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

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

DISCLOSURE STATEMENT IN SUPPORT OF JOINT PLAN OF LIQUIDATION DATED NOVEMBER 12, 2015

Pursuant to 11 U.S.C. § 1125, this Disclosure Statement in Support of Joint Plan of Liquidation (as hereinafter amended, the "Disclosure Statement") is submitted by Blue Sun Energy, Inc. ("Blue Sun Energy"), Blue Sun Advanced Fuels, LLC ("Blue Sun Advanced Fuels"), Blue Sun Biodiesel, LLC ("Blue Sun Biodiesel"), and Blue Sun St. Joe Refinery, LLC ("Blue Sun St. Joe Refining" and together with Blue Sun Energy, Blue Sun Advanced Fuels, and Blue Sun Biodiesel, the "Debtors"). 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 Joint Plan of Liquidation (as hereinafter amended, the "Plan"), dated November 12, 2015, a copy of which is attached as Exhibit "A". **THE DEBTORS RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN IN ORDER TO MAXIMIZE THE RECOVERY OF YOUR CLAIM;**

[1] Blue Sun St. Joe Refinery, 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.

HOWEVER, CREDITORS ALSO HAVE THE OPTION OF VOTING AGAINST RE REJECTING 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 Debtors 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. The Plan is a liquidating plan. In other words, the Debtors seek to make payments under the Plan by liquidating their remaining assets, and prosecuting their causes of action, and placing the proceeds in a fund 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 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 debtor can solicit acceptances of its plan, however, Section 1125 of the Bankruptcy Code requires the debtor 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 either approving or conditionally approving this Disclosure Statement. Approval by the Bankruptcy Court of this Disclosure Statement means only that the Bankruptcy Court has found that this Disclosure Statement contains sufficient information for the Debtors to transmit the Plan and Disclosure Statement to Creditors and to solicit acceptances of the Plan.

After the Bankruptcy Court has granted approval or conditional 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 Debtors 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 Member Equity 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 Debtors reserve all rights to object to or challenge any Claims that are filed or asserted in the Case.

This is a solicitation by the Debtors only and is not a solicitation by the attorneys, agents, financial advisors, and accountants retained by the Debtors. No statement or information concerning the Debtors or their assets or securities is authorized, other than as set forth in the Disclosure Statement.

II.
BACKGROUND AND EVENTS LEADING TO BANKRUPTCY FILING

A. The Companies.

Originally founded in 2001 as SunFuels, Inc., Blue Sun Energy introduced biodiesel into the existing petroleum fuels pool by focusing on an integrated approach to addressing market needs. This 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, Blue Sun Energy 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 industry-leading QA/QC policies, proprietary Blue Sun Fusion™ additive packages, and blending technology to ensure high-quality, differentiated Blue Sun Biodiesel is consistently available throughout our Fusion™ distribution network.

Early in 2012, Blue Sun Biodiesel also established a downstream terminal presence for biodiesel blending in Knoxville, TN. At Blue Sun Biodiesel'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, Blue Sun St. Joe Refining began operating the St. Joe refinery to produce high-quality biodiesel for wholesale distribution. The Blue Sun St. Joseph Refinery is potentially one of the most efficient biodiesel plants in the U.S. and has produced the highest quality B100 biodiesel, exceeding ASTM specifications. Prepetition, the Debtors implemented a new biodiesel refining technology in the St. Joe refinery that creates very high quality biodiesel at potentially significantly lower cost than current biodiesel refining technologies. If the upgrades to the plant are completed, it will be one of the most advanced biodiesel facility in the world.

As part of its long-term strategic plans, the Blue Sun 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.

Blue Sun Advanced Fuels owns and operates 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. <u>Ownership Structure and Management.</u>

Blue Sun Energy, Inc. is a privately owned Colorado corporation. Shareholders

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

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

Blue Sun St. Joe's Refining, LLC is a Missouri limited liability company 100% owned by Blue Sun Biodiesel. Blue Sun St. Joe's Refining operates the biodiesel plant located in St. Joseph, Missouri.

Blue Sun Advanced Fuels, LLC is a Colorado limited liability company owned 80% by Blue Sun Energy. The remaining 20% is owned by Gorton Research Enterprises, LLC (10%) and Juniper Resources, LLC (10%). Blue Sun Advanced Fuels owns and operates 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.

Blue Sun Energy is led by a senior executive team with proven experience in building sales of premium-positioned, value-added commercial and industrial products, successful research and development disciplines and commercialization of process and product innovation and product development in rapid scale scenarios. Jerry Washburn was appointed to the Board of Directors in July 2010. Mr. Washburn has over 40 years

of financial and technology experience in a variety of senior level roles (CFO, COO, CEO, Advisory and Fiduciary Board) and have spent much of my career leading early-stage and emerging market companies through rapid scale to their next levels. His experience spans the crucial facets of rapid growth companies including, successfully concluding multiple capital, debt/equity transactions, business development and strategic planning, technology and business process implementation, mergers and acquisitions and private-to-public transactions.

