of the filing of the fee notice, the debtor shall promptly pay the balance due to the subchapter V trustee.

B. Post-Confirmation Modifications of the Plan

The debtor requesting the modification of a confirmed plan of reorganization in a Subchapter V Case must file the modified plan, together with a motion seeking confirmation of the modified plan which specifies the precise changes sought by the modification including, but not limited to, the following:

1. the purpose of, or the necessity for, the modification, together with a sufficient description of all circumstances, including financial information and related information, that establishes a legitimate need for the modification;

2. the specific changes being made as to any plan payment, the term of the plan, the proposed distribution to any class, and/or any other substantive provision; and

3. a redline of the proposed modified Plan against the Confirmed Plan.

C. Notice of Substantial Consummation

The debtor shall file a Notice of Substantial Consummation and serve it upon the subchapter V trustee, the U.S. trustee, and all parties-in-interest within fourteen days following substantial consummation as required under 11 U.S.C. §§ 1183(c)(1) and (2).

D. Discharge and Case Closure Process-Consensual Plan

1. Within ninety days of the debtor filing a Notice of Substantial Consummation, the subchapter V trustee shall file (a) a final application for compensation and (b) the applicable Report of No Distribution (“NDR”) or Final Report (“TFR”).

2. Within thirty days of the filing of the subchapter V trustee’s NDR or TFR, the debtor shall file a motion for final decree.

3. Upon entry of a final decree, the subchapter V trustee is discharged as the trustee of the estate, the subchapter V trustee’s bond is cancelled, and the case may be closed.

E. Discharge and Case Closure Process-Nonconsensual Plan

1. Upon completion of Plan payments, the disbursing agent as set forth in the confirmed Plan or confirmation order shall file a notice of completion of plan payments.

2. Within ninety days of the filing of the notice of Plan completion, the subchapter V trustee shall file (a) a final application for compensation and (b) the applicable Report of No Distribution (“NDR”) or Final Report (“TFR”).

3. Within thirty days of the filing of the subchapter V trustee’s NDR or TFR, the debtor shall file a motion for entry of discharge and a motion for final decree. In the motion for entry of discharge, the debtor shall certify that (1) all payments required under the confirmed plan have been made, (2) all administrative expenses, including the approved fees and expenses of the subchapter V trustee have been paid in full, and (3) that the debtor is entitled to entry of discharge.

4. Upon entry of a final decree, the subchapter V trustee is discharged as the trustee of the estate, the subchapter V trustee’s bond is cancelled, and the case may be closed.

Appendix SubV-1 – Notice of Budget

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION**

IN RE:

DEBTOR

§
§
§
§

CASE NO:

(Chapter 11, Subchapter V)

DEBTOR’S NOTICE OF NINETY DAY PRELIMINARY BUDGET

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, _____, Debtor and Debtor-in-Possession in the above-styled and numbered chapter 11 case (the “Debtor”) and, in accordance with Section I(F) of the Procedures for Subchapter V Cases filed in the Western District of Texas, files its Notice of Preliminary Budget. Attached hereto as **Exhibit A** is a proposed ninety day budget for the Debtor’s proposed use of existing cash and postpetition income and/or earnings from the Petition Date.

Any party opposed to the attached Preliminary Budget may file an appropriate motion to raise any concerns therewith; however, the failure to object to the Notice of Preliminary Budget does not constitute the Court’s approval thereof or preclude any future argument by the parties regarding the propriety of the Debtor’s expenditures.

/s/ _____

Attorney for the Debtor

CERTIFICATE OF SERVICE

[Add certificate of service]

Appendix SubV-2 – Status Report

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION**

IN RE:

§
§
§
§

CASE NO:

DEBTOR

(Chapter 11, Subchapter V)

DEBTOR’S SUBCHAPTER V STATUS REPORT PER 11 U.S.C. § 1188(c)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, _____, Debtor and Debtor-in-Possession in the above-styled and numbered Chapter 11 case (the “Debtor”) and, in accordance with the provisions of 11 U.S.C. § 1188(c), files this *Debtor’s Subchapter V Status Report* (the “Report”) and would respectfully show the Court as follows:

- 1. Nature of Business:**
- 2. Location:**
- 3. Ownership Structure:**
- 4. Type and Number of Employees:**
- 5. Primary Cause of the Necessity to File Bankruptcy:**
- 6. Filing of Required Documents and Compliance Matters:**
 - a. Reviewed Local Sub V Procedures and Mandatory Forms: Yes ☐ No ☐
 - b. All Schedules and Statements filed: Yes ☐ No ☐
 - c. Bankruptcy Rule 2015.3 documents filed: Yes ☐ No ☐
 - d. Current on all required tax returns: Yes ☐ No ☐
 - e. Required insurance in place and provided to U.S. trustee: Yes ☐ No ☐

f. Notice of Budget or Cash Collateral Motion filed: Yes ☐ No ☐

g. Commenced payment of Sub V Trustee deposit: Yes ☐ No ☐

h. If you answered “No” to any subsection, briefly explain why the Debtor is not in compliance and the date by which you anticipate resolution of the issue:

7. General Information about Secured, Priority and Unsecured Debt:

a. Secured Debt estimated total:

b. Priority Debt estimated total:

c. General Unsecured estimated total:

8. Status of Employment of Professionals:

9. Status of Discussions with Subchapter V Trustee:

10. Status of Any Cash Collateral, Adequate Protection, or Stay Relief Issues:

11. Goals of Reorganization of the Business:

12. Financial Projections Summary: [attach exhibits of current financial statements]

13. Efforts Taken to Date and Status of Achieving Consensual Plan Confirmation:

14. Any Other Pertinent Information that Should be Brought to the Court’s Attention:

s/
Attorney for the Debtor

CERTIFICATE OF SERVICE

[Add certificate of service]

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:

§
§
§
§

CASE NO:

DEBTOR

(Chapter 11, Subchapter V)

SUBCHAPTER V DEBTOR'S PLAN DATED [DATE]

This is the plan of reorganization in the chapter 11, subchapter V case of [Debtor name] (the "Debtor"). You are encouraged to carefully review the full text of this document, including all exhibits and attachments, before deciding how to vote on the Plan. You may wish to consult an attorney about your rights and your treatment under the Plan.

