**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE WESTERN DISTRICT OF MISSOURI**
**KANSAS CITY DIVISION**

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| In re: | Case No. 15-42231 |
| BLUE ST. JOE REFINING, LLC, et al., | (Lead Case) |
| Debtors.[1] | Chapter 11 |

# SECOND AMENDED DISCLOSURE STATEMENT IN SUPPORT OF THIRD AMENDED JOINT PLAN OF LIQUIDATION DATED AUGUST 11, 2016

Pursuant to 11 U.S.C. § 1125, this Second Amended Disclosure Statement in Support of Third Amended Joint Plan of Liquidation (as hereinafter amended, the "Disclosure Statement") is submitted by Blue Sun Energy, Inc. ("BSE"), Blue Sun Advanced Fuels, LLC ("BSAF"), Blue Sun Biodiesel, LLC ("BSB"), and Blue Sun St. Joe Refining, LLC ("BSSJ" and together with BSE, BSAF, and BSB, the "Debtors" or "Blue Sun"), and the Official Committee of Unsecured Creditors (the "Committee" and together with the Debtors, the "Plan Proponents"). The purpose of this Disclosure Statement is to provide adequate information to the holders of claims or interests in this matter so that they may make an informed judgment in exercising their right to vote for acceptance or rejection of the Third Amended Joint Plan of Liquidation, dated August 11, 2016 (as hereinafter amended, the "Plan"), a copy of which is attached as Exhibit "A".

**THE PLAN PROPONENTS RECOMMEND THAT YOU VOTE TO ACCEPT**

[1] Blue Sun St. Joe Refining, LLC, debtor and debtor-in-possession in Case No. 15-42231, Blue Sun Energy, Inc., debtor and debtor-in-possession in Case No. 15-42232, Blue Sun Advanced Fuels, LLC, debtor and debtor-in-possession in Case No. 15-42234, Blue Sun Biodiesel, LLC, debtor and debtor-in-possession in Case No. 15-42233.

**THE PLAN IN ORDER TO MAXIMIZE THE RECOVERY OF YOUR CLAIM; HOWEVER, CREDITORS ALSO HAVE THE OPTION OF VOTING AGAINST THE PLAN.**

Capitalized terms used in this Disclosure Statement will correspond to terms defined in the Plan and the Bankruptcy Code. Terms used in this Disclosure Statement that are also defined in the Plan are defined solely for convenience; and the Plan Proponents do not intend to change the definitions of those terms from the Plan. If there is any inconsistency between the Plan and this Disclosure Statement, the Plan is, and will be, controlling.

No later than January 15, 2016, the Debtors ceased all business operations and terminated their remaining employees. Therefore, the Plan is a liquidating plan. In other words, payments under the Plan will be made by liquidating the Debtors' remaining assets, and prosecuting the Debtors' causes of action, and placing the proceeds in separate funds from which creditors will be paid pro rata to the extent of available proceeds, after the payment of all liquidation expenses, in accordance with the priorities provided under the Bankruptcy Code. The estates of the Debtors are not being substantively consolidated under the Plan. Claims against each Debtor shall be paid only to the extent of available proceeds from the liquidation of the assets of such Debtor.

# I.
# OVERVIEW OF CHAPTER 11

## A. Information Regarding the Plan and Disclosure Statement.

The objective of a Chapter 11 case is the confirmation (i.e., approval by the Bankruptcy Court) of a plan of reorganization or liquidation. A Chapter 11 plan describes in detail (and in language appropriate for a legal contract) the means for satisfying the claims against and equity interests in a debtor, or in this case, the Debtors. After a plan has been filed, the holders of claims and equity interests that are impaired by the plan are permitted to vote to accept or reject the plan. Before a plan proponent can solicit acceptances of its plan, however, Section 1125 of the Bankruptcy Code requires the plan proponent to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable those parties entitled to vote on the plan to make an informed judgment about the plan and about whether they should accept or reject the plan.

The purpose of this Disclosure Statement is to provide sufficient information about the Debtors and the Plan to enable you to make an informed decision in exercising your right to accept or reject the Plan. Therefore, this Disclosure Statement provides relevant information about the Debtors, their property and financial condition, and the Plan.

This Disclosure Statement will be used to solicit acceptances of the Plan only after the Bankruptcy Court has entered an order approving this Disclosure Statement. The Bankruptcy Court's approval of this Disclosure Statement means only that the

Bankruptcy Court has found that this Disclosure Statement contains sufficient information for the Plan Proponents to transmit the Plan and Disclosure Statement to Creditors and to solicit acceptances of the Plan.

After the Bankruptcy Court has granted approval of this Disclosure Statement and there has been voting on the Plan, the Bankruptcy Court will conduct a Confirmation Hearing concerning whether the Plan should be approved. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code. The Bankruptcy Court also will receive and consider a ballot report prepared by the Plan Proponents that will present a tally of the votes accepting or rejecting the Plan cast by those entitled to vote. Accordingly, all votes are important because they can determine whether the Plan will be confirmed. Once confirmed, the Plan is essentially a new contract between the Debtors, their Creditors, and Equity Security Interest holders and is binding on all Creditors, Equity Security Interest holders and other parties-in-interest in the Debtors' Cases regardless of whether any particular Creditor or Equity Security Interest holder voted to accept the Plan.

**THIS DISCLOSURE STATEMENT IS NOT THE PLAN. FOR THE CONVENIENCE OF CREDITORS AND HOLDERS OF EQUITY SECURITY INTERESTS, THE PLAN IS SUMMARIZED IN THIS DISCLOSURE STATEMENT. ALL SUMMARIES OF THE PLAN ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN ITSELF. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN WILL CONTROL.**

**B. Representations.**

This Disclosure Statement has not been subjected to a certified audit; however, it has been prepared in part from information compiled by the Debtors from records maintained in the ordinary course of business or from information received by the Debtors from third parties. Every effort has been made to be as accurate as possible in the preparation of this Disclosure Statement. Nevertheless, the inclusion of financial information in this Disclosure Statement and exhibits is subject to adjustment, and the Plan Proponents reserve all rights to object to or challenge any Claims that are filed or asserted in the Case.

This is a solicitation by the Plan Proponents only and is not a solicitation by the attorneys, agents, financial advisors, and accountants retained by the Plan Proponents. No statement or information concerning the Debtors or their assets or securities is authorized, other than as set forth in the Disclosure Statement. **STATEMENTS MADE IN THIS DISCLOSURE STATEMENT REGARDING THE FINANCIAL PERFORMANCE OF THE DEBTORS AND PREPETITION EVENTS ARE REPRESENTATIONS OF THE DEBTORS ONLY.**

## II.
## BACKGROUND AND EVENTS LEADING TO BANKRUPTCY FILING

**A. The Companies.**

Originally founded in 2001 as SunFuels, Inc., BSE claims to have introduced biodiesel into the existing petroleum fuels pool by focusing on an integrated approach to addressing market needs. Their approach included reducing the cost of feedstocks

through the development of alternative feedstocks, operating biodiesel production facilities that yield the highest quality fuel in the world, researching and developing industry-leading biodiesel-specific fuel additives, and efficiently distributing biodiesel with control and oversight throughout the downstream value chain.

In 2004, BSE developed the proprietary Fusion™ brand of biodiesel fuel. This fuel took high-quality B100 fuel and blended it to customer specifications and backed the product with Blue Sun's industry-leading QA/QC policies, proprietary Blue Sun Fusion™ additive packages, and blending technology to ensure high-quality.

Early in 2012, BSB established a downstream terminal presence for biodiesel blending in Knoxville, TN. At BSB's terminal operation in Knoxville, Tennessee wholesale customers could load-out any blend, from B1 to B100, automatically ratio blended at the rack. The facility was located at the Cummins Terminal in Knoxville, TN.

In 2012, BSSJ began operating the St. Joe plant to produce high-quality biodiesel for wholesale distribution. The St. Joe plant was potentially one of the most efficient biodiesel plants in the U.S. and produced the highest quality B100 biodiesel, exceeding ASTM specifications. Prepetition, the Debtors implemented a new biodiesel refining technology in the St. Joe plant that created very high quality biodiesel at potentially significantly lower cost than current biodiesel refining technologies. If the upgrades to the plant would have been completed, the Debtors believe it would have been one of the most advanced biodiesel facility in the world.

As part of its long-term strategic plans, the Debtors were continuously investigating opportunities in the future of alternative renewable liquid fuels. The

Debtors were very involved in large algae R&D projects, agriculture and biofuel feedstock development, biodiesel fuel technologies to increase cold flow and other biodiesel performance factors, and more.

As of the Petition Date, BSAF owned and operated a 1.5 million gallon per year demonstration plant designed and built for the purposes of producing 100% compatible petroleum equivalent renewable diesel and jet fuel for testing and certification for use in military and commercial applications.

**B. Ownership Structure and Management.**

BSE is a privately owned Colorado corporation. Shareholders owning 5% or more of the stock of BSE are Juniper Resources, LLC (33.98%), Leigh Freeman (5.37%), Sean Lafferty (5.16%), and Dr. Michael Gorton, M.D. (7.33%). BSE primarily is a holding company, the primary asset of which is stock of the related operating subsidiaries.

BSB is a Colorado limited liability company owned 99% by BSE. The remaining one percent interest is owned by Blue Sun Producers, Inc. and Progressive Producers Non-stock Cooperative. Prepetition, BSB sold and distributed biodiesel on a wholesale basis from the Cummins Terminal in Knoxville, TN under exclusive supply agreement terms with Cummins Terminals, Inc.

BSSJ is a Missouri limited liability company 100% owned by BSB. As of the Petition Date, BSSJ operated the main biodiesel plant located in St. Joseph, Missouri.

BSAF is a Colorado limited liability company owned 80% by BSE. The remaining 20% is owned by Gorton Research Enterprises, LLC (10%) and Juniper Resources, LLC (10%). BSAF owned and operated the assets related to a 1.5 million

gallon per year demonstration plant for the production of renewable diesel and jet fuel located in St. Joseph Missouri.

**C. Terra Bioenergy, LLC and Its Lenders.**

As of the Petition Date, Terra Bioenergy, LLC ("Terra") owned the real estate comprising the St. Joseph, Missouri biodiesel production facility (the "St. Joe Plant") located at 5703 Stockyards Expressway, St. Joseph MO. Terra was formed in 2006, under the name Terra Energy, LLC by a group of Missouri farmers to build and operate the St. Joe Plant. Terra amended its Articles of Organization on May 15, 2006 to change the name of the company to "Terra Bioenergy, LLC."

Nodaway Valley Bank ("Nodaway"), and FCS Financial, FLCA ("FCS" and together with Nodaway, the "Lenders") financed Terra's construction of the St. Joe Plant. In the aggregate, Terra obtained approximately $15 million of secured financing from the Lenders in an attempt to construct the St. Joe Plant. All amounts due to the Lenders by Terra are secured by, among other things, a first position deed of trust against the St. Joe Plant and an assignment of leases and rents.

Terra was never able to complete construction of the St. Joe Plant. And, in January 2009, Terra and the Debtors began having discussions about the possibility of the Debtors completing and then operating the St. Joe Plant. BSSJ, as tenant, and Terra, as landlord, eventually signed a *Triple Net Commercial Lease*, dated September 27, 2011 (the "Original Lease") under which the Debtors agreed to complete, commission, and then operate the St. Joe Plant. At the time the Original Lease was executed, the parties estimated that completion of the St. Joe Plant would require a $3,750,000 investment by

BSE for the purchase and installation of equipment and processes to finish the St. Joe Plant. However, by the end of 2012, the parties had determined that the actual additional investment by the Debtors to make the St. Joe Plant operational would be closer to $13,750,000. The parties amended the Original Lease pursuant to the *First Amendment to Triple Net Commercial Lease*, dated December 19, 2012 (the "First Amendment" and together with the Original Lease, the "Lease"), executed by BSSJ and Terra.

In connection with the Lease, BSSJ, Terra, and the Lenders executed a *Subordination, Nondisturbance and Attornment Agreement*, dated September 27, 2011 (the "Original SNDA") and a *First Amendment to Subordination, Nondisturbance and Attornment Agreement*, dated December 19, 2012 (the "Amended SNDA").

There are two components of rent payable under the Lease, Base Rent of $110,000 per month, and Additional Rent equal to 50% of Net Profits each quarter. However, the lease provides that no Additional Rent will be due and owing to Terra:

> "if the cumulative Net Profit measured from the Commencement Date to the end of such calendar quarter does not exceed the lesser of the Tenant Investment (as defined below) or Thirteen Million Seven Hundred Fifty Thousand Dollars ($13,750,000). For the purposes of clarity, this means that the first Thirteen Million Seven Hundred Fifty Thousand Dollars of Net Profits shall be paid entirely to Tenant and thereafter the portion of Net Profits, if any, shall be payable to Landlord as provided in this Lease as Additional Rent."

However, pursuant to ¶ 17(i) of the Amended SNDA, in the event BSSJ elected to renew the Lease, the monthly rent payment to Terra (which BSSJ was required to pay directly to the Lenders) was required to be an amount not less than the "Amortization Amount" of Terra's mortgage debt to the Lenders. In September 2014, BSSJ elected to

renew the Terra Lease for an additional year. Thereafter, BSSJ was required to make monthly payments of $165,000 to the Lenders. From and after the execution of the Original Lease, in reliance on Terra's representations regarding the 30 MMgpy nameplate capacity of the St. Joe Plant, the Debtors spent $13,325,634.78 for "Tenant Improvements" under the Lease in an effort to complete the St. Joe Plant. BSSJ continued to make the monthly payments to the Lenders under the Lease and the Amended SNDA until July, 2015.

**D. Novozymes North America, Inc.**

When Blue Sun agreed to complete and operate the St. Joe Plant, management carefully evaluated competing biodiesel production technologies before settling on an innovative enzyme transesterification process developed by Novozymes North America, Inc. ("Novozymes"). At the time, the Novozymes was successful in a laboratory setting in refining biodiesel from higher free fatty acid (FFA) feedstock sources (available at a lower cost) that could not be used effectively in traditional biodiesel production. However, the process was unproven on an industrial scale.

Blue Sun signed a Supply Agreement, dated December 15, 2011 (amended January 1, 2014), with Novozymes to purchase enzymes for use in its biodiesel production, and began what turned out to be a very difficult and arduous four-year project, at a cost of over six million dollars, to perfect this technology at industrial scale for use of enzymes in biodiesel production.

By 2015, the Blue Sun technical team finally installed and perfected the Blue Sun MAX Process™, a patent pending process technology that enables the Novozymes'

lipase enzyme to refine biodiesel from any lipid feedstock available, including up to 100% free fatty acid material, and enables biodiesel production with the Novozymes enzyme. This breakthrough enabled Blue Sun to be the first biodiesel refiner in the world to successfully demonstrate Novozymes' enzymatic process at large industrial scale.

**E. Tenaska Commodities, LLC.**

Tenaska Commodities, LLC is a large domestic multi-commodity marketing and trading company that provides risk management, logistical and supply chain management services to the energy and agriculture industries. Tenaska Commodities transacts in 45 different energy and agriculture commodities, including in growing markets for advanced biofuels, renewable diesel and cellulosic ethanol. Until July 29, 2015, Tenaska and BSSJ were parties to an Amended and Restated Feedstocks Supply and Biodiesel Sale Agreement, dated as of February 19, 2015. Tenaska terminated the agreement on July 29, 2015 when it learned of the Debtors' eminent chapter 11 filings.