Dr. Michael E. Gorton, M.D., a heart surgeon, engineer, entrepreneur, innovator and environmental advocate was appointed to the Board of Directors in April 2013. Dr. Gorton was Chairman of the Department of Cardiothoracic Surgery at the University of Kansas Medical Center during the largest growth, turn around in US history focusing on quality improvement and customer care. The program was recognized by US News and World Report for its leadership in cardiac care. The same innovative spirit and talent has led him as scientific advisor, director, and active member in multiple early-, mid-, and late-stage technology companies specializing in alternative liquid fuels including jet fuel, advanced biomass and feed crop, micronutrient DNA radiation protectant, minimally invasive spine implants, wave, solar, and gasification technologies. Dr. Gorton has worked with the US FDA in regulatory assessment and approval of device applications along with refinement of the Society of Thoracic Surgeons world wide data base for tracking and betterment of outcomes in cardiac and thoracic surgery. He was in charge of a large multi-specialty product line including quality control and finance management.

Mr. Christopher W. Guill was appointed to the Board in April 2013. He is the

President of Gold Hill Reclamations & Mining, and is the Managing Director of Juniper Resources, the majority owner of Blue Sun. His background includes new business development with Syngnta agribusiness, consumer product development and successful ecommerce startups. Christopher holds marketing and finance degrees from Boise State University.

Mr. Bruce Baughman is the Chief Operating Officer. Mr. Baughman has over 32 years' experience in heavy industrial manufacturing, agri/chemical-process, energy/biofuels, food manufacturing and facility and corporate management, including process design, maintenance engineering, process optimization and major capital construction project management. Mr. Baughman is responsible for directing Blue Sun's ongoing upgrade of the St. Joseph biodiesel processing facility in addition to assisting in setting the strategic direction of the company. Mr. Baughman's prior experience includes positions with ADM, DuPont/Solae, Kraft, Cargill, Abitec Corp, ITG GreenHunter and Mission New Energy. Mr. Baughman is a graduate of the University of Missouri, Rolla.

Mr. Sean Lafferty is the Vice President of Technology and New Business. Mr. Lafferty is one of the founders of Blue Sun. He previously has served as Vice President of Operations and as Secretary, Treasurer and Director during his time with Blue Sun. Mr. Lafferty has significant experience in the electric power and renewable energy fields, including serving as an Electrical Engineer for Exponential Engineering Co. He has 15 years of applied electrical engineering experience with a focus on power systems. Mr. Lafferty earned a B.S. in electrical engineering from Colorado State University.

C. Terra Bioenergy, LLC and Its Lenders.

Terra Bioenergy, LLC ("Terra") owns 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. Terra and its representatives consistently represented to the Debtors that the St. Joe Plant was designed and built to produce 30 million gallons per year, *i.e.*, that the St. Joe Plant's "nameplate capacity" was 30 MMgpy. Terra and its representatives also consistently represented to the Debtors that, in addition to completing the construction of the plant, the only modification required to allow the St. Joe Plant to reach its "full 30 MMgpy nameplate capacity" was the addition of additional tank storage capacity.

Blue Sun St. Joe, 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 and Original SNDA were executed, the parties estimated that completion of the St. Joe Plant would require a $3,750,000 investment by Blue Sun for the purchase and installation of equipment and processes to finish the St. Joe Plant. The completion estimates were based in large part on Terra's representations regarding the 30 MMgpy nameplate capacity. 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 Blue Sun St. Joe and Terra.

In connection with the Lease, Blue Sun St. Joe, 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 Blue Sun St. Joe elected to renew the Lease, the monthly rent payment to Terra (which Blue Sun St. Joe 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, in reliance on Terra's representations regarding the 30 MMgpy nameplate capacity of the St. Joe Plant, Blue Sun St. Joe elected to renew the Terra Lease for an additional year. Thereafter, Blue Sun St. Joe 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. Blue Sun St. Joe 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, it 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. <u>Tenaska Commodities, LLC.</u>

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 Blue Sun St. Joe Refining 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 Blue Sun 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 have elected to run the St. Joe Plant on a 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. Blue Sun Advanced Fuels 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 operates a demonstration renewable biodiesel plant (the "CH Plant"), adjacent to the Terra/Blue Sun large biodiesel refinery, capable of producing 1.5 million gallons per year of renewable diesel and jet fuel utilizing the BIC Process; and Blue Sun Biodiesel and ARA/CLG entered into a *Technology License Agreement*, dated January 7, 2013 (as amended, the "CLG License") under which Blue Sun Biodiesel is 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 and are in the process of completing 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. The Debtors expect to complete production under the ARA Agreement in December 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.