NONSTANDARD PROVISIONS

☐ If this box is checked, the Plan contains nonstandard provisions in Article 6.

SUMMARY OF THE PLAN AND DISTRIBUTIONS TO CREDITORS

[A concise summary of the Plan should be stated here.]

ARTICLE 1

RELEVANT BACKGROUND AND FINANCIAL INFORMATION FOR DEBTOR

☐ If this box is checked, this Article is impacted by a nonstandard provision. Please **review Article 6 of the Plan for further details.**

1.1 Nature of the Debtor's Business.

[Describe the Debtor's Business here.]

1.2 History of Business Operations of the Debtor.

[Describe a brief history of the business operations of the Debtor]

1.3 Legal Structure and Ownership.

[Describe the Debtor's legal structure and ownership here.]

1.4 Events Leading to the Filing of the Bankruptcy Case.

[Describe what problems compelled the filing of the Chapter 11 petition and, if applicable, how the Debtor has cured those problems for its successful rehabilitation.]

1.5 Filing of the Debtor's Chapter 11 Case.

On [the Petition Date], the Debtor filed a voluntary petition for relief under the Bankruptcy Code (the “Code”). The chapter 11, subchapter V case is pending in the Bankruptcy Court in the Western District of Texas. The Debtor’s schedules of assets and liabilities are available at docket number [____], and the Debtor’s statement of financial affairs is available at docket number [____].

1.6 Liquidation Analysis.

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to the Plan as **Exhibit A.**

1.7 Feasibility Analysis.

The Debtor must also show that it/he/she will have enough cash over the life of the Plan to make the required Plan payments and operate the Debtor’s business. The Debtor has provided projected financial information as **Exhibit B.** Based on the plan projections, the Debtor’s monthly disposable income, as that term is defined by 11 U.S.C. § 1191(d), to be committed to the payment of claims for the period described in 11 U.S.C. § 1191(c)(2) is \$ ____.

1.8 Avoidable Transfers. [Pick applicable paragraph]

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

[OR]

The Debtor has not yet completed its investigation with regard to prepetition transactions. The Debtor anticipates completing its investigation by _____. If you received a payment or other transfer of property that is fraudulent, preferential, or other avoidable transfer under the Code, the Debtor may seek to avoid such transfer.

[OR]

The Debtor estimates that up to \$____ may be realized from the recovery of fraudulent, preferential, or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

ARTICLE 2 THE PLAN

☐ **If this box is checked, this Article is impacted by a nonstandard provision. Please review Article 6 of the Plan for further details.**

This Plan of Reorganization (the “Plan”) under chapter 11 of the Bankruptcy Code proposes to pay creditors of the Debtor from [specify source of payments, e.g., future income, infusion of capital, sale of assets, etc.]. Treatment of Creditors’ claims is determined by which

class such claim belongs to. Claims have been classified below in accordance with section 1122 of the Code.

Only Creditors in classes that are impaired may vote on whether to accept or reject the Plan, and only Creditors holding Allowed Claims may vote. A class accepts the Plan when more than one-half (1/2) in number and at least two-thirds (2/3) in dollar amount of the Allowed Claims that actually vote, vote in favor of the Plan. Also, a class of Equity Interest holders accepts the Plan when at least two-thirds (2/3) in amount of the allowed Equity Interest holders that actually vote, vote in favor of the Plan.

A class that is not impaired is deemed to accept the Plan.

2.1 Unclassified Claims.

Certain types of Claims are automatically entitled to specific treatment under the Code. For example, Administrative Expenses and Priority Tax Claims are not classified. They are not considered impaired, and holders of such Claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan does not place the following Claims in any class:

A. Administrative Expenses

The Debtor must pay all Administrative Expenses in full. If an Administrative Expense is disputed, the Bankruptcy Court must determine the validity and amount of the Administrative Expense, or in other words, “allow” the Administrative Expense. Any Administrative Expense that is undisputed and is due and owing on the Confirmation Date must be paid in accordance with this Plan, or upon such other terms as agreed upon by the Debtor and the Administrative Claimant or court order. If the Administrative Expense is disputed, payment will be made after the Administrative Expense is allowed by the Bankruptcy Court.

The following chart lists the Debtor’s estimated Administrative Expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Administrative Tax Claim [taxing authority/type of tax]		Payment through the Plan as follows:
Debtor’s counsel fees and expenses		Payment through the Plan as follows:
Other estate professional fees: [name/role]		Payment through the Plan as follows:
Subchapter V Trustee		Payment through the Plan as follows::
Other Administrative Claim: [detail]		
TOTAL		

B. Priority Tax Claims.

Priority Tax Claims are unsecured income, employment, and other taxes described by 11

U.S.C. § 507(a)(8). Unless the holder of such a § 507(a)(8) Priority Tax Claim agrees otherwise, it must receive the present value of such Claim, in regular installments paid over a period not exceeding five years from the order of relief.