Under the terms of the Tenaska agreement, Tenaska augmented Blue Sun's feedstock purchasing and B100 sales function by providing its network of feedstock suppliers and B100 buyers to Blue Sun's trading team, and conducted inbound purchasing and outbound sales negotiations, respectively. Tenaska also handled all logistics (shipping, hedging and scheduling) related to delivering inbound feedstock supplies and outbound biodiesel shipments. As discussed in more detail below, in light of the termination of the Tenaska Agreement and continually worsening economic and industry conditions, postpetition the Debtors elected to run the St. Joe Plant on only a very limited basis postpetition to convert its remaining feedstock inventories into

biodiesel, and then closed the facility pending some improvement in the biodiesel industry.

**F. ARA and Chevron Lummas Global.**

Applied Research Associates, Inc. ("ARA") and Chevron Lummas Global LLC ("CLG") developed a Biofuels ISOCONVERSION Process (the "BIC Process") for converting fatty acid bio-derived plant oil and animal feedstocks (lipids) into fungible fuel products that can be substituted for petroleum fuels including jet kerosene, diesel and naphtha. BSAF and ARA entered into a Cooperation and Collaboration Agreement, dated as of January 16, 2013, (as amended, the "ARA Agreement") for the purpose of demonstrating the commercial viability of the BIC Process through the design, construction, and operation of a Catalytic Hydrothermolysis (CH) demonstration system with a rated capacity of up to 100 bbl/day to produce jet and diesel fuels for certification and demonstration testing and to document and demonstrate to ASTM, the Department of Defense, and the aviation industry that the BIC Process can be scaled up and produce specification-quality jet and diesel fuels that are 100% equivalent with their petroleum counterparts.

In accordance with the terms of the ARA Agreement, Blue Sun constructed and operated a demonstration renewable biodiesel plant (the "CH Plant"), adjacent to the main St. Joe plant, capable of producing 1.5 million gallons per year of renewable diesel and jet fuel utilizing the BIC Process; and BSB and ARA/CLG entered into a *Technology License Agreement*, dated January 7, 2013 (as amended, the "CLG License") under which

BSB was granted use rights and preferential royalty concessions relating to the BIC Process.

Prepetition the Debtors produced and supplied approximately 175,000 gallons of intermediate crude fuel. Postpetition, the Debtors completed production of an additional approximately 220,000 gallons of renewable diesel and jet fuel for testing by the U.S. Navy pursuant to the terms of the ARA Agreement. The completion of the production run post-petition required the Debtors to retrofit and upgrade the CH Plant before resuming production in beginning mid-September 2015. In October 2015 the Debtors license agreement with CLG was amended to include certain preferentially beneficial terms to Debtors over and above those that will be made available to any other licensee. The Debtors completed production under the ARA Agreement in December 2015.

## G. Financial Performance and Events Leading to Chapter 11 Filing.

### 1. The St. Joe Plant Capacity Issue.

Despite being known and rated as a 30 million gallon per year (MMGY) facility, the St. Joe Plant never produced more than 14.3 MMGY. Until early 2015, the Debtors always believed that the constraining/limiting factor was the unique Novozymes enzymatic refining process. However, in early 2015, after the Debtors closed the refinery and installed upgrades that cured bottlenecks related to the enzymatic process, they learned that the refinery had other inherent design, software, and equipment constraints that limited its maximum volume to approximately 15 MMGY.

### 2. Financial Performance and Industry Issues.

As of December 31, 2014, on a consolidated basis, the Debtors reported total assets of $29,922,554, including: (i) current assets of $12,999,252 consisting primarily of cash, accounts receivable (including Biodiesel Tax Credits due), inventory, and prepaid expenses; and (ii) property, plant & equipment of $15,565,390, consisting of Tenant Improvements related St. Joe Plant and the cost of the CH demonstration plant. As of December 31, 2014, on a consolidated basis, the Debtors reported total liabilities of $33,604,498, including: (i) accounts payable totaling $5,065,562; (ii) accrued payroll and employee benefits totaling $217,284; (iii) current notes payable and accrued interest totaling $22,468,318; and (iv) long term notes and accrued interest totaling $5,539,945. On a consolidated basis, the Debtors posted a Net Loss of $4,865,498 for 2014.

The Debtors' financial performance continued to deteriorate in 2015. For the six months ending June 30, 2015, on a consolidated basis, the Debtors reported total assets of $25,928,362, including: (i) current assets of $7,262,122 consisting primarily of cash, accounts receivable (including Biodiesel Tax Credits due), inventory, and prepaid expenses; and (ii) property, plant & equipment of $17,308,328, consisting of Tenant Improvements relating to the St. Joe Plant and the cost of the CH demonstration plant. For the six months ending June 30, 2015, on a consolidated basis, the Debtors reported total liabilities of $36,379,674, including: (i) accounts payable totaling $6,215,183; (ii) accrued payroll and employee benefits totaling $211,154; (iii) current notes payable and accrued interest totaling $24,338,424; and (iv) long term notes and accrued interest totaling $5,227,849. For the six months ending June 30, 2015, on a consolidated basis, the Debtors posted a Net Loss of $5,774,566.

The operating results experienced by the Debtors were not unique to Blue Sun; they were consistent with the biodiesel industry as a whole. Biodiesel competes directly with petroleum based diesel fuel, and therefore biodiesel prices generally track the Heating Oil Index, the index used by the biodiesel industry to reflect diesel fuel prices. From June 2014 to July 2015, the Heating Oil Index dropped from over $3.00 per gallon to $1.66 per gallon. In addition, at the end of 2014, the Biodiesel Tax Credit or "federal blender credit," a $1.00 per gallon biodiesel tax credit originally passed by the U.S. Congress as part of the 2008 Farm Bill, expired. As a result, biodiesel prices effectively declined nearly $2.34 per gallon from July 2014 to July 2015 while the related feedstock and conversion costs declined only modestly. As a result, all biodiesel producers throughout the domestic industry that continued to operate experienced substantial operating losses.

Industry experts believe that only the financially strongest and lowest cost producers continued to operate during 2015 with the hope that the Biodiesel Tax Credit would be retroactively extended, effective January 1, 2015, as part of the "Tax Extenders" bill for 2015, which would enable them to recoup a portion of their operating losses, or perhaps break even. Renewable Fuel Standards (RFS) guidelines announced on June 1, 2015 proposed sales requirements for the industry of 1.70 billion gallons, an increase from 1.63 million gallons sold in 2014. However, 30% of this volume was satisfied by foreign sources, further damaging domestic producers. As a result, Tenaska estimated that fully 1.0 billion gallons of U.S. biodiesel capacity (approx. 50% of total effective capacity) was closed due to the severe economic conditions.

## H. Efforts to Avoid Chapter 11 Filing.

1. Funding and Potential Merger.

In the 18 months prior to the bankruptcy filing, the Debtors aggressively explored options for obtaining new capital and/or a financial partner to help the business survive until: (i) the St. Joe Plant could be properly updated and expanded to achieve the 30 MMGY capacity Terra represented that it was designed and constructed to achieve, and (ii) industry economic conditions improved to the point where the business could reach at a minimum breakeven performance.

In April 2015, Terra and BSE signed a letter of intent with the John and Joann Horton Family Limited Partnership (the "Horton FLP") outlining a merger and recapitalization plan for the business. John Horton, the General Partner of Horton FLP, formerly was a senior financial executive with GE Gas Turbines, GE Military Aircraft Engines, and Honeywell Aircraft Engines. Mr. Horton claims over 15 years' experience in private equity and venture capital including roles as (a) CFO for a private equity funded company, Omega Cabinetry, (b) Managing Director of a New York based private equity firm, Butler Capital, with over $2.0 billion of capital; (c) Founding Operating Partner of a private equity firm, Intervale Capital, focused on energy services with over $1.28 billion of committed capital; and (d) Outside Director for numerous portfolio companies of sophisticated private equity firms, including First Reserve, Clayton Dubilier & Rice, and JPMorgan Chase.

In broad strokes, Horton FLP agreed, subject to due diligence and other contingencies, to fund up to $5.0 million dollars to a merged and recapitalized Newco

that would acquire all of the assets of Terra and the Debtors, and would assume certain liabilities, including the Nodaway/Farm Credit Services mortgage debt, as restructured. The parties had hoped to accomplish the merger and recapitalization of the business through an out-of-court restructuring, and fervently attempted to do so. Pursuant thereto, from April 30, 2015 – the Petition Date, Horton FLP loaned $3.0 million in working capital to the Debtors to keep the companies afloat. However, in the months prior to the filing, as industry conditions continued to worsen and operational constraint issues with the St. Joe Plant continued to emerge, it eventually became clear that the Debtors could not survive absent a chapter 11 filing.

2. Operational Changes and Chapter 11 Operating Plan.

From an operational standpoint, the Debtors implemented the following cost-savings measures prior to the chapter 11 filings: (a) the St. Joe Plant was transitioned from a 7 to 5 day operating schedule, (b) employee and consultant headcount was reduced from 84 to 51 employees, and (c) the BSE Denver corporate office was closed.

Postpetition the Debtors operated the St. Joe Plant on a reduced schedule to complete its wind-down after the termination of the Tenaska agreement by (a) finishing all work in process and converting all unsoiled feedstock inventories into biodiesel (approx. 650,000 gallons), and (b) selling the remaining soured feedstock inventory in the cattle feed market (approx. 250,000 gallons). Once the Tenaska wind down was completed, the Debtors shuttered the St. Joe Plant and reduced its work force to the minimum level necessary to operate only the CH Plant and maintain and preserve the St. Joe Plant machinery and equipment. The Debtors then ran the CH Plant through the end

of December 2015 to complete their requirements under the U.S. Navy contract with ARA by, (a) continuing retrofitting in order to start production in the 3rd week of September, and (b) running continuously thereafter until they had delivered the required 220,000 gallons of crude intermediate to the fractionator/hydro-treater.

3. The Intended Restructuring.

At the time the cases were filed, the Debtors believed that they would be filing a joint plan of reorganization with Terra (which filed its own Chapter 11 case on August 5, 2015) that would accomplish a merger and recapitalization of the companies as originally agreed to by Terra in the merger LOI with Horton FLP. Under the contemplated plan:

- Horton FLP would provide up to $1,100,000 of debtor in possession financing secured by liens against all assets of the Debtors and a superpriority administrative claim.

- (a) Terra and each of the Blue Sun subsidiaries would be consolidated with BSE, (b) all of the existing equity interest in Terra, BSE, and the Blue Sun subsidiaries would be cancelled, and (c) "New Blue Sun" would be formed to acquire 100% of the equity in the Reorganized Debtor.

- The Reorganized Debtor would assume certain executory contracts and unexpired leases critical to the continued operation of the business, including the existing agreements with ARA and CLG.

- All administrative claims would be paid in full on the effective date of the Plan.

- All priority tax claims within the meaning of 11 U.S.C. § 507(a)(8) would be paid in full and in cash within five (5) years of the petition date through regular equal monthly installments of principal and interest at the statutory rate determined in accordance with 11 U.S.C. § 511.

- Any priority non-tax claims would be paid in full within five (5) years of the petition date through regular equal monthly installments of principal and interest.

- At the option of the plan proponents, the reorganized debtor would either (i) surrender the collateral securing the Lenders' mortgage, or (ii) pay the Lenders' secured claim in a principal amount to be determined pursuant to 11 U.S.C. § 506(c) based on the value of the existing collateral securing the loan, with interest at the rate of 4% per annum, through monthly principal and interest payments based on a 30 year amortization schedule beginning 30 days after the Effective Date of the Plan, and payment in full within five (5) years of the Effective Date of the Plan. The Lenders' deficiency claim would be treated in the same manner as all other unsecured claims against any of the debtors.

- All creditors holding allowed unsecured claims against the any of the debtors would have the option to receive (a) a lump sum cash payment, on the later of the date that the claim is allowed by final order of the Bankruptcy Court or six months after the Effective Date of the Plan, equal to 5% of the allowed amount of such creditor's claim; or (b) its pro rata share of a portion of the equity in New Blue Sun. Any creditor that failed to make an election would be deemed to have elected to receive the 5% cash payment.

- On the Effective Date, the stock of New Blue Sun would be allocated as follows: (a) 53% to Horton FLP, or its nominee, in exchange for (i) a credit bid by Horton FLP of its $3.0 million prepetition secured debt and its $1,100,000 of debtor-in-possession financing (if approved by the Court), and (ii) a subordinated note against New Blue Sun, (b) approximately 35.0% reserved for unsecured creditors, and (c) approximately 12.0% reserved for a management bonus pool.

As discussed below, the Debtors never filed the proposed plan because Terra reneged on its commitment to proceed with the intended joint plan shortly after the Petition Date.

## III.
## POSTPETITION PROCEEDINGS AND EVENTS.

### A. Summary of Key Events Related to the Bankruptcy Cases.

While more detailed information related to the events in the Bankruptcy Cases can be obtained by assessing the Bankruptcy Court's CM/ECF filing system and reviewing

the pleadings filed in the jointly administered cases, the following is a summary of certain key bankruptcy-related proceedings and events associated with this Bankruptcy Cases.

1. The Commencement of the Cases and First Day Motions.

On July 31, 2015, (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code") commencing the above captioned chapter 11 cases (together, the "Case") in this Court. The Debtors filed all required lists of twenty largest unsecured creditors, master mailing matrices, lists of equity security holders, schedules and statements of financial affairs, and other pleadings required to properly commence the cases.

To enable the Debtors to operate more effectively and efficiently, and to avoid the adverse effects of their chapter 11 filings, the Debtors requested various types of relief in "first day" motions filed with the Court, including:

- Joint administration of the Debtors' cases [Dkt. 4];
- Authorization to retain Gallagher & Kennedy, P.A. as general bankruptcy and restructuring counsel [Dkt. 27];
- Authorization to retain Lentz Clark Deines PA as local bankruptcy and conflicts counsel [Dkt. 29];
- Authorization to retain MCA Financial Group, Ltd., as financial advisor for the Debtors Dkt. [28];
- Authorization to pay certain prepetition employee wages and benefits [Dkt. 25]; and
- Authorization to obtain up to $1.1 million of debtor in possession financing from Horton FLP (the "DIP Motion") [Dkt. 24].

The Court approved the Debtors first day motions on an interim basis, and set a final hearing on the DIP financing motion. [Dkt. 43 – 45, 49 – 51, and 65 – 67]. An Official Committee of Unsecured Creditors (the "Committee") was appointed on August 12, 2015.

2. Final DIP Order.

On August 20, 2015, Terra and the Lenders each filed objections to the DIP Motion. [Dkt. 81 & 84]. Terra and the Lenders objected to the DIP Motion because the proposed budget did not include any allowance for the payment of post-petition rent under the Terra Lease. The Lenders also claimed that the Terra Lease automatically renewed for an additional one year term running through September 27, 2016. The Debtors had not included any provision in the Budget for the payment of Terra Lease because, prepetition, in the context of the proposed merger of Terra and the Debtors, Terra had agreed to forego any postpetition payments under the Terra Lease. Terra officially reneged on that commitment when it filed a *Notice of Lease Default* [Dkt. 82] in the Case on August 20, 2015 before filing its objection to the DIP Motion.

The Committee also raised certain concerns/objections to the DIP Motion, including (i) an objection to any liens or super-priority claims granted to the DIP Lender extending to avoidance actions or the proceeds thereof, (ii) the amount of the Carve-Out for professionals, and (iii) certain provisions related to challenges to the DIP Lender's prepetition secured claim.