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. Joseph refinery has never produced more than 14.3 MMGY. Until earlier this year, Blue Sun always believed that the constraining/limiting factor was the unique Novozymes enzymatic refining process. However, in early 2015, after Blue Sun closed the refinery and installed upgrades that cured bottlenecks related to the enzymatic process, it learned that the refinery has other inherent design, software, and equipment constraints that limit maximum volume closer to 15 MMGY.

More recently, on or about August 26, 2015, in connection with site visits to the St. Joe Plant by the Lenders' financial advisor, supervised by Bruce Baughman, Blue Sun's Chief Operating Officer, the original construction drawings used by Terra's general contractor were inspected. The construction drawings specify that the St. Joe Plant was designed and built by Terra to be a 15 MMgpy nameplate capacity, not a 30 MMgpy nameplate capacity as represented by Terra. The Debtors would not have entered into the Lease or spent more than $13 million in Tenant Improvements on the St. Joe Plant if they had known that Terra's representations regarding the design and capability of the St. Joe Plant were false.

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 are not unique to Blue Sun; they are 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 have 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 are continuing to operate are experiencing substantial operating losses.

Industry experts believe that only the financially strongest and lowest cost producers are operating currently and are doing so only with the hope that the Biodiesel Tax Credit will be retroactively enacted as part of the "Tax Extenders" bill for 2015, which will enable them to recoup a portion of their operating losses, or perhaps break even. The Senate Finance Committee has passed a tax extenders package that includes two-year extensions of tax credits for biodiesel, renewable diesel and cellulosic biofuels. The next step for the legislation is consideration by the full U.S. Senate, which has not yet been scheduled, and then by the U.S. House of Representatives. The bill would extend incentives for biodiesel and renewable diesel for two years, through 2016, including the $1.00 per gallon Biodiesel Tax Credit. However, even if the Biodiesel Tax Credit is retroactively extended, producers like Blue Sun will not see any funds until Q1 2016 at the earliest meaning that many producers simply will not survive, which in fact is the present reality in the industry.

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 is now being satisfied by foreign sources, further damaging domestic producers. As a result, Tenaska has estimated that fully 1.0 billion gallons of U.S. biodiesel capacity (approx. 50% of total effective capacity) has been 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 Blue Sun Energy 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 also has 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 Blue Sun Energy Denver corporate office was closed.

Postpetition the Debtors planned to operate 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 run was completed, the Debtors planned to shutter the St. Joe Plant temporarily and reduce 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 planned to run the CH Plant through the end of the year 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 (estimated to occur by Late November or early December, 2015).

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 plant:

- 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 Blue Sun Energy, (b) all of the existing equity interest in Terra, Blue Sun Energy, 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 also 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.

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 were resolved consensually by the Debtors, Terra, and the Lenders as reflected in paragraph 26 of 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 Notice of Violation.

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.[2] 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 "Department") related to a biodiesel spill that occurred at the St. Joe Plant on July 7, 2015. 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 from the Department.

5. Industry Conditions, Postpetition Operations, and Marketing Efforts.

Conditions in the biodiesel industry have failed to improve and in fat have continued to worsen. The biodiesel headlines in recent months have revolved almost exclusively around falling commodity prices. Historical pricing for B99-B100 Biodiesel has continued to drop from $4.37/ gallon on January 10, 2013, to $4.22/ gallon on January 1, 2014, and further to $3.51 on July 1, 2015.[3] The challenges with the biodiesel fuel industry have not only been about falling prices, but about policy uncertainty, particularly in the United States. In 2014, the U.S. biodiesel market shrunk due to policy uncertainty which destabilized the industry and caused many biodiesel plants to shut down or severely reduce production. According to the U.S Energy Information Administration's Monthly Biodiesel Production Report, U.S. Biodiesel production

[2] Full details regarding the Debtors containment and remediation response are detailed in the Debtors' response to the Notice of Violation received from the Department, which will be provided to interested parties upon request.

[3] Per the U.S. Department of Energy's Alternative Fuel Price Report http://www.afdc.energy.gov/fuels/prices.html

decreased from 1.359 billion gallons in 2013 to 1.270 billion gallons in 2014. Production data available for January through August 2015 reported 839 million gallons in 2015 to date, which would approximate production of 1.259 billion gallons for the year.[4]

In addition, the demand for vegetable oil is considered to be highly inelastic, both in domestic and international markets. The inelastic demand sets the stage for very volatile feedstock prices for the biodiesel industry. It also indicates that the biodiesel industry can expect pressure on biodiesel margins as production levels increase and a larger portion of the feedstock supply is used for biodiesel.