Each holder of a Priority Tax Claim will be paid as set forth in the chart below:

Name of Taxing Authority and Type of Tax	Estimated Amount Owed	Date of Assessment	Treatment
			Paid in full with interest of __% per annum in [Monthly/interval] installments of \$ __, beginning on [date] and continuing on the [#] day of each [month] for [term].
			Paid in full with interest of __% per annum in [Monthly/interval] installments of \$ __, beginning on [date] and continuing on the [#] day of each [month] for [term].

2.2 Classes of Claims and Equity Interests.

The following are the classes of claims set forth in the Plan, and the proposed treatment that they will receive under the Plan:

A. Classes of Secured Claims

Allowed Secured Claims are Claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured Claims under 11 U.S.C. § 506. If the value of the collateral or setoffs securing the Creditor's Claim is less than the amount of the Creditor's Allowed Claim, the deficiency will be classified as a general unsecured Claim. In addition, certain claims secured only by the Debtor's principal residence, may require different treatment pursuant to 11 U.S.C. § 1190(3) as set forth below, if applicable.

The following chart lists all classes containing the Debtor's secured prepetition Claims and their proposed treatment under the Plan:

Class #	Description	Insider?	Impairment	Treatment
	<i>Secured claim of:</i> [Creditor Name] Collateral description: Allowed Secured Amount: \$____	[Yes/No]	[State whether impaired or unimpaired]	Allowed Secured Claim will be paid in full, with interest of __% per annum, paid in [monthly/interval] installments of \$____, beginning on [date] and continuing on the [#] day of each [month] for [term]. Deficiency in the amount of \$____ to be classified and treated as a general unsecured Claim
	<i>Secured claim of:</i> [Creditor Name] Collateral description: Allowed Secured Amount: \$____	[Yes/No]	[State whether impaired or unimpaired]	Allowed Secured Claim will be paid in full, with interest of __% per annum, paid in [monthly/interval] installments of \$____, beginning on [date] and continuing on the [#] day of each [month] for [term]. Deficiency in the amount of \$____ to be classified and treated as a general unsecured Claim

B. Classes of Priority Unsecured Claims.

Certain priority Claims that are referred to in 11 U.S.C. §§ 507(a)(1), (4), (5), (6), and (7) are required to be placed in classes. The Code requires that each holder of such a Claim receive

cash on the Effective Date of the Plan equal to the allowed amount of such Claim. However, a class of holders of such Claims may vote to accept different treatment.

The following chart lists all classes containing Claims under 11 U.S.C. §§ 507(a)(1), (4), (5), (6), and (a)(7) and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
	[Creditor name] Allowed Priority Claim: \$ _____ Basis: § 507(a) _____	[State whether impaired or unimpaired]	
	[Creditor name] Allowed Priority Claim: \$ _____ Basis: § 507(a)	[State whether impaired or unimpaired]	

C. Class[es] of General Unsecured Claims

General Unsecured Claims are not secured by property of the estate and are not entitled to priority under 11 U.S.C. § 507(a). A table of all claims, their estimated amounts, whether the claim is allowed or disputed, and their anticipated distribution under the Plan is attached hereto as **Exhibit C**.

The following chart identifies the Plan's proposed treatment of general unsecured Class[es], which contain general unsecured Claims against the Debtor:

Class #	Description	Impairment	Treatment
	1122(b) Convenience Class for claims of an amount less than \$ _____.	[State whether impaired or unimpaired]	
	General Unsecured Class	[State whether impaired or unimpaired]	

D. Class[es] of Equity Interest Holders.

Equity Interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are Equity Interest holders. In a partnership, Equity Interest holders include both general and limited partners. In a limited liability company, the Equity Interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the Equity Interest holder.

The following chart sets forth the Plan's proposed treatment of the class[es] of Equity Interest holders: [There may be more than one class of Equity Interest holders in, for example, a partnership case, or a case where the prepetition debtor had issued multiple classes of stock.]

Class #	Names & Description	Impairment	Treatment
		[State whether impaired]	

		or unimpaired]	
--	--	----------------	--

2.3 Claims Allowance Process.

Any Claim detailed on the Debtor's schedules for which the Debtor did not select disputed, unliquidated, or contingent is deemed an allowed claim under this Plan. For all other Claims, the Claimant must file a Proof of Claim by the Bar Date in order to receive a distribution under the Plan.

The Debtor may object to the amount or validity of any Claim within sixty days of the Confirmation Date by filing an objection with the Bankruptcy Court and serving a copy of the objection on the holder of the Claim. The Claim objected to will be treated as a Disputed Claim under the Plan.

No partial distributions will be made with respect to a Disputed Claim until the resolution of such dispute by settlement or Final Order. The provisions of this section are not intended to restrict payment of any Allowed Claims which are not disputed. Until a Disputed Claim is resolved, payment distributions to claimants holding disputed claims will be retained by the Disbursing Agent subject to a final resolution of the Disputed Claim. Upon resolution in favor of the Allowed Claim the Disbursing Agent will distribute withheld funds within the next payment period. If the Disputed Claim is disallowed, the Disbursing Agent will make withheld funds available to allowed claim holders within the next payment period in accordance with this Plan.

2.4 Treatment of Executory Contracts and Unexpired Leases.

The Debtor assumes, and if applicable assigns, the following executory contracts and unexpired leases as of the Effective Date: **[List and describe here.]**

Except for the executory contracts and unexpired leases that have been assumed, and if applicable assigned, herein, the Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases as of the Effective Date.