On August 23, 2015, the Debtors and their affiliates filed the Debtors *Consolidated Reply To Objections To DIP Financing Motion Filed By Terra Bioenergy,*

*LLC And Its Lenders* [Dkt. 88]. The Debtors disputed the extent of the post-petition obligations due under the Lease, and also disputed the Lenders' allegation that the Lease term had automatically renewed for an additional one year term. The objections to the DIP Motion, and the Committee's concerns, were resolved consensually by the Debtors, the Committee, the US Trustee, Terra, and the Lenders as reflected in the *Final Order (I) Authorizing The Debtors to Obtain Postpetition Financing Pursuant to Section 364 of The Bankruptcy Code, and (II) Granting Liens and Superpriority Claims* [Dkt. 91] (the "Final DIP Order") entered on August 31, 2015. Among other things, the Final DIP Order provided for an increase of the DIP funding commitment from Horton FLP from $1.1 million to $1.76 million to provide sufficient liquidity for the Debtors to make postpetition payments under the Terra Lease. The Final DIP Order also provided a procedure for the Court to resolve the Lease Dispute, which required the Debtors to excess the disputed portion of the Lease payments and then initiate an adversary or contested matter within sixty (60) days.

3. The Motion to Reject SNDA and the Lease Dispute.

On September 8, 2015, the Debtors filed the *Motion to Reject Subordination, Attornment and Nondisturbance Agreement* [Dkt. 101] asking the Court to approve the Debtors rejection, pursuant to 11 U.S.C. § 365 of the Amended SNDA. The Debtors argued that the Amended SNDA was burdensome to the estate and therefore should be rejected. The Lenders filed an *Objection to Motion to Reject Subordination Attornment and Nondisturbance Agreement* [Dkt. 113], and the Debtors filed their reply on October

12, 2015 [Dkt. 118]. The Court denied the motion by order dated October 20, 2015. [Dkt. 129].

In accordance with the terms of the Final DIP Order, the Debtors filed a Complaint initiating Adversary No. 15-04144 on October 30, 2015 seeking the Court's adjudication of the Lease Dispute. The Complaint alleged claims for declaratory judgment, avoidance and recovery of fraudulent transfers, and disallowance of claims against Terra and the Lenders, and also alleged claims for fraud in the inducement and negligent misrepresentation against Terra, based on Terra's misrepresentations to the Debtors regarding the capacity of the St. Joe Plant and related issues.

4. Environmental Issues.

On July 7, 2015, prior to the chapter 11 filings, an unusual set of circumstances led to the release of approximately 800 gallons of biodiesel into a drainage ditch that runs along the southwest edge of the facility site during a severe rain event. The Debtors immediately and appropriately responded to the spill, by, among other things, containing the spill, vacuuming out all spilled material and impacted storm water, and then continuing to monitor the storm drainage ditches and adjacent areas to ensure that all spilled material had been removed. The Debtors also immediately reported the release (via telephone) to the National Response Center, the Department and the local St. Joseph agency representatives.

On or about September 21, 2015, the Debtors received a Notice of Violation from the State of Missouri Department of Natural Resources (the "MDNR") related to the July 7, 2015 biodiesel spill at the St. Joe Plant. The Debtors provided its response to the

Notice of Violation on October 15, 2015. The Debtors deny that any violations occurred. To date there has been no further response or action from MDNR.

On or about January 11, 2016, the Debtors received another Notice of Violation from MDNR alleging that BSSJ had (1) failed to determine if certain waste at the St. Joe Plant was hazardous, and (2) failed to obtain a permit when treating hazardous waste. After obtaining a short extension, Blue Sun provided its response to the Notice of Violation on February 16, 2016. The Debtors deny that any violations occurred. To date there has been no further response or action by MDNR.[2]

5. Committee Challenge Action.

On October 23, 2015, the Committee filed the *Motion Of The Official Committee Of Unsecured Creditors For The Entry Of An Order Pursuant To 11 U.S.C. §§ 1103(C) And 1109(B) Granting The Committee Leave, Standing And Authority To Prosecute And, If Appropriate, Settle An Action Challenging The Validity, Extent And Priority Of The Pre-Petition Liens Of The John And Joann Horton Family Limited Partnership* [Dkt. 131] asking the Court to grant the Committee derivative standing to prosecute, and if appropriate, settle certain avoidance actions against Horton FLP. By Order dated November 9, 2015, the Court granted the Committee standing motion over the objection of Horton FLP. [Dkt. 150]. The Committee filed a *Complaint for Avoidance and Recovery of Transfers Under 11 U.S.C. §§ 547, 548 and 550; and Disallowance of Claims under 11 U.S.C. § 502* on November 13, 2015 initiating Adversary No. 15-04148-

[2] Copies of the MDNR notices and the Debtors' response may be obtained by contacting counsel for the Debtors.

abf (the "Challenge Action") seeking the following relief against Horton FLP: (i) avoidance and recovery, as fraudulent transfers, of certain prepetition liens granted by BSB, BSAF, and BSSJ to Horton FLP to secure its prepetition debt, (ii) avoidance and recovery, as preferential transfers, of the liens granted to Horton FLP by BSB, BSAF, and BSSJ on July 17, 2015, (iii) avoidance and recovery of a $200,000 preferential payment made by BSE to Horton FLP on July 30, 2015, and (iv) disallowance of all claims asserted by Horton FLP, until and unless Horton FLP returns all avoidable transfers to the Debtors.

The Court initially stayed all proceedings on the Challenge Action until January 6, 2016, set a pretrial conference for February 3, 2016, and set a trial to commence on February 18, 2016. The Court later vacated the pretrial conference and trial date, and set a March 3, 2016 status conference. The Challenge Action was settled pursuant to the Settlement Agreement and Mutual Release, dated June 3, 2016, executed by the Debtors, the Committee, and Horton FLP (the "Horton FLP Settlement Agreement"). The Bankruptcy Court approved the Horton FLP Settlement Agreement pursuant to the Order Granting Joint Motion for Order Approving Settlement Agreement entered on August 9, 2016 at Administrative Docket No. 384 (the "Horton FLP Settlement Order").

6. The Conversion Motion.

On October 26, 2015, Terra and the Lenders filed a *Joint Motion to Convert Case from Chapter 11 to Chapter 7 or in the Alternative to Enforce Compliance with Section 365(d)(3)* [Dkt. 135]. Terra and the Lenders contended that the Debtors' chapter 11 cases should be converted to chapter 7 based on substantial and continuing diminution of the

estates, or alternatively, that the Debtors should be compelled to comply with their post-petition obligations under the Terra Lease. The Committee and Farnum Street Financial, Inc. filed joinders in support of the conversion motion. The Debtors disputed the allegations stated in the conversion motion and contended that a liquidating plan would offer creditors a far greater recovery than they would receive if the cases are converted to Chapter 7.

7. The Initial Sale Motion and Original Liquidating Plan.

During the Case, the Debtors implemented their planned operational changes. The Debtors ran the St. Joe Plant on a limited basis through August 2015 to run through their existing feedstock in an attempt to mitigate damages under the terminated Tenaska agreement. The Debtors also completed the necessary upgrades to the CH Plant and completed the remaining production requirements under the ARA contract in December 2015.

The Debtors determined that the most only viable restructuring option for the Case was a sale of the Debtors' remaining assets. During September and October 2015, MCA Financial Group, Ltd. ("MCA"), with input from the Debtors, researched and identified 76 potential interested parties (which included 20 private equity firms). MCA emailed to all 76 targets a Confidential Information Memorandum, prepared by MCA and the Debtors, which highlighted the overall Blue Sun operations and assets available for sale. Approximately 60 initial calls were made to companies on this list, and follow up calls and emails were made in a continued effort to gauge potential interest in the Debtors' assets. The only party that expressed interest in the Debtors' assets was Horton FLP. At

the time, the Debtors' remaining assets, excluding estate claims and causes of action, generally consisted of the following:

- The Blue Sun MAX Process™, a patent pending process technology that allows the Novozymes' lipase enzyme to make biodiesel from any lipid feedstock available, including up to 100% free fatty acid material, and enables biodiesel production with the Novozymes enzyme.
- The CH Plant and the Debtors' rights under the ARA Agreement and CLG License to use the Biofuels ISOCONVERSION Process.
- Accounts receivable, including potential Biodiesel Tax Credits related to BSSJ's 2015 biodiesel production, although at the time Congress had not yet approved the retroactive extension of the Biodiesel Tax Credit program for 2015 and beyond.
- Inventory and work in process related to the St. Joe Plant.
- Miscellaneous tangible personal property related to the St. Joe Plant and the CH Plant.
- Any remaining rights of the Debtors' rights under the Terra Lease.

Pursuant to the Asset Purchase Agreement, dated November 11 2015, by and among the Debtors and Horton FLP, and subject to Bankruptcy Court approval and higher and better bids, if any, the Debtors agreed to sell substantially all of their remaining assets, excluding estate claims and causes of action and the Debtors' rights under the Terra Lease, to Horton FLP for $4,760,000, subject to higher and better bids.[3]

On November 11, 2015, the Debtors filed the *Debtors' Motion For Orders: (1) Approving Sale Of Debtors' Assets Free And Clear Of Liens, Claims And Interests, (2) Approving Bid Procedures, Break-Up Fee And Expense Reimbursement, (3) Approving*

[3] Horton FLP was expected to satisfy its payment obligation by credit bidding amounts it is owed under the DIP Facility and its $3.0 million prepetition secured loan to the Debtors.

*The Stalking Horse Bidder's Right To Credit Bid, (4) Approving Procedures For The Assumption And Assignment Of Contracts, (5) Setting Date And Time For Hearing On Proposed Sale, And (6) Approving The Form And Manner Of Notices* [Dkt. 153] (the "Sale and Bid Procedures Motion"). Pursuant to the Sale and Bid Procedures Motion, and *inter alia*, sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors asked the Court to enter orders:

- Setting a hearing on shortened time on November 19, 2015, or as soon thereafter as the Court's calendar may permit (the "Bid Procedures Hearing") to consider the relief requested in paragraphs 2 through 6 below;
- Authorizing and approving the proposed procedures, dates and deadlines to govern the sale process, including a break-up fee and an expense reimbursement to the proposed stalking horse bidder, and to provide for the submission of any competing bids for substantially all the Debtors' assets, and the form and manner of notices;
- Approving the form and manner of notice of the proposed sale, the sale hearing, the Bid Procedures, and related matters;
- Approving the form and manner of notice to all counterparties (each a "Contract Counterparty") to the Debtors' executory contracts and unexpired leases;
- Approving the form of Asset Purchase Agreement, attached to the Sale and

Bid Procedures Motion as Exhibit 5 (the "Stalking Horse Agreement"), authorizing the Debtors to enter into and execute the Stalking Horse Agreement with the John and Joann Horton Family Limited Partnership (the "Stalking Horse Purchaser"), and approving and confirming the right of the proposed stalking horse bidder to credit bid;

- Setting (i) the hearing to approve the Asset Sale (the "Sale Hearing") on January [8], 2016, or as soon thereafter as the Court's calendar may permit, and (ii) the deadline to file and serve any objection to such relief;
- Approving the sale of substantially all of the Debtors' assets, including the assumption and assignment of executory contracts and unexpired leases, to the Successful Bidder free and clear of all liens, claims, interests, and encumbrances; and
- Approving related relief.

On November 12, 2015, the Debtors filed the *Joint Plan of Liquidation, dated November 12, 2016* [Dkt. 159] (the "Original Plan") and the *Disclosure Statement in Support of Joint Plan of Liquidation, dated November 12, 2016* [Dkt. 158]. Pursuant to the Original Plan, the Debtors proposed an orderly liquidation of the Debtors' remaining assets through a sale and marketing process and the appointment of a liquidating trustee to prosecute the Debtors' remaining estate causes of action, liquidate all remaining assets, and administer and distribute the proceeds to creditors in accordance with the priority scheme established under the Bankruptcy Code. The Debtors sought conditional approval of the disclosure statement. [Dkt. 160].

Objections to the Sale and Bid Procedures Motion were filed by the U.S. Trustee, the Lenders, and the Committee. [Dkt. 192, 194, and 196]. Objections to the disclosure statement were filed by the Lenders and the Committee. [Dkt. 195 and 197]. VCW Holding, LLC, Juniper Resources LLC, Gorton Research Enterprises, LLC filed joinders in support of the Sale and Bid Procedures Motion and the disclosure statement. [Dkt. 198 and 200].

8. Subsequent Proceedings and Settlements.

In an effort to resolve all or substantially all contested proceedings in the cases, the Debtors, the DIP Lender, Terra, the Lenders, and the Committee engaged in extensive settlement discussions regarding the proposed sale process, the conversion motion, and the Original Plan. The settlement negotiations resulted in a partial settlement of the contested issues in the case. Specifically, pursuant to a Settlement Agreement, dated December 14, 2015, by and between the Debtors, Terra, the Lenders, and the DIP Lenders, the parties to the Settlement Agreement resolved all issues related to: (i) the Lease Dispute, (ii) the surrender of the St. Joe Plant to Terra and all related issues, (iii) the Conversion Motion, (iv) the Original Plan and disclosure statement, and (v) the Sale and Bid Procedures Motion. A joint motion to approve the Settlement Agreement was filed on December 15, 2016. [Dkt. 239].

The Committee objected to the Settlement Agreement, and determined to continue to press its objections to the Sale and Bid Procedures Motion and the disclosure statement, and continued to pursue its joinder in the Conversion Motion. Following a December 16, 2015 hearing on all contested matters, the Committee's remaining

objections to the Sale and Bid Procedures Motion and the disclosure statement were resolved, the Committee withdrew its objections to the Settlement Agreement, and the Committee withdrew is request that the Court convert the case to Chapter 7. [Dkt. 242]. The Court entered orders approving the Settlement Agreement, granting the Sale and Bid Procedures Motion, and conditionally approving the disclosure statement in support of the Original Plan on December 24 and 29, 2015. [Dkt. 258, 259, and 261].

On December 21, 2015, the Debtors filed a *Motion For Stipulated Order Approving Settlement Agreement With Tenaska Commodities, LLC* asking the Court to approve a settlement of all remaining disputes between the Debtors and Tenaska Commodities, LLC. [Dkt. 250]. The Court approved the agreement by order dated December 22, 2016. [Dkt. 251]. On January 13, 2016, the Debtors filed a *Joint Motion for Order Approving Settlement Agreement* [Dkt. 267] asking the Court to approve a settlement agreement by and between the Debtors, Terra, the Lenders, and Farnum Street Financial, Inc. The Court approved the settlement agreement by order dated January 14, 2016. [Dkt. 268].

The Court approved the following deadlines in relation to the marketing and sale process:

- **Two (2) Business Days after Entry of Bid Procedures Order:** Debtors to serve Cure and Possible Assumption and Assignment Notices and Sale and Bid Procedures Notice
- **January 8, 2016 at 4:00 p.m.:** Cure or Assignment Objection Deadline
- **January 22, 2016 at 4:00 p.m.:** Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- **February 5, 2016 at 4:00 p.m.:** Bid Submission Deadline

- **February 11, 2016 at 10:00 a.m.:** Date of Auction
- **February 12, 2016 at 9:30 a.m.:** Date of Sale Hearing

In addition, the Debtors and the Committee agreed that they would cooperate to jointly market the Debtors' assets in an attempt to generate a recovery for the estates over and above the DIP Lender's stalking horse bid. On January 15, 2016, the Debtors filed the *First Amended Joint Plan of Liquidation, dated January 15, 2016* [Dkt. 280] (the "Amended Plan") and the *Notice of Filing and Opportunity to Object and/or Change Vote Re: Amended Joint Plan of Liquidation, dated January 15, 2016* [Dkt. 281]. The amended plan was a collaborative effort between the Debtors and the Committee and was filed to address objections to the Original Plan raised by the U.S. Trustee and the Committee. The Debtors believed that the amended plan did not materially modify the rights of any creditor that previously voted to accept the Original Plan, but the notice filed with the amended plan gave creditors 21 days to either file an objection to the amended plan or change their prior vote.