A proof of claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than thirty days after the date of the order confirming this Plan.

Any claim based on the rejection of an executory contract or unexpired lease under this section will be barred if the proof of claim is not timely filed unless the Bankruptcy Court orders otherwise.

2.5 Means for Implementation of the Plan.

[Describe how the Plan will be implemented, including how the Plan will be funded, which would generally be through the Debtor's continued operations and then payment to creditors from disposable income. If, however, Plan implementation requires the sale of the Debtor's assets or the creation of a trust or other mechanisms, such provisions should be detailed in then Nonstandard Provisions of Article VI. Reference the nonstandard provisions and direct parties to review them in detail.]

[Then insert the paragraph set forth below, if applicable.]

The Board of Directors of the Debtor immediately prior to the Effective Date shall serve as the initial Board of Directors of the Reorganized Debtor on and after the Effective Date. Each member of the Board of Directors shall serve in accordance with applicable non-bankruptcy law and the Debtor's certificate or articles of incorporation and bylaws, as each of the same may be amended from time to time.

2.6 Payments by Disbursing Agent.

If the Plan is confirmed under 11 U.S.C. §1191(a), payments to Creditors provided for in the Plan will be made by the Debtor.

If the Plan is confirmed under 11 U.S.C. § 1191(b), the Debtor proposes that [Debtor or Subchapter V Trustee] act as the Disbursing Agent. There is cause to have [proposed disbursing agent] serve as the Disbursing Agent, instead of the Subchapter V Trustee, because [insert cause].

2.7 Post-Confirmation Management.

The Post-Confirmation Officers/Managers of the Debtor, and their compensation, shall be as follows:

Name	Position	Compensation

2.8 Tax Consequences of the Plan.

Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, and/or Advisors.

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum: (1) Tax consequences to the Debtor of the Plan; (2) General tax consequences on Creditors of any discharge, and the general tax consequences of receipt of Plan consideration after Confirmation.]

ARTICLE 3 DISCHARGE.

3.1 [Option 1 – If 11 U.S.C. § 1141(d)(3) is not applicable]

Discharge. **If the Plan is confirmed under 11 U.S.C. § 1191(a)**, on the Confirmation Date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the Effective Date, to the extent specified in 11 U.S.C. § 1141(d) of the Bankruptcy Code; or

If the Plan is confirmed under 11 U.S.C. § 1191(b), as soon as practicable after completion by the Debtor of all payments due under the Plan, unless the court approves a written waiver of discharge executed by the Debtor after the order for relief under this chapter, the court shall grant the Debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in this Plan, except any debt—

- (1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or
- (2) if applicable, of the kind specified in section 523(a) of this title.

[Option 2– If 11 U.S.C. § 1141(d)(3) is applicable]

No Discharge. In accordance with 11 U.S.C. § 1141(d)(3), the Debtor will not receive any discharge of debt in this bankruptcy case.

ARTICLE 4
GENERAL PROVISIONS.

- ☐ **If this box is checked, this Article is impacted by a nonstandard provision. Please review Article 6 of the Plan for further details.**

4.1 Vesting of Property of the Estate.

If a plan is confirmed under 11 U.S.C. § 1191(a), except as otherwise provided in the Plan or in the order confirming the Plan, (i) confirmation of the Plan vests all of the property of the estate in the Debtor, and (ii) after confirmation of the Plan, the property dealt with by the Plan is free and clear of all Claims and Equity Interests of Creditors, equity security holders, and of general partners in the Debtor.

If a plan is confirmed under 11 U.S.C. § 1191(b), property of the estate includes, in addition to the property specified in § 541, all property of the kind specified in that section that the Debtor acquires, as well as earnings from services performed by the Debtor, after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of the Bankruptcy Code, whichever occurs first. Except as provided in 11 U.S.C. § 1185 of the Bankruptcy Code, the Plan, or the order confirming the Plan, the Debtor shall remain in possession of all property of the estate.

4.2 Binding Effect.

If the Plan is confirmed, the provisions of the Plan will bind the Debtor and all Creditors, whether or not they accept the Plan. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

4.3 Severability.

If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

4.4 Retention of Jurisdiction by the Bankruptcy Court.

The Bankruptcy Court shall retain jurisdiction of this case with regard to the following matters:

- (i) to make such orders as are necessary or appropriate to implement the provisions of this Plan and to resolve any disputes arising from implementation of the Plan;

- (ii) to rule on any modification of the Plan proposed under 11 U.S.C. § 1193;
- (iii) to hear and allow all applications for compensation to professionals and other Administrative Expenses and enter final orders;
- (iv) to resolve all issues regarding Claims objections, and issues arising from the assumption/rejection of executory contracts or unexpired leases, and
- (iv) to adjudicate any cause of action which may exist in favor of the Debtor, including preference and fraudulent transfer causes of action.

4.5 Captions.

The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

ARTICLE 5 **DEFINITIONS**

5.1 The definitions and rules of construction set forth in 11 U.S.C. §§ 101 and 102 shall apply when terms defined or construed in the Code are used in this Plan and they are supplemented by the following definitions:

[Insert supplemental definitions]

ARTICLE 6 **NONSTANDARD PROVISIONS**

6.1 The following nonstandard provisions shall be applicable to the Plan:

[Insert nonstandard provisions, including pinpoint references to the section of the Plan the nonstandard provision impacts]

Respectfully submitted,

By: _____
[DEBTOR]

By: _____
[COUNSEL FOR DEBTOR]

Appendix SubV-4 – Form Notice of Confirmation Hearing

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION**

IN RE:

§
§
§
§

CASE NO:

DEBTOR

(Chapter 11, Subchapter V)

**NOTICE OF HEARING ON CONFIRMATION OF
SUBCHAPTER V PLAN AND RELATED DEADLINES**

On _____, 202_, the above-referenced Debtor filed a Plan of Reorganization (“Plan”), which is attached hereto as **Exhibit A**. The Debtor hereby provides each creditor entitled to vote with the applicable Ballot, which is attached hereto as **Exhibit B**, to vote whether to accept or reject the Plan. In addition to casting your vote to accept or reject the plan, any party in interest may also object to confirmation of the Plan. Parties in interest must submit their ballot and file any objection to confirmation of the Plan by the deadlines set forth below.