9. The Juniper Action.

Despite the diligent efforts of the Debtors, the Committee and their respective professionals, the Debtors did not receive any material interest in or competing bids for the Debtors remaining assets prior to the February 5, 2016 bid deadline. In addition, new information was discovered by the Debtors and the Committee in late January, 2016 that indicated that a sale of the Debtors' remaining assets to Horton FLP was no longer in the best interests of the Debtors or their estates. On January 29, 2016, Juniper Resources,

LLC ("Juniper") filed a *Limited Objection to Debtors' First Amended Joint Plan of Liquidation, dated January 15, 2016 and Reservation of Rights* [Dkt. 293] in which Juniper claimed a first position perfected lien and security interest in all Federal Blender Tax Credits attributable to BSSJ's 2015 production and sale of biodiesel, all intellectual property owned by BSE, and all equipment owned by BSAF.[4] The Debtors' management had previously incorrectly stated that, although Juniper filed UCC-1 financing statements with respect to the assets of the Debtors described above, no security agreements were ever signed by the Debtors. That assertion proved to be incorrect. Juniper's filings also made clear that its security interest in BSSJ's Federal Blender Tax Credits was perfected during the one-year preference period applicable to insiders subjecting it to avoidance and recovery by the estates as preferential transfers under 11 U.S.C. § 547. And, the facts also indicate that BSSJ's and BSAF's grant of security interests to Juniper in their assets, to secure an antecedent debt owed by BSE, are avoidable as fraudulent conveyances.

The fact that Juniper holds avoidable first position liens and security interests in BSSJ's Federal Blender Tax Credits and BSAF's equipment significantly impacts the estates' interests in those assets vis-à-vis Horton FLP's prepetition secured claim and DIP Obligations. Section 4.1 of the DIP Credit Agreement provides as follows:

> The Borrowers (as debtors and as debtors in possession) hereby grant to DIP Lender a security interest in all presently existing and hereafter

[4] In late December 2015, the U.S. Congress passed, and the President signed into law as part of a tax extenders bill, an extension of the $1.00 per gallon federal blender tax credit retroactive to January 1, 2015. The Debtors believe that the Federal Blender Tax Credits owed to BSSJ for the production and sale of biodiesel fuel in 2015 totals approximately $3,271,469.40.

> acquired or arising Collateral, which is subject and junior to any and all validly existing and properly perfected prepetition liens and security interests in the Collateral, in order to secure prompt repayment of the Obligations and in order to secure prompt performance by the Borrowers of each and all of their covenants and Obligations under the Loan Documents and otherwise.

*See* DIP Credit Agreement, § 4.1 (emphasis added). Schedule 5.1 of the DIP Credit Agreement lists the prior "Permitted Liens," and includes Juniper's lien against BSSJ's Federal Blender Tax Credits evidenced by UCC-1 Financing Statement 1412184773113 filed with the Missouri Secretary of State on December 18, 2014, and Juniper's lien against BSAF's Equipment evidenced by UCC-1 Financing Statement No. 20142065326 filed on July 9, 2014 with the Colorado Secretary of State. Paragraph (3)a of the Final DIP Order defines the "DIP Facility Superpriority Claims" of Horton FLP as having:

> …priority over any and all administrative expenses, including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-consensual lien, levy or attachment, whether incurred in the Related Cases or any successor case, which allowed superpriority claims of the DIP Lender shall be payable from and have recourse to all prepetition and postpetition property of the Blue Sun Debtors, subject to Prior Permitted Liens and Carve-Out (as defined below) (the "DIP Facility Superpriority Claims"),

*See* Final DIP Order, page 2, ¶ (3)a.

Paragraph 4 of the Final DIP Order provides as follows:

> DIP Facility Liens. As security for the repayment of the Obligations, pursuant to sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, the DIP Lender is hereby granted (without the necessity of the execution by the Blue Sun Debtors or the filing or recordation of mortgages, security agreements, account control agreements, financing statements, or otherwise) the DIP Facility Liens. The DIP Facility Liens are valid, binding, enforceable and fully perfected as of the entry of the Interim

> Order, not subject to subordination, impairment or avoidance, for all purposes in the Chapter 11 Cases and any successor case. The DIP Facility Liens granted herein shall not prime or be senior in any respects to the Permitted Prior Liens. For purposes of this Order, Permitted Prior Liens shall mean all validly existing and properly perfected prepetition liens and security interests in the Collateral, but only to the extent that such liens are (x) valid, enforceable, non-avoidable liens and security interests that were perfected prior to the Petition Date, (y) not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non bankruptcy law. Notwithstanding the foregoing, for purposes of the DIP Facility and this Order, Permitted Prior Liens shall further include any lien preserved for the Debtors' bankruptcy estates under section 551 of the Bankruptcy Code.

*See* Final DIP Order, pages 11-12, ¶4 (emphasis added). And, Paragraph 8 of the Final DIP Order provides as follows:

> No Liens on Avoidance Actions. The DIP Facility Liens shall not include liens on any Avoidance Actions or the proceeds thereof. Such assets are specifically excluded from the DIP Facility Liens notwithstanding any language in the Interim Order or the DIP Facility Documents to the contrary. In addition, the Avoidance Actions and the proceeds thereof are specifically excluded from the allowed DIP Facility Superpriority Claims granted to the DIP Lender under the terms of the DIP Facility.

*See* Final DIP Order, page 15, ¶8.

In short, the Debtors and the Committee believed that the Debtors' would be entitled to avoid and preserve Juniper's perfected liens for the benefit of the estates, and that, in light of the applicable provisions of the Final DIP Order, the Debtors would be in first position with respect to the all of BSSJ's Federal Blender Tax Credits and all equipment owned by BSAF.

In light of the foregoing, on February 8, 2016, the Debtors filed notices withdrawing the Sale and Bid Procedures Motion, withdrawing the Original Plan, and withdrawing the Amended Plan. [Dkt. 298 – 300]. And, also on February 8, 2016, in

collaboration with the Committee, BSSJ and BSAF filed a *Complaint For Avoidance and Recovery of Transfers Under 11 U.S.C. § 547, 548 550, and 551; Disallowance Of Claims Under 11 U.S.C. § 502; and Declaratory Judgment Under 28 U.S.C. § 2201 And 2202* (the "Juniper Complaint") against Juniper and Horton FLP initiating Adversary No. 16-04018-abf [Dkt. 302] (the "Juniper Action") and seeking the following relief:

- The avoidance, recovery, and preservation, for the benefit of the BSSJ bankruptcy estate, of Juniper's first position lien against all BSSJ Federal Blender Tax Credits, as a preferential transfer pursuant to 11 U.S.C. §§ 547, 550, and 551;[5]

- The avoidance and recovery of a $1,000,000 preferential payment made by BSSJ to Juniper on January 22, 2015, pursuant to 11 U.S.C. §§ 547, 550, and 551;

- The avoidance, recovery, and preservation, for the benefit of the BSSJ bankruptcy estate, of Juniper's first position lien against all BSSJ Federal Blender Tax Credits, as a fraudulent conveyance pursuant to 11 U.S.C. §§ 548, 550, and 551;

- The avoidance, recovery, and preservation, for the benefit of the BSAF bankruptcy estate, of Juniper's first position lien against all BSAF equipment, as a fraudulent conveyance pursuant to 11 U.S.C. §§ 548, 550, and 551;

- Disallowance of all claims by Juniper against BSSJ and BSAF until such time as Juniper pays the amount equal to the aggregate of all of the transfers, plus interest thereon and costs, pursuant to 11 U.S.C. § 502(d);

- A declaratory judgment that the BSSJ bankruptcy estate is entitled to receive and retain for the benefit of the estate all 2015 BTC, and all proceeds thereof, free and clear of all liens claims and interests asserted by any person or entity that would resolve the controversy and clearly define the rights, claims and interests of BSSJ, Juniper, and Horton FLP in and to the 2015 BTC.

- A declaratory judgment that the BSAF bankruptcy estate is entitled to

[5] The Debtors believe that the Federal Blender Tax Credits owed to BSSJ for the production and sale of biodiesel fuel in 2015 totals approximately $3,271,469.40.

> receive and retain for the benefit of the estate all equipment owned by BSAF, and all proceeds thereof, free and clear of all liens claims and interests asserted by any person or entity that would resolve the controversy and clearly define the rights, claims and interests of BSAF, Juniper, and Horton FLP in and to the 2015 BTC.

In addition to the claims asserted against Juniper and Horton FLP, in February 2016, the Debtors made demand on Dr. Michael Gorton, a director of BSE, for the return of a preferential payment in the amount of $500,000 made by BSSJ to Dr. Gorton during the one year preference period applicable to insiders.

10. The Global Mediation.

On May 16, 2016, the Debtors, the Committee, Horton FLP, Juniper, and Dr. Michael Gorton attended a day long mediation in Kansas City, MO with the Honorable Barry S. Schermer, U.S. Bankruptcy Judge, Eastern District of Missouri, in an attempt to reach a global settlement of all claims and disputes between the Debtors' estates, and Horton FLP, Juniper, and Dr. Gorton. Despite diligent, good faith efforts by the parties, and a lot of hard work by Judge Schermer, the mediation did not produce a settlement. However, the mediation did focus the issues for the parties and closed the gap, at least with respect to the estates' disputes with Horton FLP. Following the mediation, the Debtors, the Committee, and Horton FLP agreed to resolve all claims and disputes between the Debtors' estates and Horton FLP as reflected in the Horton FLP Settlement Agreement, approved by the Bankruptcy Court pursuant to the Horton FLP Settlement Order. The Horton FLP Settlement Agreement did not resolve the estates' claims against

Juniper in the Juniper Action or the estates claims against Dr. Gorton. In summary, the terms of the Horton FLP Settlement Agreement are as follows:[6]

a. Horton FLP's deadline to object to the Disclosure Statement shall be extended. The Parties will ask the Court to hear the 9019 motion during the June 8, 2016 docket, prior to addressing the Disclosure Statement. If the Court considers and approves the Agreement during the June 8, 2016 hearing, the Debtors and the Committee may ask the Court to immediately approve the Disclosure Statement, along with any modification to the Plan and Disclosure Statement required to incorporate the terms of this Agreement. If the Court declines the Parties' request for expedited consideration of the 9019 motion, the Parties will ask the Court to continue the Disclosure Statement hearing to the date set by the Court to hear the 9019 motion. If the Court denies the 9019 motion, the Parties will ask the Court to continue the Disclosure Statement hearing for a least twenty-one (21) days to allow sufficient time for Horton FLP to file an objection to the Disclosure Statement, which objection must be filed no later than three (3) days prior to the date of the continued hearing on the Disclosure Statement.

b. In accordance with 11 U.S.C. § 510(a), Juniper's agreement to subordinate its prepetition liens and security interests in property of the Debtors, to all liens and security interests granted by the Debtors to Horton FLP, shall be deemed valid and enforceable.

c. Horton FLP shall have the following allowed claims in the Bankruptcy Cases against each of the Debtors, jointly and severally: (i) a postpetition DIP claim in the amount of $2,500,000, (ii) a prepetition secured claim in an amount equal to (x) the value of all BTCs collected by BSSJ in excess of $2,500,000, plus (y) $400,000, and (iii) an unsecured deficiency claim in the amount of $2,800,000.

d. The Horton FLP DIP Claim will be paid as follows:

(i) The BTCs will be collected by the Debtors in the ordinary course of business and deposited in the BSSJ debtor-in-possession account immediately upon receipt. Horton FLP shall be irrevocably entitled to receive the first $2,500,000 of BTCs collected by the Debtors, free and clear of all liens, claims, and interests of every kind and nature, which sums shall be disbursed to Horton FLP by the Debtors as soon as the funds have

[6] The summary of the Horton FLP Settlement Agreement contained herein is not intended to modify and does not modify the terms of the Horton FLP Settlement Agreement.

cleared and are available to be disbursed from the BSSJ debtor-in-possession account.

(ii) If the total amount of BTCs collected by the Debtors is less than $2,500,000 (a "BTC Shortfall"), then the amount of such BTC Shortfall shall be paid to Horton FLP by the Debtors' estates from the proceeds of Avoidance Actions as follows:

1. From each $1.00 of Avoidance Action recoveries collected by the Debtors' estates, $0.50 will be paid to Horton FLP and $0.50 will be retained by the estate of the Debtor for whose benefit the Avoidance Action was prosecuted until the full amount of the BTC Shortfall has been paid.

2. After Horton FLP has received $2,500,000 in accordance with Sections 2.5(a) and (b) of the Agreement, the Horton FLP DIP Claim shall be deemed paid in full, and Horton FLP shall not be entitled to receive any additional proceeds of BTCs or Avoidance Actions on account of such claim.

(iii) After the Horton FLP DIP Claim has been paid in full, BSSJ's bankruptcy estate shall be irrevocably entitled to receive and retain all remaining collected BTCs and the respective Debtors' estates shall be entitled to receive and retain all remaining Avoidance Action recoveries free and clear of all liens, claims, and interests of every kind and nature, including, but not limited to any liens, claims, or interests asserted by Horton FLP or Juniper, which funds shall be administered and paid in accordance with the Agreement, including Section 2.6 of the Agreement, the terms of the Plan or further order of the Bankruptcy Court, in the event that the Plan is not confirmed.

e. The Horton FLP Secured Claim shall be satisfied as follows:

(i) In consideration of the benefits to be received by Horton FLP under the Agreement, the total amount of all BTCs collected by BSSJ in excess of $2,500,000 shall be free of any claim by Horton FLP to, and shall be retained by, the BSSJ estate in accordance with Section 2.5(d) of the Agreement.

(ii) The Approval Order shall provide that all of the Debtors' remaining Equipment and Intellectual Property will be conveyed to Horton FLP, free and clear of all liens, claims and interest, pursuant to 11 U.S.C. §§ 363(f) and 365, in exchange for a credit bid in the amount of $400,000.

f. The Horton FLP Unsecured Claim will be paid pro rata along with all other allowed unsecured claims against the Debtors' estates, to the extent of available funds.

g. Except as expressly stated in Sections 2.5 and 2.6 of the Agreement, Horton FLP shall not have or assert any other claims of any kind or nature against the Debtors or their estates.

h. The Debtors and the Committee shall amend the Plan and Disclosure Statement to the extent necessary to incorporate, and disclose the terms of, the Agreement. Horton FLP shall execute and submit appropriate ballots on account of the Horton FLP DIP Claim, the Horton FLP Secured Claim, and the Horton FLP Unsecured Claim to accept the Plan, as modified consistent with the Agreement, and Horton FLP shall not object to either the Plan or the Disclosure Statement, as modified.

i. All claims asserted against Horton FLP in the Challenge Action and the Juniper Action shall be dismissed with prejudice, each party to bear its own attorneys' fees and costs, and the Juniper Action shall continue against all defendants in such action except for Horton FLP.

j. The Agreement includes general mutual releases of claims, with exception of the claims, benefits, and obligations of the parties under the Agreement.

11. Current Status of Debtors' Estates.

The Debtors are no longer conducting any business operations. The Debtors completed their remaining production requirements under the ARA contract in December 2015. By January 15, 2016, the Debtors surrendered the St. Joe Plant to Terra and terminated all remaining employees. Jerry Washburn, one of BSE's directors, the Debtors' CFO and the responsible person authorized to act on behalf of the Debtors in the bankruptcy cases has agreed to continue to serve in that role and assist in administering the cases and transitioning the Debtors' remaining assets to the Liquidating Trustee appointed under the Plan.