On _____, 202_, the Court entered the Scheduling Order attached hereto as **Exhibit C** setting the following deadlines:

1. _____, 202_ at 5:00 p.m. (CT), at the U.S. Bankruptcy Court, Courtroom #_, _____, is fixed as the time and place of the hearing on confirmation of the Plan and any objections thereto.

2. _____, 202_ at 5:00 p.m. (CT) is fixed as the last day for holders of claims and interests to accept or reject the Plan by submitting a ballot. Such ballots shall be sent to counsel for the Debtor at the mailing or email address set forth in the Plan. Ballots shall not be filed with the Court.

3. _____, 202_ at 5:00 p.m. (CT) is also fixed, pursuant to Bankruptcy Rule 3020(b)(1), as the last day for filing and serving written objections to confirmation of the Plan. Any objections to the Plan shall be accompanied by a memorandum of legal authorities supporting such objection.

4. _____, 202_ at 5:00 p.m. (CT) is the record date by which an equity security holder or creditor whose claim is based on a security must be the holder of record of the security to be eligible to accept or reject the Plan under Bankruptcy Rule 3017.2.

5. By _____, 202_, counsel for the Debtor will file with the Court (a) a ballot summary in the form required by L. Rule 3018-1(b) with a copy of the ballots; (b) a memorandum of legal authorities addressing any unresolved objections filed to the Plan; and (c) under a notice coversheet, a proposed order confirming the Plan (and if such proposed order confirming the Plan

is a modification of the Local Required Form Order then counsel for the Debtor shall also file a redline comparing the revised order to the Local Required Form Order).

6. By _____, 202_, counsel for the Debtor will transmit by first class mail, a copy of this Notice, the Plan, the Scheduling Order, and a ballot conforming with Official Form 314, to all creditors, equity security holders, the trustee, the debtor, and all other parties in interest. Counsel for the Debtor shall promptly file a Certificate of Service with the Court reflecting such mailing.

You are encouraged to carefully review the Plan, including all exhibits and attachments, before deciding how to vote on the Plan. You may wish to consult an attorney about your rights and your treatment under the Plan.

BE ADVISED: If the Plan is confirmed under 11 U.S.C. § 1191(b): [select applicable provision]

- ☐ The Subchapter V Trustee will act as the Disbursing Agent.
- ☐ The Debtor is requesting that the Court allow the Debtor to act as the Disbursing Agent, instead of the Subchapter V Trustee, for cause described in the Plan.

/s/ _____
Attorney for the Debtor

CERTIFICATE OF SERVICE

[Add certificate of service]

Appendix SubV-5 – Form Confirmation Order – Consensual (under 11 U.S.C. § 1191(a))

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION**

IN RE:

§

§

§

CASE NO. xxxxxxxxxx

§

§

DEBTOR

§

CHAPTER 11, Subchapter V

**ORDER CONFIRMING DEBTOR'S
PLAN OF REORGANIZATION UNDER 11 U.S.C. § 1191(a)**

On _____, the Court held a hearing (the “Confirmation Hearing”) to consider confirmation of the Plan of Reorganization for a Small Business under Subchapter V of chapter 11 (the “Plan”)¹ filed herein by _____ (the “Debtor”) on _____ (Docket No. _____). Present or making appearances at the hearing were counsel for the Debtor, the Debtor’s representative, _____, the Subchapter V Trustee appointed in the case (hereinafter “Sub V Trustee”), counsel for certain creditors who have entered an appearance in the case, and the United States Trustee. The Court has reviewed the Plan, considered the documents admitted into evidence and the testimony of witnesses present at the hearing, considered the statements and arguments of counsel, the docket of the Bankruptcy Case, and considered any other relevant factors affecting the case as set forth on the record.

Based upon the foregoing, the Court finds and determines as follows:

A. The Debtor filed this case on _____ (the “Petition Date”), and was qualified to be a Debtor under 11 U.S.C. § 109. The Debtor was also qualified and elected to

¹ Capitalized terms used herein without definition shall have the meanings provided for in the Plan. In addition, any term used in the Plan or this Order that is not defined in the Plan or this Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules.

proceed as a small business debtor under Subchapter V of the Bankruptcy Code as that term is defined by 11 U.S.C. § 1182(1).

B. This Court has jurisdiction over the case pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (L) and (O), and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and whether it should be confirmed. Venue in the Western District of Texas was proper on the Petition Date and continues to be proper under 28 U.S.C. §§ 1408 and 1409.

C. Every person or entity required to receive notice of the hearing on confirmation of the Plan, as well as the Plan voting and Plan objection deadlines set by the Court, received timely and adequate notice as required by the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) 2002 and 9014 and the Bankruptcy Code.

D. The contents of the Plan (with any modifications as set forth below) satisfy the applicable requirements of 11 U.S.C. § 1190 and any other applicable requirements of the Bankruptcy Code.

E. The Plan (with any modifications as set forth below) and the Debtor have satisfied all applicable requirements for confirmation of the Plan under 11 U.S.C. § 1191(a).

F. The Plan (with any modifications as set forth below) and the Debtor have satisfied all other requirements of the Bankruptcy Code and Bankruptcy Rules necessary to confirm the Plan.

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

1. The Plan of Reorganization for a Small Business under Subchapter V of Chapter

11 filed by the Debtor on _____ (Docket No. _____) and attached hereto as **Exhibit A**, is hereby **CONFIRMED** and approved in each and every respect as a consensual plan pursuant to 11 U.S.C. § 1191(a), with the modifications set forth below. The terms of the Plan are incorporated by reference into, and are an integral part of, this Confirmation Order.

2. To the extent any objections to confirmation of the Plan have not been resolved or withdrawn, any such objections are hereby denied.

3. The effective date of the Plan shall be _____, 20__ (“Effective Date”), notwithstanding anything to the contrary in the Plan.

4. In the event of a conflict between provisions of the Plan and this Confirmation Order, the terms of this Confirmation Order shall control.

5. Within three days after the Effective Date, the Debtor shall serve notice of (i) entry of this Confirmation Order; (ii) the occurrence of the Effective Date; and (iii) any bar dates and any other deadlines set by the Plan (“Notice”), pursuant to Bankruptcy Rule 3020(c). The Notice shall be sent to all creditors and parties-in-interest by first class mail, postage prepaid. The Debtor shall thereafter promptly file a copy of such Notice with proof of mailing with the Court.

6. The provisions of the Plan, and any documents executed in conjunction with the Plan, and this Confirmation Order are, as of the Effective Date, effective and binding on the Debtor, all creditors of the Debtor, and any other parties-in-interest, as well as their respective heirs, successors, assigns, or other persons claiming through them. 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 the Court that the Plan be approved and confirmed in its entirety subject to the modifications set forth herein. Each

provision of the Plan shall be deemed authorized and approved by this Confirmation Order, subject to the modifications set forth herein, and shall have the same binding effect of every other provision in the Plan, whether or not mentioned in this Confirmation Order.

7. The Debtor and its respective agents and attorneys are hereby authorized, empowered, and directed to carry out the provisions of the Plan and to perform the acts and execute and deliver the documents as are necessary or appropriate in connection with the Plan and this Order.

8. Nothing in this Confirmation Order or the Plan shall in any way operate to, or have the effect of, impairing or extinguishing in any respect any causes of action disclosed on Debtor's schedules or arising under chapter 5 of the Bankruptcy Code or any other claims or defenses owned by the Debtor on the Effective Date, and the Debtor shall retain such claims as provided in the Plan, including any claims or defenses that may not have been defined in the Plan but are nonetheless owned by the Debtor on or before the Effective Date. After the Effective Date, the Debtor may, in accordance with the provisions of the Plan, evaluate and determine whether to pursue any such retained claims.

9. Except as otherwise expressly provided in the Plan, all payments and other distributions to be made under the Plan shall be timely and proper if mailed by first class mail on or before the date of distribution provided for in the Plan to the address listed in the creditor's proof of claim filed in this case, or, if no proof of claim is filed, to the creditor's last known mailing address.

10. [Pick correct option]

[option 1] On the Effective Date, Debtor shall be and is hereby discharged to the extent

and as provided by 11 U.S.C. § 1141(d)(1), except that Debtor will not be discharged of any debt or obligation: (i) imposed by this Plan; (ii) excepted from discharge under 11 U.S.C. § 523 as provided by 11 U.S.C. § 1141(d)(2) if the Debtor is an individual; and (iii) to the extent provided in 11 U.S.C. § 1141(d)(6) if the Debtor is a corporation.

[option 2] In accordance with § 1141(d)(3) of the Bankruptcy Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

11. The Debtor and all holders of Claims and Interests are bound by the Plan within the meaning of 11 U.S.C. § 1141.

12. The Court shall retain jurisdiction of this case for all purposes provided in 11 U.S.C. §§ 1193 and 1142, and Bankruptcy Rule 3020(d).

13. Pursuant to 11 U.S.C. § 1141(b), except as otherwise provided in the Plan or in this Confirmation Order, as of the Effective Date, all the property of the Estate vests in the Debtor. Except as provided in 11 U.S.C. §§ 1141(d)(2) and (3), and except as otherwise provided in the Plan or in this Confirmation Order, after Confirmation of the Plan, the property dealt with by the Plan is free and clear of all Claims and Interests of creditors. If the Debtor's bankruptcy case is subsequently converted to chapter 7, all property of the Debtor shall automatically revert and become property of the bankruptcy estate of the Debtor in the converted chapter 7 case.

14. The services of the Subchapter V Trustee shall terminate upon substantial consummation of the Plan, and the Debtor is to file and serve a Notice of Substantial Consummation upon the Subchapter V Trustee, the U.S. trustee, and all parties-in-interest within fourteen days following substantial consummation as required under 11 U.S.C. §§ 1183(c)(1) and (2).

15. This Confirmation Order is a final order and effective and enforceable immediately upon entry and the period in which an appeal must be filed shall commence upon the entry hereof.