## IV.
## FINANCIAL INFORMATION

FINANCIAL INFORMATION REGARDING THE DEBTORS CAN BE FOUND IN THE BANKRUPTCY SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS FILED BY EACH OF THE DEBTORS, AND IN THE DEBTORS' MONTHLY OPERATING REPORTS FILED IN THE BANKRUPTCY CASES BY ACCESSING THE DOCKET IN THE BANKRUPTCY CASE ON PACER:

https://ecf.mowb.uscourts.gov/cgi-bin/DktRpt.pl?739513399453185-L_1_0-1

## V.
## SOURCES OF INFORMATION

The financial information contained in this Disclosure Statement is derived the books and records of the Debtors. The information contained in this Disclosure Statement represents the Debtors' best estimate in light of current market conditions and past experience. All the information provided is subject to change and represents the best information available at the time, the actual results may differ. The accounting and financial information provided by the Debtors is based on Generally Accepted Accounting Principles ("GAAP") and the calculations were prepared by the Debtors' accountants and professionals.

## VI.
## SUMMARY OF THE PLAN

The following provides a summary of the overall structure and classification of claims against or interests in the Debtors and is qualified in its entirety by reference to the Plan. The statements in this Disclosure Statement include summaries of the provisions

contained in the Plan. This summary does not purport to be a complete statement of all terms in the Plan, and reference is made to the Plan for the full and complete statement of such terms. The Plan controls the treatment of Claims against and Equity Security Interest in the Debtors. Where Claims are divided into subclasses in the Plan, each subclass will be considered to be a separate class for all confirmation purposes, including treatment and voting on the Plan.

**A. Classification and Treatment of Claims and Equity Security Interests.**

The Plan classifies Claims and Equity Security Interests in various Classes according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each Class of Claims or Equity Security Interests are impaired or unimpaired. The Plan provides the treatment each Class will receive under the Plan. In accordance with the requirements of the Bankruptcy Code, Allowed Administrative Expense Claims and Priority Tax Claims are not set forth in Classes and are not entitled to vote on the Plan. The Allowed Claims against the Debtors' Estates are divided into the following classes:

1. BSE.

a. Class 3.3.1 (Priority Non-Tax Claims). Class 3.3.1 consists of any Priority Non-Tax Claims against BSE.

b. Class 3.3.2 (Secured Claims). Class 3.3.2 consists of any Secured Claims against BSE. Each Secured Claim against BSE will be placed in a separate sub-class under Class 3.3.2 including the following:

(1) Class 3.3.2(a) (Horton FLP Secured Claim against BSE).

(2) Class 3.3.2(b) (Other Secured Claims against BSE).

c. Class 3.3.3 (Unsecured Claims). Class 3.3.3 consists of all Unsecured Claims against BSE.

d. Class 3.3.4 (Equity Security Interests). Class 3.3.4 consists of all Equity Security Interests in BSE.

2. BSSJ.

a. Class 3.4.1 (Priority Non-Tax Claims). Class 3.4.1 consists of any Priority Non-Tax Claims against BSSJ.

b. Class 3.4.2 (Secured Claims). Class 3.4.2 consists of any Secured Claims against BSSJ. Each Secured Claim against BSSJ will be placed in a separate sub-class under Class 3.4.2 including the following:

(1) Class 3.4.2(a) (Horton FLP Secured Claim against BSSJ).

(2) Class 3.4.2(b) (Other Secured Claims against BSSJ).

c. Class 3.4.3 (Unsecured Claims). Class 3.4.3 consists of all Unsecured Claims against BSSJ.

d. Class 3.4.4 (Equity Security Interests). Class 3.4.4 consists of all Equity Security Interests in BSSJ.

3. BSAF.

a. Class 3.5.1 (Priority Non-Tax Claims). Class 3.5.1 consists of any Priority Non-Tax Claims against BSAF.

b. Class 3.5.2 (Secured Claims). Class 3.5.2 consists of any Secured

Claims against BSAF. Each Secured Claim against BSAF will be placed in a separate sub-class under Class 3.5.2 including the following:

(1) Class 3.5.2(a) (Horton FLP Secured Claim against BSAF).

(2) Class 3.5.2(b) (Other Secured Claims against BSAF).

c. Class 3.5.3 (Unsecured Claims). Class 3.5.3 consists of all Unsecured Claims against BSAF.

d. Class 3.5.4 (Equity Security Interests). Class 3.5.4 consists of all Equity Security Interests in BSAF.

4. BSB.

a. Class 3.6.1 (Priority Non-Tax Claims). Class 3.6.1 consists of any Priority Non-Tax Claims against BSB.

b. Class 3.6.2 (Secured Claims). Class 3.6.2 consists of any Secured Claims against BSB. Each Secured Claim against BSB will be placed in a separate sub-class under Class 3.6.2 including the following:

(1) Class 3.6.2(a) (Horton FLP Secured Claim against BSB).

(2) Class 3.6.2(b) (Other Secured Claims against BSB).

c. Class 3.6.3 (Unsecured Claims). Class 3.6.3 consists of all Unsecured Claims against BSB.

d. Class 3.6.4 (Equity Security Interests). Class 3.6.4 consists of all Equity Security Interests in BSB.

5. All Debtors.

a. Class 4 (Intercompany Claims). Class 4 consists of all claims by and

Debtor against another Debtor.

b. Class 5 (Horton FLP DIP Claim). Class 5 consists of the Horton FLP DIP Claim.

**B. Summary of Treatment of Claims Not Impaired Under The Plan.**

1. Administrative Expense Claims. Administrative Expenses include Claims for costs or expenses of administering the Debtors' Case which are allowed under Section 503(b) of the Bankruptcy Code and fees payable to the Clerk of the Bankruptcy Court and the Office of the United States Trustee which were incurred during the Case. The Bankruptcy Code requires that all Allowed Administrative Expense Claims be paid in full on or before the Effective Date of the Plan, unless a particular creditor agrees to a different treatment. All fees payable pursuant to section 1930 of Title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date. All Allowed Administrative Expense Claims shall be paid in full on or before the Effective Date of the Plan to the extent that there is sufficient Cash on hand to pay such claims. In the event that there is not sufficient Cash on hand on the Effective Date to pay all Allowed Administrative Expense Claims in full (including but not limited to all Allowed Professional Fee Claims), the Liquidating Trustee shall pay each Allowed Administrative Expense Claim together with each Allowed Professional Fee Claim on a *pro rata* basis and the remaining amounts owing under an Allowed Administrative Expense Claim shall be paid on a *pro rata* basis from the Dividend Fund. Any holder of an Administrative Expense Claim that objects to this proposed treatment

must timely file an objection to the Plan. If a holder of an Administrative Expense Claim does not timely object to the Plan, such holder shall be deemed to have agreed to the treatment set forth herein. Requests for allowance and payment of Administrative Expenses must be filed and served no later than thirty (30) days after the Effective Date.

2. Professional Fee Claims. The Bankruptcy Court must approve all requests for the payment of professional compensation and expenses to the extent incurred on or before the Effective Date. Each Professional Person requesting compensation or reimbursement of expenses in the Proceedings pursuant to Sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code shall file an application for allowance of final compensation and reimbursement of expenses not later than thirty (30) days after the Effective Date. Nothing herein shall prohibit each Professional Person from requesting interim compensation during the course of these cases pending Confirmation of this Plan. No motion or application is required to fix fees payable to the Clerk's Office or the Office of the United States Trustee, as those fees are determined by statute. All Allowed Professional Fee Claims, to the extent that such Claims are allowed pursuant to entry of an order the Bankruptcy Court authorizing and allowing such claims pursuant to Sections 327, 330 and 331 of the Bankruptcy Code, shall be paid in full on or before the Effective Date of the Plan to the extent that there is sufficient Cash on hand to pay such claims. In the event that there is not sufficient Cash on hand on the Effective Date to pay all Allowed Professional Fee Claims in full, the Liquidating Trustee shall pay each Allowed Professional Fee Claim together with each Allowed Administrative Expense Claim on a *pro rata* basis and the remaining amounts owing under the Allowed Professional Fee

Claims shall be paid on a *pro rata* basis from the Dividend Fund. Any holder of a Professional Fee Claim that objects to this proposed treatment must timely file an objection to the Plan. If a holder of a Professional Fee Claim does not timely object to the Plan, such holder shall be deemed to have agreed to the treatment set forth herein. Notwithstanding the foregoing, any Professional Person may apply to the Bankruptcy Court in the manner prescribed by the Bankruptcy Code for interim allowance of fees, costs and disbursements at any time and from time to time before payment in full of such fees, costs and disbursements.

3. Objections. Notwithstanding any other provision of the Plan to the contrary, any objections by the Liquidating Trustee to motions or applications seeking the allowance and payment of Administrative Expense Claims or Professional Fee Claims must be filed and served within the normal time limits established by the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Procedure for the Western District of Missouri, or as otherwise ordered by the Bankruptcy Court.

4. Priority Tax Claims. Priority Tax Claims are certain pre-Petition Date unsecured income, employment and other taxes described by Section 507(a)(8) of the Bankruptcy Code. The Bankruptcy Code requires, and thus the Plan provides, that each holder of a Section 507(a)(8) Priority Tax Claim receives regular installment payments in cash of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date, in a manner not less favorable than non-priority, unsecured claims. To the extent Priority Tax Claims exist on the Confirmation Date, those holders of Priority Tax Claims will be (a) paid out

of the Dividend Fund created by the sale of the Debtor's Assets by the Liquidating Trust on the Effective Date, or (b) over a period not exceeding five (5) years after the Petition Date, in the sole and absolute discretion of the Liquidating Trustee. Except as expressly set forth in the Plan, neither the Debtors, the Liquidating Trust, nor their designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of Priority Tax Claims such that the holders of Allowed Priority Tax Claims shall have recourse only against the Dividend Fund and their Claims shall be paid solely out of the Dividend Fund.

**C. Summary of Treatment of Impaired Classes.**

1. Classes 3.3.1, 3.4.1, 3.5.1, and 3.6.1 (Priority Non-Tax Claims). Certain Priority non-tax claims that are referred to in Sections 507(a)(3), (4), (5), (6) and (7) of the Bankruptcy Code are entitled to priority treatment. Allowed Priority Non-Tax Claims will be paid by the applicable Liquidating Trust in full on the Effective Date of the Plan out of the applicable Dividend Fund in the event there are sufficient funds in the applicable Dividend Fund to pay such Allowed Priority Non-Tax Claims in full in the sole and absolute discretion of the Liquidating Trustee. To the extent there are not sufficient funds in the applicable Dividend Fund to pay Priority Non-Tax Claims in full on the Effective Date, the Liquidating Trust shall pay such Claims with interest at the rate of 2.0% per annum from the Effective Date to such date or dates as it is determined by the Liquidating Trustee that sufficient cash is available to make such payments; provided that the Liquidating Trustee, in its discretion, may make partial payments after the Effective Date to the holders of Priority Non-Tax Claims. Neither the Debtors, the

Liquidating Trust, the Liquidating Trustee, nor their respective designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of such Priority Non-Tax Claims such that the holders of Allowed Priority Non-Tax Claims shall have recourse against the Debtors and the Reorganized Debtors only from the Dividend Fund, and their Claims against the Debtors and Reorganized Debtors shall be paid solely out of the Dividend Fund. Claims in Classes 3.3.1, 3.4.1, 3.5.1, and 3.6.1 are impaired under the Plan, and holders of such Claims are entitled to vote to accept or reject the Plan.

2. Classes 3.3.2(a), 3.4.2(a), 3.5.2(a), and 3.6.2(a) (Horton FLP Secured Claim against Debtors). Holders of Allowed Secured Claims will retain their Liens in their collateral. The Horton FLP Secured Claim is an Allowed Claim and shall be treated and satisfied in accordance with Section 2.6(a) of the Horton FLP Settlement Agreement, approved by the Bankruptcy Court pursuant to the Horton FLP Settlement Order. Class 3.3.2(a), 3.4.2(a), 3.5.2(a), and 3.6.2(a) Claims are impaired under the Plan.

3. Classes 3.3.2(b), 3.4.2(b), 3.5.2(b), and 3.6.2(b) (Other Secured Claims against Debtors). Each Other Secured Claim against any Debtor will be placed in a separate sub-class under Classes 3.3.2(b), 3.4.2(b), 3.5.2(b), and 3.6.2(b), respectively. Holders of Allowed Other Secured Claims will retain their Liens in their collateral. The holders of Allowed Other Secured Claims will be satisfied through: (a) abandonment or transfer of all right, title and interest of the applicable Debtor and its Estate in the Assets in which a secured creditor has a Lien (as of the Petition Date and/or thereafter) to the secured creditor, or (b) before or after the Effective Date, the sale and/or other disposition

of the Asset in which the secured creditor has a Lien (as of the Petition Date and/or thereafter). Any Lien on a Sold Asset will attach to the proceeds of sale, which shall be transferred to and paid to the holder of the Allowed Other Secured Claim. The transfer of the proceeds of a Sold Asset will occur on the later of the Effective Date of the Plan or within five (5) Business Days of the sale of the Asset, in full or partial satisfaction of the Creditor's Allowed Other Secured Claim. Except as otherwise agreed, holders of Allowed Secured Other Claims will have the right to assert a deficiency Claim which, if it becomes an Allowed Claim, shall be treated as an Unsecured Claim in the applicable class of Unsecured Claims. Claims in Classes 3.3.2(b), 3.4.2(b), 3.5.2(b), and 3.6.2(b) are impaired under the Plan, and holders of such Claims are entitled to vote to accept or reject the Plan.

4. Classes 3.3.3, 3.4.3, 3.5.3, and 3.6.3 (Unsecured Claims). After payment in full to the holders of Allowed Administrative Expense Claims and Allowed Priority Claims pursuant to this Plan, and upon the Liquidating Trustee's determination that sufficient cash is available to make such payments, each holder of an Allowed Unsecured Claim in Classes 3.3.3, 3.4.3, 3.5.3, and 3.6.3 shall receive its Pro Rata share of the applicable Dividend Fund established for the particular class of Unsecured Claims. Neither the Debtors, the Liquidating Trust, the Liquidating Trustee, nor their respective designee(s), officers, directors, members, employees, attorneys or agents shall be individually liable or responsible for the payment of such Allowed Unsecured Claims such that the holders of Allowed Unsecured Claims shall have recourse against the Debtors and Reorganized Debtors only from the applicable Dividend Fund established

for the particular class of Unsecured Claims, and their Claims against the Debtor and Reorganized Debtor shall be paid solely out of such applicable Dividend Fund. Claims in Classes 3.3.3, 3.4.3, 3.5.3, and 3.6.3 are impaired under the Plan, and holders of such Claims shall be entitled to vote to accept or reject the Plan.

5. Classes 3.3.4, 3.4.4, 3.5.4, and 3.6.4 (Equity Security Interests). Holders of Equity Security Interest in the Debtors shall not retain an interest in the Debtors. No distribution will be made in respect of Equity Security Interests. All outstanding capital stock of the Debtors and all membership interests in the Debtors will be deemed redeemed and cancelled as of the Effective Date. Classes 3.3.4, 3.4.4, 3.5.4, and 3.6.4 will be deemed to have voted against confirmation of this Plan.

6. Class 4 (Intercompany Claims). Class 4 consists of all Unsecured Claims asserted by any Debtor against any other Debtor. All Class 4 Claims shall be deemed settled and compromised for no distribution on the Effective Date on account of the benefits the Debtors will realize under the terms of the Plan. Class 4 Intercompany Claims are impaired under the Plan, but will be deemed to have accepted the Plan.

7. Class 5 (Horton FLP DIP Claim). The Horton FLP DIP Claim is an Allowed Claim in the amount of $2,500,000 and shall be treated, paid and satisfied in accordance with Section 2.5 of the Horton FLP Settlement Agreement, approved by the Bankruptcy Court pursuant to the Horton FLP Settlement Order. Class 5 is impaired under the Plan.