16. The following Nonmaterial Plan Modifications are hereby approved:
[insert any applicable nonmaterial plan modifications; note that if nonstandard provisions were already detailed in the Plan itself, they do not need to be repeated here]

#

Appendix SubV-6 – Form Confirmation Order – Non-Consensual (under 1191(b))

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION**

IN RE:

§

§

§

CASE NO. xxxxxxxxxx

§

§

DEBTOR

§

CHAPTER 11, Subchapter V

**ORDER CONFIRMING DEBTOR'S
PLAN OF REORGANIZATION UNDER 11 U.S.C. § 1191(b)**

On _____, the Court held a hearing (the “Confirmation Hearing”) to consider confirmation of the Plan of Reorganization for a Small Business under Subchapter V of chapter 11 (the “Plan”)² filed herein by _____ (the “Debtor”) on _____ (Docket No. _____). Present or making appearances at the hearing were counsel for the Debtor, the Debtor’s representative, _____, the Subchapter V Trustee appointed in the case (hereinafter “Sub V Trustee”), counsel for certain creditors who have entered an appearance in the case, and the United States Trustee. The Court has reviewed the Plan, considered the documents admitted into evidence and the testimony of witnesses present at the hearing, considered the statements and arguments of counsel, the docket of the Bankruptcy Case, and considered any other relevant factors affecting the case as set forth on the record.

Based upon the foregoing, the Court finds and determines as follows:

A. The Debtor filed this case on _____ (the “Petition Date”), and was qualified to be a Debtor under 11 U.S.C. § 109. The Debtor was also qualified and elected to

² Capitalized terms used herein without definition shall have the meanings provided for in the Plan. In addition, any term used in the Plan or this Order that is not defined in the Plan or this Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules.

proceed as a small business debtor under Subchapter V of the Bankruptcy Code as that term is defined by 11 U.S.C. § 1182(1).

B. This Court has jurisdiction over the case pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (L) and (O), and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and whether it should be confirmed. Venue in the Western District of Texas was proper on the Petition Date and continues to be proper under 28 U.S.C. §§ 1408 and 1409.

C. Every person or entity required to receive notice of the hearing on confirmation of the Plan, as well as the Plan voting and Plan objection deadlines set by the Court, received timely and adequate notice as required by the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) 2002 and 9014 and the Bankruptcy Code.

D. The contents of the Plan (with any modifications as set forth below) satisfy the applicable requirements of 11 U.S.C. § 1190 and any other applicable requirements of the Bankruptcy Code.

E. The Plan (with any modifications as set forth below) and the Debtor have satisfied all applicable requirements for confirmation of the Plan under 11 U.S.C. § 1129(a), except for 11 U.S.C. § 1129(a)(8) and/or 1129(a)(10). Thus, the Plan cannot be confirmed under 11 U.S.C. § 1191(a). However, the Plan can and should be confirmed under 11 U.S.C. § 1191(b), as the Plan (with any modifications as set forth below) does not discriminate unfairly and is fair and equitable with respect to each impaired class of claims and interests that have not accepted the Plan as required by 11 U.S.C. § 1191(c).

F. The Plan (with any modifications as set forth below) and the Debtor have satisfied

all other requirements of the Bankruptcy Code and Bankruptcy Rules necessary to confirm the Plan.

G. [optional if the Debtor is acting as the Disbursing Agent] The Court specifically finds that there is cause under 11 U.S.C. § 1194(b) for the Debtor to serve as the Disbursing Agent under the Plan.

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

1. The Plan of Reorganization for a Small Business under Subchapter V of chapter 11 filed by the Debtor on _____ (Docket No. _____) and attached hereto as **Exhibit A**, is hereby **CONFIRMED** and approved in each and every respect as a nonconsensual plan pursuant to 11 U.S.C. § 1191(b), with the modifications set forth below. The terms of the Plan are incorporated by reference into, and are an integral part of, this Confirmation Order.

2. To the extent any objections to confirmation of the Plan have not been resolved or withdrawn, any such objections are hereby denied.

3. The effective date of the Plan shall be _____, 20__ (“**Effective Date**”), notwithstanding anything to the contrary in the Plan

4. In the event of a conflict between provisions of the Plan and this Confirmation Order, the terms of this Confirmation Order shall control.

5. Within three days after the Effective Date, the Debtor shall serve notice of (i) entry of this Confirmation Order; (ii) the occurrence of the Effective Date; and (iii) any bar dates and any other deadlines set by the Plan (“**Notice**”), pursuant to Bankruptcy Rule 3020(c). The Notice shall be sent to all creditors and parties-in-interest by first class mail, postage prepaid. The Debtor

shall thereafter promptly file a copy of such Notice with proof of mailing with the Court.

6. The provisions of the Plan, and any documents executed in conjunction with the Plan, and this Confirmation Order are, as of the Effective Date, effective and binding on the Debtor, all creditors of the Debtor, and any other parties-in-interest, as well as their respective heirs, successors, assigns, or other persons claiming through them. 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 the Court that the Plan be approved and confirmed in its entirety subject to the modifications set forth herein. Each provision of the Plan shall be deemed authorized and approved by this Confirmation Order, subject to the modifications set forth herein, and shall have the same binding effect of every other provision in the Plan, whether or not mentioned in this Confirmation Order.

7. The [Debtor or Trustee] shall make the payments to creditors required by the Plan under 11 U.S.C. § 1194(b) ("Disbursing Agent"). The Debtor shall make all required plan payments to the Disbursing Agent before the [] of each [month, quarter, year]. After receipt of the plan payments, the Disbursing Agent will distribute plan payments in accordance with the terms of this Order and the Plan before the [] of each [month, quarter, year] until all required payments have been made. If the Debtor fails to make all required plan payments to the Disbursing Agent by the deadline, the Disbursing Agent shall provide notice to Debtor and Debtor's counsel and request payment within seven days of the notice. If Debtor fails to make the required plan payment to the Disbursing Agent within seven days of the notice, the Disbursing Agent shall file a notice of default with the Court.