**D. Treatment of Executory Contracts and Unexpired Leases.**

The Plan contemplates and provides for the rejection, pursuant to Section 365 of the Bankruptcy Code, of any and all Executory Contracts and Unexpired Leases of the Debtors which are in force on the Effective Date, except those Executory Contracts and Unexpired Leases which were specifically assumed pursuant to an order of the Bankruptcy Court. Notwithstanding any other provision in the Plan or prior notice of any kind from the clerk of the Bankruptcy Court, any and all Creditors or persons with Claims against a Debtor's Estate arising out of or in connection with or due to the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan shall have thirty (30) days from the Effective Date within which to file a proof of claim in the true amount of such Claims. If any such Creditors fail to file such proofs of claim within said thirty (30) day period, then such Creditors shall have no Claims as against the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee or their respective Representatives, which Claims arising out of or in connection with or due to such rejection of such Executory Contract or Unexpired Lease, shall be dismissed, released and null and void.

Any Claim that arises from the rejection of an Executory Contract or Unexpired Lease shall, to the extent such Claim becomes an Allowed Claim, be treated as an Unsecured Claim in the applicable class of Unsecured Claims. Any claim filed in accordance with the provisions of Section 9.1 of the Plan shall be treated as a Disputed Claim until the period of time has elapsed within which the Liquidating Trustee may file an objection to such Claim.

## VII.
## OVERVIEW OF ADDITIONAL PLAN PROVISIONS.

### A. Implementation of the Plan.

1. The Plan is to be implemented in a manner consistent with Section 1123 of the Bankruptcy Code.

2. Transfers to the Liquidating Trusts.

a. BSSJ. On the Effective Date, all Remaining Assets of BSSJ, including, but not limited to all of BSSJ's rights under the Tenaska Order, the Horton FLP Settlement Agreement, and the Horton FLP Settlement Order, shall be transferred to the BSSJ Liquidating Trust in accordance with the terms of the Plan.

b. BSAF. On the Effective Date, On the Effective Date, all Remaining Assets of BSAF, including, but not limited to all of BSAF's rights under the Tenaska Order, the Horton FLP Settlement Agreement, and the Horton FLP Settlement Order, shall be transferred to the BSAF Liquidating Trust in accordance with the terms of the Plan.

c. BSE. On the Effective Date, all Remaining Assets of BSE, including, but not limited to all of BSE's rights under the Tenaska Order, the Horton FLP Settlement Agreement, and the Horton FLP Settlement Order, shall be transferred to the BSE Liquidating Trust in accordance with the terms of the Plan.

d. BSB. On the Effective Date, all Remaining Assets of BSB, including, but not limited to all of BSB's rights under the Tenaska Order, the Horton FLP Settlement Agreement, and the Horton FLP Settlement Order, shall be

transferred to the BSB Liquidating Trust in accordance with the terms of the Plan.

3. Liquidating Trusts.[7]

a. The Plan will be consummated and distributions will be made by each of the Liquidating Trusts out of each Dividend Fund in accordance with the terms of the Plan and each of the Liquidating Trust Agreements.

b. Pursuant to Bankruptcy Code sections 1123(a)(5)(B), 1123(b)(3)(B) and 1141 of the Bankruptcy Code, the Confirmation Order shall approve each Liquidating Trust Agreement, the establishment of each Liquidating Trust and the appointment of the Liquidating Trustee, and authorize and direct the Debtors to take all actions necessary to consummate the terms of the Liquidating Trust Agreements and to establish the Liquidating Trusts, including the transfer of the Remaining Assets of each Debtor to the applicable Liquidating Trust. The Remaining Assets transferred to the applicable Liquidating Trust shall include, but are not limited to, the Avoidance Actions, the Juniper Action, and the Estate Claims. Each Liquidating Trust shall be deemed established, and the Liquidating Trustee shall be deemed appointed, as of the Effective Date. Each Liquidating Trust shall be created and administered solely to implement the Plan. The powers, responsibilities and compensation for the Liquidating Trustee shall be set forth herein and in the Liquidating Trust Agreements. From the Effective Date, the Liquidating Trustee shall be a representative of the Estates, pursuant to

[7] A copy of the proposed form of Liquidating Trust Agreement is attached hereto as Exhibit "B". The final version of the Liquidating Trust Agreement will submitted in accordance with Section 14.18 of the Plan within three (3) Business Days before the Confirmation Hearing.

Bankruptcy Code section 1123, appointed for the purposes of, among other things, pursuing the Estate Claims on behalf of the Debtors' Estates. In furtherance of that objective, the Liquidating Trustee shall have the rights of a trustee appointed under Bankruptcy Code section 1106 as it relates to the Remaining Assets. The Liquidating Trusts shall have the full power and authority, either in its name or the name of the applicable Debtor, to commence, if not already commenced, prosecute, settle and abandon any action related to the Estate Claims and to object to Claims as specified below. The Liquidating Trustee shall be authorized to retain professionals (which may include Professional Persons) with the reasonable professional fees, expenses and costs to be paid out of the assets of the applicable Liquidating Trust and Dividend Fund. To avoid any doubt, on the Effective Date, the Juniper Action shall be transferred to the Liquidating Trusts to be prosecuted by the Liquidating Trustee.

c. The Debtors and the Committee will jointly determine the allocation of the Remaining Assets among the Liquidating Trusts for each of the Debtors. If the Debtors and the Committee are unable to agree on an allocation of all or any portion of the Remaining Assets, the allocation will be determined by order of the Bankruptcy Court after notice and a hearing.

d. The transfer of each Debtor's Remaining Assets to the applicable Liquidating Trust shall be treated for federal income tax purposes and any applicable state or local income franchise or gross receipts tax purposes, and for all purposes of the Internal Revenue Code of 1986, as amended (the "Tax Code")

(e.g., sections 61(a)(12), 483, 1001, 1012 and 1274) as a transfer to creditors to the extent creditors are beneficiaries of the applicable Liquidating Trust, followed by a deemed transfer from the creditors to the applicable Liquidating Trust. The beneficiaries of each Liquidating Trust shall be treated as the grantors and deemed owners of the Liquidating Trust for federal income tax purposes and any applicable state or local income, franchise or gross receipt tax purposes, and it is intended that each Liquidating Trust be classified as a liquidating trust under Section 301-7701-4 of the Treasury Regulations, as more particularly described in Revenue Procedure 94-45, 1994-2 C.B. 684. The Liquidating Trustee and the Beneficiaries of each Liquidating Trust shall value the assets of the Liquidating Trust on a consistent basis and use such valuation for all federal and state tax purposes.

e. Except as expressly stated in the Horton FLP Settlement Agreement and Horton FLP Settlement Order, the Net Proceeds of any and all sales (private or public) of the Assets collected by each Liquidating Trust (or its designee or agent) and the recoveries from the Estate Claims of each Debtor shall be used first to pay all Allowed Administrative Expense Claims, and then all remaining funds shall be placed by the Liquidating Trustee in the applicable Dividend Fund to pay other Allowed Claims under the Plan.

f. On and after the Effective Date, each Liquidating Trust, by and through the Liquidating Trustee, shall be fully empowered and authorized (without further order of the Bankruptcy Court): (i) to market for sale and/or to sell and/or

dispose of the Remaining Assets, and shall have the power and authority (without the need for a further hearing or order of the Bankruptcy Court) to execute all contracts of sale and other documents necessary to effectuate the sale or disposition of the Remaining Assets, and (ii) settle and compromise Claims without supervision of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order. Without limiting the foregoing, the Liquidating Trustee may pay the charges it incurs for professional fees, disbursements, expenses or related support services after the Effective Date without any application to the Bankruptcy Court.

g. Each Liquidating Trust shall have a term of not greater than five (5) years from its date of creation, unless extended from time to time pursuant to the terms of the applicable Liquidating Trust Agreement, with the approval of the Bankruptcy Court, solely to implement the Plan. At least twice a year, but only if permitted by the other terms of the Plan and the applicable Liquidating Trust Agreement, the Liquidating Trustee shall distribute the net income of the applicable Liquidating Trust plus all net proceeds and recoveries from the Remaining Assets to the Creditors holding Allowed Claims in accordance with the terms of the Plan, provided that the Liquidating Trustee shall not be required to make a distribution if the administrative time, costs and expenses in doing so is greater than the benefit to the beneficiaries of such distribution as determined by the Liquidating Trustee, and the Liquidating Trustee may retain a sufficient

amount of net income and net proceeds in the Liquidating Trusts that the Liquidating Trustee reasonably believes are necessary to maintain the value of the assets, to pay the costs and expenses of the Liquidating Trusts, including the compensation of the Liquidating Trustee and the reasonable fees, expenses and costs of professionals retained by the Liquidating Trusts, or to meet claims and contingent liabilities (including Disputed Claims). The Liquidating Trustee shall make continuing, reasonable efforts to dispose of the assets of the Liquidating Trusts, make timely distributions and not unduly prolong the duration of the Liquidating Trusts.

4. Liquidating Trustee.

a. Appointment of Liquidating Trustee. On the Effective Date, the Liquidating Trustee shall be immediately appointed and authorized to administer each Liquidating Trust and to liquidate any and all Assets on behalf of each Liquidating Trust for distribution in accordance with the Plan and the applicable Liquidating Trust Agreement.

b. Powers of the Liquidating Trustee. All transfers of the Remaining Assets, including the execution of all contracts of sale, deeds, and other documents necessary to effectuate this Plan and to make payments under the Plan, shall be made by the Liquidating Trustee, on behalf of each Liquidating Trust and in accordance with the applicable Liquidating Trust Agreement. The Liquidating Trustee shall have and is hereby granted the power and authority to list and/or market the Remaining Assets for sale (at such prices and for such amounts as

determined by the Liquidating Trustee), and the Liquidating Trustee shall also have the power and authority to execute any and all documents (including contracts, deeds, and other documents) necessary to effectuate this Plan, sell or convey title to the Remaining Assets and shall have the standing and authority to prosecute, settle or abandon the Juniper Action, the Avoidance Actions, and the Estate Claims without the need of further order of the Bankruptcy Court, and to object to Claims. The Liquidating Trustee, on behalf of each Liquidating Trust, shall be further empowered to: (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan including, without limitation, releases, settlement documents, notices of dismissal, stipulations of dismissal of any and all Estate Claims; (ii) review and object to any Claims; (iii) subject to the provisions of this section of the Plan, make all distributions contemplated hereby; (iv) employ professionals to represent each Liquidating Trust in connection with the consummation of the terms of this Plan; and (v) commence such actions and exercise such other powers as may be vested in the Liquidating Trustee and/or the Liquidating Trust by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Liquidating Trustee to be necessary and proper to implement the provisions of the Plan.

5. Expenses Incurred on or After the Effective Date. The amount of any reasonable fees and expenses incurred by each Liquidating Trust on or after the Effective Date (including, without limitation, reasonable attorney and other professional fees and expenses) shall be paid from funds held in the applicable Liquidating Trust. The

Liquidating Trustee shall receive compensation as set forth in the Liquidating Trust Agreements for services rendered and expenses incurred on behalf of each Liquidating Trust and in carrying out its duties pursuant to the Plan.

6. Non-Transferability of Beneficial Interests in the Trusts. No Person entitled to a distribution from a Liquidating Trust under the terms of the Plan may sell, transfer or otherwise assign its right to receive a distribution from such Liquidating Trust except by will, by intestate succession or by operation of law. The right to receive distributions from the Liquidating Trusts will not be represented by any certificate.

7. Bond and Reporting. The Liquidating Trustee shall obtain a bond in the amount of $250,000. From and after the Effective Date, the Liquidating Trustee shall file interim reports with the Bankruptcy Court regarding the operations of the Liquidating Trusts no less frequently than quarterly.

8. Indemnification. The Liquidating Trustee and its Representatives shall be indemnified as provided in the Liquidating Trust Agreements.

9. Post Confirmation Debtors and Management.

a. Cancellation of Equity Interests. On the Effective Date, all issued and outstanding Equity Security Interests for each of the Debtors shall be deemed extinguished, cancelled and retired.

b. Resignation of Officers and Directors. On the Effective Date, all officers, directors, and managers of each of the Debtors shall be deemed resigned without further action under applicable law, regulation, order or rule.

c. Wind Down and Dissolution of Debtors. As soon as practicable

after the Effective Date, the Liquidating Trustee shall: (1) take any action reasonably necessary to effectuate the wind down and dissolution of each of the Debtors; (2) file whatever documents are necessary to effect the dissolution of each of the Debtors under the applicable laws of their respective states of incorporation; (3) take such other actions as the Liquidating Trustee may determine to be necessary or desirable to carry out the purposes of this section. Filing of all dissolution documents by the Liquidating Trustee shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, including any action by the Debtors' officers or directors, as applicable.

10. D&O Policy. The D&O Policy contains an exclusion to coverage, referred to in the D&O Policy as an Insured vs. Insured Exclusion, that eliminates coverage for any claim "brought by or on behalf of, or in the name or right of, the Insured Organization, whether directly or derivatively, or any Insured Person" (the "I v. I Exclusion"). The I v. I Exclusion, however, contains several exceptions that make the exclusion inapplicable, and based on the exceptions, the D&O Policy provides coverage for claims "brought and maintained by the Insured Organization in its capacity as debtor-in-possession pursuant to a bankruptcy proceeding" (the "Debtor Exception"). Based on the Debtor Exception, any Claims brought and maintained by the Debtors against their current or former directors and officers are covered by the D&O Policy. The Debtors assignment of their respective Claims, including all Estate Claims, to the Debtors' respective Liquidating Trusts under the Plan shall conclusively be deemed to be in good

faith and without collusion among the Debtors, the Committee, the U.S. Trustee, the Debtors' creditors, or any other party. And, nothing in this Plan, including but not limited to the Debtors' respective assignment of Claims to the Liquidating Trusts, shall in any way terminate, void, or limit coverage for the Claims under the D&O Policy. From and after the Effective Date, all Claims will continue to be covered under the D&O Policy, and, as before the assignments under this Plan, will not be subject to the I v. I Exclusion.

**B. Retention of Jurisdiction.**

1. Notwithstanding the entry of the Confirmation Order or the occurrence of Effective Date, the Bankruptcy Court shall retain jurisdiction over this Case and any proceedings related thereto to the fullest extent permitted by the Bankruptcy Code or applicable law, and to make such orders as are necessary or appropriate to carry out the provisions of the Plan.

2. In addition, the Bankruptcy Court shall retain jurisdiction to implement the provisions of the Plan in the manner as provided under Section 1142 of the Bankruptcy Code. If the Bankruptcy Court abstains from exercising, or declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter set forth in this Section, or if the Liquidating Trustee elects to bring an action or proceeding in any other forum, then this Section shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court public authority or commission having competent jurisdiction over such matters.

3. Without limiting the foregoing, the Bankruptcy Court shall retain

jurisdiction of the Case for the following matters:

a. To enable the Liquidating Trustee to consummate any and all proceedings which may have been brought before or after the entry of the Confirmation Order, to set aside Liens or encumbrances, to challenge or object to the allowance of Claims, to prosecute all necessary actions with respect to the Estate Claims, including to recover any preferences, transfers, assets or damages to which it may be entitled under the applicable provisions of the Bankruptcy Code or other federal, state or local law.

b. To adjudicate all controversies concerning the classification or allowance of a Claim and/or Equity Security Interest.

c. To hear and determine all claims and/or motions arising from or seeking the rejection of any Executory Contracts or Unexpired Leases, and to consummate the rejection and termination thereof or with respect to any Executory Contracts or Unexpired Leases to which an application or motion for rejection or termination is filed before entry of the Confirmation Order.

d. To liquidate damages in connection with any disputed, contingent or unliquidated Claims.

e. To adjudicate all claims to a security or ownership interest in any property of the Debtors or in any proceeds thereof, including the adjudication of all claims asserted by Secured Creditors and other parties in interest.

f. To adjudicate all claims or controversies arising out of any purchases, sales, or contracts made or undertaken by the Debtors and/or the

Liquidating Trustee before or after the entry of the Confirmation Order.

g. To recover all Assets and properties of the Debtors, wherever located.

h. To adjudicate and determine any cause of action provided for under the Plan or pursuant to the Confirmation Order.

i. To make orders as are necessary or appropriate to carry out the provisions of the Plan or the Liquidating Trust Agreements, or in aid of confirmation and consummation of the Plan.

j. To hear and determine any application to modify the Plan in accordance with Section 1127 of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan, the Disclosure Statement or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects hereof.

k. To hear and determine all matters concerning state, local and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code.

l. To determine any and all applications, adversary proceedings, and contested or litigated matters properly before the Bankruptcy Court before or after the Confirmation Date.

m. To hear and determine all controversies, suits and disputes, if any, as may arise with regard to orders of the Bankruptcy Court in the Case entered on or before the Confirmation Date.

n. To extend the expiration date of any Liquidating Trust.

o. To issue any orders to amend the Liquidating Trust that may be required in order to maintain the classification of such trusts as liquidating trusts under Section 301.7701-4 of the Treasury Regulations, as more particularly described in Revenue Procedure 94-45, 1994-2 684. C.B., or any subsequent guidance issued by the Internal Revenue Service setting out requirements for such classification.

p. To enter an Order closing the Case.

**C. Procedures for Resolving Disputed Claims.**

1. Objections to Claims. Only the Liquidating Trustee shall be entitled to object to Claims. Except as otherwise provided in the Plan, any objections to Claims shall be served and filed on or before the later of: (i) one hundred and twenty (120) days after the Effective Date; (ii) thirty (30) days after a request for payment or proof of Claim is timely filed and properly served; or (iii) such other date as may be fixed by the Bankruptcy Court, whether before or after the dates specified in subsections (i) and (ii) herein. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Creditor if service is effected in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) by first class mail, postage prepaid, on any counsel that has appeared on the Creditor's behalf in the Cases; or (c) by first class mail, postage prepaid, on the signatory on the proof of Claim or other representative identified in the proof of Claim or any attachment thereto.

2. Payments and Distributions with Respect to Disputed Claims.

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim. The Liquidating Trustee will create appropriate reserves in the applicable Dividend Fund to provide for payment of Disputed Claims if ever the Disputed Claims become Allowed Claims.

3. Distributions After Allowance. After such time as a Disputed Claim becomes, in whole or in part, an Allowed Claim, the Liquidating Trustee shall distribute within fifteen (15) days to the holder thereof the distributions, if any, to which such holder is then entitled under the Plan in accordance with the provisions hereof.

4. No Recourse. Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by the Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Liquidating Trustee or its Representatives or their successors or assigns, or any of their respective property; provided, however, that nothing in the Plan shall modify any rights of a holder of a Claim in accordance with Section 502(j) of the Bankruptcy Code. The Bankruptcy Court's entry of an estimation order may limit the distribution to be made on individual Disputed Claim, regardless of the amount finally allowed on account of such Disputed Claim.

**D. Procedures Concerning Distributions.**

1. Time of Distributions Under the Plan. Payments and distributions to be made by the Liquidating Trusts on or after the Effective Date pursuant to the Plan shall be made on such date, or as soon as practicable thereafter, except as otherwise provided for in the Plan, the applicable Liquidating Trust Agreement or as may be ordered by the Bankruptcy Court.

2. Payment Dates. Whenever any payment or distribution to be made under the Plan shall be due on a day other than a Business Day, such payment or distribution shall instead be made, without interest, on the next Business Day.

3. Manner of Payments Under the Plan. Cash payments made pursuant to the Plan shall be made in the currency of the United States, by check drawn on a domestic bank or by wire transfer from a domestic bank. Distributions to all holders of Allowed Claims shall be made (a) at the addresses set forth in the proof of claim filed by such holders (or at last known addresses of such holders if no proofs of claims were filed or the Debtor was notified of a change of address); or (b) at the addresses set forth in any written notices of address change delivered (i) before the Effective Date to the Debtor or the Bankruptcy Court after the date the proof of claim was filed or (ii) on or after the Effective Date, to the Liquidating Trustee; or (c) at the addresses reflected in the Debtor's schedules if no claim shall have been filed and no written notice of an address change has been received by the Debtor. No payments shall be made to a holder of a Disputed Claim unless and until such Claim becomes an Allowed Claim by a Final Order.

4. Fractional Cents. Any other provision of the Plan to the contrary

notwithstanding, no payments of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent (rounding down in the case of .5).

5. Non-Negotiated Checks. Except as otherwise set forth in Section 12.6 hereof, if a Holder of an Allowed Claim or other claim or interest fails to negotiate a check issued to such Holder under the Plan within one hundred and eighty (180) days of the date such check was issued by the applicable Liquidating Trust, then the amount of Cash or other property attributable to such check shall be deemed to be "Unclaimed Distributions," and the payee of such check shall be deemed to have no further Claim or future Claim against the applicable Debtor, Dividend Fund or Liquidating Trust with respect of such check.

6. Unclaimed Distributions. In the event any payment to a holder of a Claim under the Plan remains unclaimed for a period of six (6) months after such distribution has been made (or after such delivery has been attempted), such Unclaimed Distribution and all future distributions to be made to such holders shall be deemed forfeited by such holder and the Unclaimed Distribution shall be retained by or returned to the applicable Liquidating Trust.

7. No Cash Payments of $50.00 or Less on Account of Allowed Claims. If a cash payment otherwise provided for by this Plan with respect to an Allowed Claim would be less than Fifty Dollars ($50.00) (whether in the aggregate or on any payment date provided in this Plan), notwithstanding any contrary provision of this Plan, no such payment will be made and the applicable Liquidating Trust shall retain such funds for its

own purposes.

8. Disputed Payments or Distributions. In the event of any dispute between and among Claimants (including the entity or entities asserting the right to receive the disputed payment or distribution) as to the right of any Person or entity to receive or retain any payment or distribution to be made to such Person or entity under the Plan, the applicable Liquidating Trust may, in lieu of making such payment or distribution to such Person or entity, make it instead into an escrow account or to a disbursing agent, for payment or distribution as ordered by a court of competent jurisdiction or as the interested parties to such dispute may otherwise agree among themselves.

**E. Effect of Confirmation of the Plan.**

1. Discharge. Any liability imposed by the Plan will not be discharged. If Confirmation of this Plan does not occur, the Plan shall be deemed null and void. In such event, nothing contained in this Plan shall be deemed to constitute a waiver or release of any claims against the Debtors or their Estates or any other Persons, or to prejudice in any manner the rights of the Debtors or their Estates or any Person in any further proceeding involving the Debtors or their Estates. The provisions of this Plan shall be binding upon the Debtors, all Creditors and all Equity Security Interest holders, regardless of whether such Claims or Equity Security Interests are impaired or whether such parties accept this Plan, upon Confirmation thereof.

2. Modification of Plan. The Plan Proponents may modify the Plan at any time before Confirmation. However, the Bankruptcy Court may require a new Disclosure Statement or re-voting on the Plan if the Plan Proponents materially modify the Plan

before Confirmation. The Plan Proponents may also seek to modify the Plan at any time after Confirmation, but before the Effective Date, so long as the Bankruptcy Court authorizes the proposed modification after notice and a hearing. After the Effective Date, the Liquidating Trustee may, upon Order from the Bankruptcy Court, in accordance with Section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose of this Plan.

3. U.S. Trustee's Fees. The Debtors shall pay all outstanding amounts due the United States Trustee on the Effective Date and, on and after the Effective Date, the Liquidating Trustee shall be liable for, and shall pay the fees due the United States Trustee pursuant to 28 U.S.C. §1930(a)(6) until the entry of a final decree in this case or until the case is converted or dismissed. After the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court, and serve on the United States Trustee, a quarterly financial report for each month (or portion thereof) the case remains open.

4. Investment of Dividend Fund. The Liquidating Trustee shall invest any monies held at any time as part of the trust assets, including without limitation, funds in any Dividend Fund, only in interest-bearing deposits or certificates of deposit issued by any federally insured banking institution or short-term investments and obligations of, or unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities.

5. Retention of Claims and Causes of Action. Except to the extent any rights, claims, causes of action, defenses, and counterclaims are expressly and specifically

released in connection with the Plan or in any settlement agreement approved during the Case: (i) any and all Estate Claims accruing to the Debtors or their Estates shall remain assets of and vest in the applicable Liquidating Trust whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Estate Claims have been listed or referred to in the Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court, and (ii) neither the Debtors, their Estates, nor the Liquidating Trusts waive, release, relinquish, forfeit, or abandon (nor shall they be estopped or otherwise precluded or impaired from asserting) any Estate Claims or defenses that constitute property of the Debtors or their Estates: (a) whether or not such Estate Claims or defenses have been listed or referred to in the Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court, (b) whether or not such Estate Claims is currently known to the Debtors, and (c) whether or not a defendant in any litigation relating to such Estate Claims filed a proof of claim in the Case, filed a notice of appearance or any other pleading or notice in the Case, voted for or against this Plan, or received or retained any consideration under the Plan. Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise applicable principle of law or equity, including, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, analyze or refer to any Estate Claim or potential Estate Claim in the Plan, the Disclosure Statement, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Debtors' or the applicable Liquidating Trust's right to commence, prosecute, defend against, settle,

recover on account of, and realize upon any Estate Claim that the Debtors or their Estates have or may have as of the Effective Date.

The Debtors expressly reserve all Estate Claims and defenses for later adjudication by the applicable Liquidating Trust and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Estate Claims and defenses upon or after the Confirmation or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order. In addition, the Liquidating Trusts expressly reserve the right to pursue or adopt Estate Claims that are alleged in any lawsuits in which any of the Debtors is a defendant or an interested party, against any Person or Governmental Entity, including the plaintiffs or co-defendants in such lawsuits. Any Person or Governmental Entity to whom a Debtor has incurred an obligation (whether on account of services, purchase, sale of goods or otherwise), or who has received services from a Debtor, or who has received money or property from a Debtor, or who has transacted business with a Debtor, or who has leased equipment or property from or to a Debtor should assume that such obligation, receipt, transfer or transaction may be reviewed by the Liquidating Trust subsequent to the Effective Date and maybe the subject of an action after the Effective Date, whether or not: (a) such Person or Governmental Unit has filed a proof of Claim against a Debtor in the Case; (b) such Person's or Governmental Unit's proof of Claim has been objected to by a Debtor; (c) such Person's or Governmental Unit's Claim was included in a Debtor's Schedules; or (d) such Person's or Governmental Unit's scheduled Claim has been objected to by a

Debtor or has been identified by a Debtor as contingent, unliquidated or disputed.

6. **NO WAIVER OF CLAIMS. NEITHER THE FAILURE TO LIST A CLAIM IN THE SCHEDULES FILED BY THE DEBTORS, THE FAILURE OF THE DEBTORS OR ANY OTHER PERSON TO OBJECT TO ANY CLAIM FOR PURPOSES OF VOTING, THE FAILURE OF THE DEBTORS OR ANY OTHER PERSON TO OBJECT TO A CLAIM OR ADMINISTRATIVE EXPENSE BEFORE CONFIRMATION OR THE EFFECTIVE DATE, THE FAILURE OF ANY PERSON TO ASSERT A CLAIM OR CAUSE OF ACTION BEFORE CONFIRMATION OR THE EFFECTIVE DATE, THE ABSENCE OF A PROOF OF CLAIM HAVING BEEN FILED WITH RESPECT TO A CLAIM, NOR ANY ACTION OR INACTION OF THE DEBTORS OR ANY OTHER PERSON WITH RESPECT TO A CLAIM, OR ADMINISTRATIVE EXPENSE, OTHER THAN A LEGALLY EFFECTIVE EXPRESS WAIVER OR RELEASE, SHALL BE DEEMED A WAIVER OR RELEASE OF THE RIGHT OF THE DEBTORS OR THE LIQUIDATING TRUSTS BEFORE OR AFTER SOLICITATION OF VOTES ON THE PLAN OR BEFORE OR AFTER CONFIRMATION OR THE EFFECTIVE DATE TO (A) OBJECT TO OR EXAMINE SUCH CLAIM OR ADMINISTRATIVE EXPENSE, IN WHOLE OR IN PART OR (B) RETAIN AND EITHER ASSIGN OR EXCLUSIVELY ASSERT, PURSUE, PROSECUTE, UTILIZE, OTHERWISE ACT OR OTHERWISE ENFORCE ANY CLAIM OR CAUSE OF ACTION AGAINST THE HOLDER OF ANY SUCH CLAIM.**

**F. General Provision.**

1. Notices Under the Plan. Notices, requests, or demands with respect to the Plan shall be in writing and shall be deemed to have been received within five (5) days of the date of mailing, provided they are sent by registered mail or certified mail, postage prepaid, return receipt requested, and if sent to the Plan Proponents, addressed to:

GALLAGHER & KENNEDY, P.A.
Attn: Todd A. Burgess
2575 E. Camelback Rd., Suite 1100
Phoenix, AZ 85016

LENTZ CLARK DEINES, PA
Attn: Jeffrey A. Deines
9260 Glenwood
Overland Park, KS 66212

STINSON LEONARD STREET LLP
Attn: Mark A. Shaiken
6400 S. Fiddlers Green Circle, Suite 1900
Greenwood Village, CO 80111

STINSON LEONARD STREET LLP
Attn: Nicholas J. Zluticky
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150

2. Withholding Taxes/Setoffs. Each Liquidating Trust shall be entitled to deduct any Federal or State withholding taxes from any payments with respect to Allowed Claims for wages of any kind. The Liquidating Trustee may, but shall not be required to, set off or recoup against any Claim, and the payments to be made pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever the applicable Debtor or Estate may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such claim the applicable Debtor may have against such holder.

3. Committee. On the Effective Date, the Committee shall automatically dissolve and the members thereof and the Professional Persons retained by the Committee in accordance with Section 1103 of the Bankruptcy Code shall be released

and discharged from their respective duties and obligations.

4. Headings. The headings used in the Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the provisions of the Plan.

5. Unenforceability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

6. Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Missouri.

7. Liquidated and/or Disputed Claims. The Bankruptcy Court shall fix or liquidate the amount of any contingent and/or disputed Claim pursuant to Section 502 of the Bankruptcy Code. The amount so fixed shall be deemed the amount of such contingent Claim for purposes of the Plan. In lieu thereof, the Bankruptcy Court may determine the amount to be reserved for such contingent Claim, which amount shall be the maximum amount which the holder of such contingent Claim shall be entitled to receive under the Plan if such contingent Claim later is allowed in whole or in part.

8. Revocation of Plan. The Plan Proponents reserve the right to revoke and withdraw the Plan at any time before Confirmation.

9. Reservation of Rights. Nothing contained herein shall prohibit the Plan Proponents from prosecuting or defending any of their rights as may exist on their own behalf before the Confirmation Date. If Confirmation of the Plan does not occur, the

Plan shall be deemed null and void. In such event, nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors, their Estates, the Committee or any other Person, or to prejudice in any manner, the rights and remedies of the creditors, the Debtors, their Estates, the Committee or any Person in any further proceedings involving the Debtors or their Estates. The filing of the Plan and or any modifications hereto, and the Plan itself shall not constitute a waiver by the Plan Proponents of any and all rights, remedies, objections, causes of action, the Plan Proponents may have or may wish to raise with respect to anything, including, without limitation, any other plan or plans filed or to be filed in this bankruptcy case, all of which rights and objections are hereby reserved.

10. Exemption from Certain Transfer Taxes. Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer hereunder will not be subject to any stamp, tax, or similar tax, including but not limited to the transfer of any Remaining Assets by the Liquidating Trusts and the recording or mortgages by the purchaser thereof.