8. The Disbursing Agent shall file a report six months after the Effective Date and

every six months thereafter detailing payment payments made by the Debtor and disbursements made under the Plan.

9. Within fourteen days of entry of this Order, the Debtor shall provide the Disbursing Agent with a list of allowed claims, associated account numbers, the amount of such claims, and the correct mailing address for the Disbursing Agent to send plan payments. If there are any disputed claims, the Debtor shall provide a separate list of such disputed claims and an estimated date of resolution. The Debtor shall file a certificate of service indicating that the claim information required by this paragraph has been timely served on the Disbursing Agent.

10. Except as otherwise provided in the Plan, no distributions will be made with respect to a disputed claim until the resolution of such dispute by settlement or final order. The provisions of this section are not intended to restrict payment of any allowed claims which are not disputed. Until a disputed claim is resolved, the Disbursing Agent shall hold any portion of plan payments that would be disbursed to the claimant if the claim were allowed in full, subject to a final resolution of the disputed claim. Upon resolution in favor of the allowed claim, the Disbursing Agent will distribute withheld funds to the claimant within the next payment period. If the disputed claim is disallowed, the Disbursing Agent will make withheld funds available to allowed claim holders in accordance with the terms of the Plan within the next payment period.

11. Disbursements may be delivered by the Disbursing Agent to (i) the address list provided by the Debtor under paragraph 8; (ii) the address for payment set forth on a proof of claim filed by the claimant or its authorized agent; or (iii) at the address set forth in any written notices of change of address delivered to the Disbursing Agent. If any distribution to a claimant of an allowed unsecured claim is returned to the Disbursing Agent as undeliverable, no further

distributions shall be made to such claimant unless and until the Disbursing Agent is notified in writing of such claimant's correct mailing address, at which time all currently due distributions shall be made to such claimant as soon as practicable. Undeliverable distributions shall remain in the possession of the Disbursing Agent until such time as a distribution becomes deliverable and shall not be supplemented with any interest, dividends, or other accruals of any kind. If, despite reasonable effort, the Disbursing Agent is unable to obtain the information necessary to deliver a distribution within six (6) months following the return of the undeliverable distribution, the Disbursing Agent shall deposit the amount with the Clerk of the Court in accordance with 11 U.S.C. § 347(a).

12. The Trustee shall file all reports required by 11 U.S.C. §§ 1183(b)(1) and 704(a)(9) in the manner prescribed by the United States Trustee Program. Upon the completion of the Plan, the Trustee shall file their final report and seek a discharge of their duties as Trustee.

13. The Trustee shall be compensated for their post-confirmation duties at their approved hourly rate. The Trustee may file a notice setting forth post-confirmation fees and expenses on a quarterly basis with the Court. All parties in interest will have fourteen days after the notice is filed to object to the Trustee fees and expenses disclosed therein. If no objection is received, the Debtor shall pay the Trustee without further order of the Court.

14. The Trustee shall file a post-confirmation final fee application within ninety days of the notice of completion of plan payments. The final fee application shall include all compensation received and disclosed in the quarterly post-confirmation notices filed with the Court.

15. The Debtor and its respective agents and attorneys are hereby authorized,

empowered, and directed to carry out the provisions of the Plan and to perform the acts and execute and deliver the documents as are necessary or appropriate in connection with the Plan and this Order.

16. Nothing in this Confirmation Order or the Plan shall in any way operate to, or have the effect of, impairing or extinguishing in any respect any causes of action disclosed on Debtor's schedules or arising under chapter 5 of the Bankruptcy Code or any other claims or defenses owned by the Debtor on the Effective Date, and the Debtor shall retain such claims as provided in the Plan, including any claims or defenses that may not have been defined in the Plan but are nonetheless owned by the Debtor on or before the Effective Date. After the Effective Date, the Debtor may, in accordance with the terms of the Plan, evaluate and determine whether to pursue any such retained claims.

17. Except as otherwise expressly provided in the Plan, all payments and other distributions to be made under the Plan shall be timely and proper if mailed by first class mail on or before the date of distribution provided for in the Plan to the address listed in the creditor's proof of claim filed in this case, or, if no proof of claim is filed, to the creditor's last known mailing address.

18. Pursuant to 11 U.S.C. § 1192, within thirty days of the filing of the Sub V Trustee's NDR or TFR, the Debtor shall file a motion for entry of the discharge order. In the motion for entry of discharge, the Debtor shall certify that (1) all payments required under the confirmed plan have been made, (2) all administrative expenses, including the approved fees and expenses of the Subchapter V Trustee have been paid in full, and (3) that the Debtor is entitled to entry of discharge.

19. The Debtor and all holders of Claims and Interests are bound by the Plan within the meaning of 11 U.S.C. § 1141.

20. The Court shall retain jurisdiction of this case for all purposes provided in 11 U.S.C. §§ 1193 and 1142, and Bankruptcy Rule 3020(d).

21. All property of the estate shall remain vested in the estate until the Debtor completes all the payments under the Plan and a discharge is entered herein. In addition, property of the estate shall include all property identified in 11 U.S.C. § 1186.

22. This Confirmation Order is a final order and effective and enforceable immediately upon entry and the period in which an appeal must be filed shall commence upon the entry hereof.

23. The following Nonmaterial Plan Modifications are hereby approved:

[insert any applicable nonmaterial plan modifications; note that if nonstandard provisions were already detailed in the Plan itself, they do not need to be repeated here]

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