11. Injunction. Except as otherwise provided in the Plan or the Confirmation Order, and except for any actions timely filed pursuant to Section 523 of the Bankruptcy Code and/or any Claims declared by the Bankruptcy Court to be non-dischargeable pursuant to Section 523 of the Bankruptcy Code, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against or Equity Security Interests in the Debtors or their Estates are, with respect to any such Claims or Equity Security Interests, permanently enjoined from and

after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) with respect to any such Claim against or affecting the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee or any of their respective property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment, collecting or otherwise recovering by any manner or means, whether directly or indirectly, with respect to any judgment, award, decree or order against the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee or any of their respective property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee or any of their respective property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; (iv) asserting initially after the Effective Date any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due to the Debtors, their Estates, the Liquidating Trusts, the Liquidating Trustee or any of their respective property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; and (v) acting or proceeding in any

manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan to the full extent permitted by applicable law. By accepting a distribution pursuant to the Plan, each holder of an Allowed Claim receiving distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth in this section, and, except as set forth in this Section, waives any and all claims, causes of action and/or remedies and objections of every kind against the Debtors and the Liquidating Trustee.

12. Ratification of Action Taken During Pendency of the Chapter 11 Case. The Confirmation Order shall ratify all transactions effected by the Plan Proponents during the period commencing on the Debtors' Petition Date and ending on the Confirmation Date.

13. Term of Injunctions or Stays. Unless otherwise provided, all injunctions or stays arising before the Confirmation Date in accordance with Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, or such later date as provided under applicable law.

14. Injunction Against Interference With Plan. Upon the entry of the Confirmation Order, all holders of Claims and Equity Security Interests and other parties in interest, including the Plan Proponents, along with its respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

15. Exculpation. Except with respect to obligations under the Plan, neither the

Plan Proponents nor any of their respective Representatives solely in their capacity as such (each an "Exculpated Party"), shall have or incur any liability to the Debtors and/or any holder of any Claim or Equity Security Interest for any act or omission in connection with, or arising out of: (i) the Case; (ii) the confirmation of the Plan; (iii) the consummation of the Plan; or (iv) the administration of the Plan or property to be distributed pursuant to the Plan, except for fraud, willful misconduct, recklessness or gross negligence; and, in all respects, the Plan Proponents and each of their respective Representatives shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided, however, that the Liquidating Trustee shall have a period of one hundred twenty (120) days from the Effective Date to investigate and commence a lawsuit against an Exculpated Party for any claims or causes of action arising from any act or omission in connection with, or arising out of, the Case, and after such lawsuit has been commenced, such claim or cause of action shall be preserved for the benefit of the applicable Liquidating Trust and not released or otherwise affected by the provisions of Section 14.15 of the Plan and the Exculpated Party shall not be relieved of any liability with respect thereto.

16. Successors and Assigns. The rights and obligations of any Person or Entity named or referred to in the Plan shall be binding upon and shall insure to the benefit of, the predecessors, successors, assigns and agents of such Entity.

17. Plan Documents. Final versions of the Liquidating Trust Agreement and such other documents needed in connection with confirmation of the Plan shall be filed with the Bankruptcy Court no later than three (3) Business Days before the Confirmation

Hearing.

## VIII.
## CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN

1. Conditions to the Effective Date. The following shall be conditions to the occurrence of the Effective Date unless such conditions shall have been duly waived by the Plan Proponents:

a. The Confirmation Order in form and substance acceptable to the Plan Proponents shall have become a Final Order, except that the Plan Proponents reserve the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the Confirmation Order; and

b. The Debtors shall have sufficient cash on hand to pay all US Trustee's Fees on the Effective Date; and

c. The Debtors shall have executed all documents and performed all acts, if any, necessary to transfer the Remaining Assets to each of the Liquidating Trusts.

## IX.
## FEDERAL TAX CONSEQUENCES

Each holder of a Claim is urged to consult with its own tax advisor regarding the federal, state, local and other tax consequences of the Plan. No rules have been requested from the Internal Revenue Service with respect to any of the tax aspects of the Plan.

## X.
## VOTING PROCEDURES AND REQUIREMENTS

### A. Parties Entitled to Vote.

If you hold an Allowed Claim that is "impaired" under the Plan, you are entitled to vote to accept or reject the Plan. Accordingly, to be entitled to vote, your Claim must be "allowed" as set forth in Section 502 of the Bankruptcy Code or temporarily allowed as set forth in Bankruptcy Rule 3018(a). Additionally, Section 1126(f) of the Bankruptcy Code permits you to vote to accept or reject the Plan only if your Claim is "impaired."

### B. Procedures for Voting.

1. Submission of Ballots.

After this Disclosure Statement has been approved by the Bankruptcy Court, all Creditors whose votes are solicited (as explained above) will be sent (a) a ballot, together with instructions for voting (the "Ballot"); (b) a copy of this Disclosure Statement as approved by the Bankruptcy Court; and (c) a copy of the Plan. You should read the Ballot carefully and follow the instructions. Please use only the Ballot sent with this Disclosure Statement. You should complete your Ballot and return it to:

GALLAGHER & KENNEDY, P.A.
Attn: Keri Adickes
2575 East Camelback Road, Suite 1100
Phoenix, AZ 85016
Telephone: (602) 530-8000
Email: kka@gknet.com

**TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED AT THE ADDRESS LISTED ABOVE BY 5:00 P.M., MOUNTAIN STANDARD TIME, ON _____, 2016. IF YOUR BALLOT IS NOT TIMELY RECEIVED, IT**

**WILL NOT BE COUNTED IN DETERMINING WHETHER THE PLAN HAS BEEN ACCEPTED OR REJECTED.**

2. Procedures for Vote Tabulation. In determining whether the Plan has been accepted or rejected, Ballots will be tabulated in accordance with the Court's Order approving this Disclosure Statement.

3. Withdrawal of Ballots. A Ballot may not be withdrawn or changed after it is cast unless the Bankruptcy Court permits you to do so after notice and a hearing to determine whether sufficient cause exists to permit the change.

4. Questions and Lost or Damaged Ballots. If you have any questions concerning voting procedures, if your Ballot is damaged or lost, or if you believe you should have received a Ballot but did not receive one, you may contact Debtors' counsel, Todd Burgess, at the address and telephone number listed above.

**C. Summary of Voting Requirements.**

In order for the Plan to be confirmed, the Plan must be accepted by at least one (1) impaired Class of Claims. For a Class of Claims to accept the Plan, votes representing at least two-thirds in claim amount and a majority in number of the Claims voted in that Class (not including votes of insiders) must be cast to accept the Plan.

**IT IS IMPORTANT THAT HOLDERS OF ALLOWED IMPAIRED CLAIMS EXERCISE THEIR RIGHTS TO VOTE TO ACCEPT OR REJECT THE PLAN. THE PLAN PROPONENTS ASSERT THAT THE TREATMENT OF CREDITORS UNDER THE PLAN IS THE BEST ALTERNATIVE FOR CREDITORS, AND THE PLAN PROPONENTS RECOMMEND THAT THE HOLDERS OF ALLOWED CLAIMS VOTE IN FAVOR OF THE PLAN.**

The specific treatment of each Class under the Plan is described in the Plan and is summarized in this Disclosure Statement.

## XI.
## CONFIRMATION OF THE PLAN

### A. Confirmation Hearing.

Section 1128(a) of the Bankruptcy Code provides that the Bankruptcy Court, after notice, will hold a Confirmation Hearing on the Plan. The Confirmation Hearing will be held at the United States Bankruptcy Court, US Courthouse, Courtroom 6B, 400 E. 9th St., Kansas City, MO, on _____, 2016, at _____ a.m./p.m. **THE HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT MADE AT THE HEARING.**

### B. Objections to Confirmation.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan, regardless of whether it is entitled to vote. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. **IF AN OBJECTION TO CONFIRMATION IS NOT TIMELY MADE, THE COURT NEED NOT RECEIVE OR CONSIDER IT. ALL OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON COUNSEL FOR THE PLAN PROPONENTS AT THE ADDRESSES SET FORTH ABOVE, ON THE UNITED STATES TRUSTEE, AND**

**ON ANY PARTY-IN-INTEREST WHO HAS REQUESTED NOTICE IN THE DEBTOR'S BANKRUPTCY CASE, BY _____, 2016.**

**C. Requirements for Confirmation of the Plan.**

1. Confirmation Under Section 1129(a) of the Bankruptcy Code. At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. Such requirements include, among others:

a. That the Debtors have complied with the applicable provisions of Chapter 11, including the provisions of Sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and interests and contents of a plan of reorganization.

b. That the Plan has been proposed in good faith and not by any means forbidden by law.

c. That any payment made or promised by the Debtors to any Person for services, costs, or expenses in connection with the Bankruptcy Case or the Plan has been approved by or is subject to approval by the Bankruptcy Court as reasonable.

d. That the Plan Proponents have disclosed the identity and affiliations of Persons proposed to serve as officers after confirmation.

e. That one or more of the impaired Classes of Claims has voted to accept the Plan.

f. That the Plan is in the best interests of holders of Claims and Equity Interests; that is, each holder of an Allowed Claim or Allowed Equity Interest either has accepted the Plan or will receive on account of its Claim or Equity Interest property with a value, as of the Effective Date, that is not less than the amount that the holder of such Claim or Equity Interest would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

g. That the Plan is feasible; that is, confirmation is not likely to be followed by the need for liquidation or further reorganization of the Debtors unless that is provided for in the Plan.

2. The Plan Satisfies Bankruptcy Code Requirements.

a. Best Interests Test and Liquidation Analysis. Under the best interests test, the Plan is confirmable if, with respect to each impaired Class of Claims or Equity Interests, each holder of an Allowed Claim or Allowed Equity Interest in such Class either: (i) has accepted the Plan; or (ii) will receive or retain under the Plan, on account of its Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. The Plan Proponents believe the distributions to Creditors under the Plan will meet or exceed the recoveries that Creditors would receive in a Chapter 7 liquidation of the Debtors and their Estates. The Plan Proponents believe that the Plan provides an equal or better return to Creditors than they can otherwise receive under

Chapter 7, and therefore the best interests of creditors test is met.

b. Feasibility of the Plan. Section 1129(a)(11) of the Bankruptcy Code includes what is commonly described as the "feasibility" standard. In order for the Plan to be confirmed, the Bankruptcy Court also must determine that the Plan is feasible - that is, that the need for further reorganization or a subsequent liquidation of the Debtors is not likely to result following confirmation of the Plan. As set forth in this Disclosure Statement and in the Plan, the Plan Proponents believe the Plan is feasible in that it provides for a liquidation of each of the Debtors' estates.

c. Acceptance by an Impaired Class. Because the Plan impairs some Classes of Claims, Section 1129(a)(10) of the Bankruptcy Code requires that, for the Plan to be confirmed, at least one impaired Class must accept the Plan by the requisite vote without counting the votes of any "insiders" (as that term is defined in Section 101(31) of the Bankruptcy Code) contained in that Class. The Plan Proponents believe that at least one impaired Class will vote to accept the Plan.

d. Confirmation Under Section 1129(b) of the Bankruptcy Code. Although Section 1129(a)(8) of the Bankruptcy Code requires that the Plan be accepted by each Class that is impaired by the Plan, Section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may still confirm the Plan at the request of the Debtors if all requirements of Section 1129(a) of the Bankruptcy Code are met except for Section 1129(a)(8) and if, with respect to each Class of Claims or Equity Interests that (a) is impaired under the Plan, and (b) has not

voted to accept the Plan, the Plan "does not discriminate unfairly" and is "fair and equitable." This provision commonly is referred to as a "cramdown." The Plan Proponents have requested cramdown confirmation of the Plan with respect to any such non-accepting Class of Creditors. The Plan Proponents believe that, with respect to such Class or Classes, the Plan meets the requirements of Section 1129(b) of the Bankruptcy Code.

(1) Unfair Discrimination. A plan of reorganization "does not discriminate unfairly" if: (i) the legal rights of a non-accepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are related to those of the non-accepting class; and (ii) no class receives payments in excess of that which it is legally entitled to receive on account of its Claims or Equity Interests. The Plan Proponents assert that under the Plan: (i) all classes of impaired Claims are being treated in a manner that is consistent with the treatment of other similar classes of Claims; and (ii) no Class of Claims will receive payments or property with an aggregate value greater than the sum of the Allowed Claims in the Class. Accordingly, the Plan Proponents believe that the Plan does not discriminate unfairly as to any impaired Class of Claims or Equity Interests.

(2) Fair and Equitable Test. The Bankruptcy Code establishes different "fair and equitable" tests for Secured Creditors, Unsecured Creditors, and holders of Equity Interests, as follows:

(a) Secured Creditors. With respect to a secured claim, "fair and equitable" means that a plan provides that either (A) the holder of the secured claim in an impaired class retains the liens securing such claim, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the amount of such allowed claim, and that the holder of such claim receives on account of such claim deferred cash payments totaling at least the amount of such allowed claim, of a value, as of the effective date, of at least the value of such holder's interest in the estate's interest in such property; (B) for the sale, subject to Section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing such claim, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clauses (A) and (C); or (C) the realization by such holder of the "indubitable equivalent" of such claim.

(b) Unsecured Creditors. With respect to an unsecured claim, "fair and equitable" means that a plan provides that either (A) each impaired unsecured creditor receives or retains property of a value, as of the effective date, equal to the amount of its allowed claim; or (B) the holders of claims and equity interests that are junior to the claims of the dissenting class will not receive or retain any property under the plan.

(c) Equity Security Interest Holders. With respect to holders of equity interests, "fair and equitable" means that a plan provides that either (A) each holder will receive or retain under the plan property of a value, as of the effective date, equal to the greater of: (1) the fixed liquidation preference or redemption price, if any, of such interest; or (2) the value of such interest; or (B) the holders of equity interests that are junior to the non-accepting class will not receive any property under the plan.

The Plan Proponents believe the Plan complies with the Claims priority established by the Bankruptcy Code and thus the "fair and equitable" test of the Bankruptcy Code (including the absolute priority rule) is met with respect to the Secured Creditors and the Equity Interest holders under the Plan.

## XII.
## ALTERNATIVES TO THE PLAN

If the Plan is not confirmed, several different events could occur: (1) the Debtors or a third party could propose another plan providing for different treatment of certain Creditors; (2) Secured Creditors, if any, could move for relief from the automatic stay to allow them to foreclose their liens against their collateral, which may be granted by the Bankruptcy Court if an alternative plan is not confirmed in a reasonable period of time; or (3) the Bankruptcy Court (after appropriate notice and hearing) could dismiss the Bankruptcy Case or convert such to a case under Chapter 7 if an alternative plan is not confirmed in a reasonable period of time.

## XIII.
## RECOMMENDATION AND CONCLUSION

The Plan Proponents believe that the Plan provides the best available alternative for maximizing the recoveries that Creditors will receive from the Debtors' Assets. Therefore, the Plan Proponents recommend that all Creditors and Equity Security Interest holders that are entitled to vote on the Plan vote to accept the Plan.

**DATED: AUGUST 11, 2016.**

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By: */s/ Jerry Washburn*
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Its: CFO and VP

**BLUE SUN ADVANCED FUELS, LLC**, a Colorado limited liability company

By: */s/ Jerry Washburn*
Name: Jerry Washburn
Its: CFO and VP

**BLUE SUN BIODIESEL, LLC**, a Colorado limited liability company

By: */s/ Jerry Washburn*
Name: Jerry Washburn
Its: CFO and VP

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By: */s/ Jerry Washburn*
Name: Jerry Washburn
Its: CFO and VP

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*/s/ Robert Eblen*

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