In September of 2013, the Inspector General announced that after seven years, the Department of Energy ("DOE") had failed to meet its advanced biofuels goals for commercial scale biofuels refineries. According to the audit, 40 percent of projects (six out of fifteen) selected under Funding Opportunity Announcements were scrapped by the DOE because recipients failed to meet targets, but not before $75 million was spent. The nine other projects being funded by DOE have experienced technical and/or financial problems that have caused two-year delays in the build out of production facilities. The problems plaguing the biofuels industry have been wide-ranging, some beyond DOE's control. For example, after the financial crisis in 2008, companies found it very difficult to secure funds for scaling their plants. This caused long delays or forced a number of companies to drop plans altogether. Numerous venture-backed biofuels companies have

[4] http://www.eia.gov/biofuels/biodiesel/production/

attempted to raise funds on the public market, only to halt their IPO plans due to poor market conditions.

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 is in the process of completing the required production under the ARA contract to preserve the value of the CH Plant and the favorable CLG License. The Debtors expect to complete production in the CH Plant in late December 2015.

In light of these conditions and other factors, including the inability of the Debtors to implement their proposed joint merger/restructuring with Terra, the Debtors determined that the only viable exit for the Case was through a sale of the Debtors' 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. MCA is prepared to send non-disclosure agreements to parties interested in further asset detail; however, to date there has been little to no interest by any of the potential interested parties. MCA

continues to follow up with potential interested parties, and continues to attempt to identify interested parties.

6. Committee Motion for Derivative Standing.

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. On November 2, 2015, Horton FLP filed the *Objection to the Official Committee of Unsecured Creditors' Motion for 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. 146]. The Debtors believe that the Committee's standing motion is unnecessary in light of the Plan, which preserves for the benefit of each of the Debtors' estates all Estate Claims.

7. 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 contend 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 Debtors dispute the allegations stated in the conversion motion and contend that the Plan offers creditors a far greater recovery than they would receive if the cases are converted.

8. Proposed Asset Sale to Horton FLP, Subject to Higher and Better Bids.

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

- The Debtors' 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, to the extent that the Biodiesel Tax Credit is retroactively enacted effective as of January 1, 2015 as part of the "Tax Extenders" bill for 2015, approximately $3.2 million of Biodiesel Tax Credit related to 2015 biodiesel production by the Debtors.
- Inventory and WIP 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 have 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.[5]

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 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 ask 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 (in the form attached hereto as Exhibit 2 to the Sale and Bid Procedures Motion, the "Bid Procedures") to govern the sale process, including a break-up fee and an expense reimbursement to the proposed stalking horse

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

bidder, and to provide for the submission of any competing bids for substantially all the Debtors' assets, and the form and manner of notices, including those related to:

- the submission and consideration of bids in respect of the proposed sale;
- the conduct of an auction (the "Auction") by the Debtors and their professionals, in consultation with the Committee, on January [6], 2015 or such other date as the Court may direct;
- the provision of notice to potential bidders, counterparties to executory contracts and unexpired leases that may be assumed and assigned, and other parties in interest; and
- the sale of all or substantially all of the Debtors' assets free and clear of liens, claims and interests (an "Asset Sale").

- Approving the form and manner of notice of the proposed sale, the sale hearing, the Bid Procedures, and related matters, substantially in the form attached to the Sale and Bid Procedures Motion as Exhibit 3 (the "Sale and Bid Procedures Notice");
- Approving the form and manner of notice to all counterparties (each a "Contract Counterparty") to the Debtors' executory contracts and unexpired leases that may be assumed and assigned, in the form attached to the Sale and Bid Procedure Motion as Exhibit 4;
- 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;
- Finding that the Successful Bidder at the conclusion of the Auction is a good faith purchaser entitled to the protections of Bankruptcy Code § 363(m); and
- Providing that all of the foregoing relief shall be effective immediately upon entry of the applicable order granting such relief, and that any stay of such order under Bankruptcy Rules 6004(h) and 6006(d) is waived and shall not be applicable.

In order to facilitate continued marketing efforts, competitive bidding and an Auction, the Debtors also filed the *Debtors' Motion For Expedited Hearing On Proposed Sale And Bid Procedures And Related Relief* [Dkt. 154] asking the Court to set an

expedited hearing on shortened notice, pursuant to Local Rule 9013-1(G), requesting an initial hearing on this motion on November 19, 2015, or as soon thereafter as the matter may be heard, to consider immediate approval of the relief requested in paragraphs 2 – 6 above.

The Debtors believe that expedited consideration and approval of the Bid Procedures and related relief is warranted by the facts and circumstances of these cases. The dates and deadlines proposed for providing notice of the opportunity to bid, notice of the sale, notice of the proposed assumption of executory contracts and unexpired leases, the Auction, and the Sale Hearing all seek to balance the needs of due process against the stark reality that the Debtors do not have the necessary funding or financial resources to sustain their operations past the end of this calendar year, and the fact that the DIP Financing matures on December 31, 2015. That same balancing of interests weighs in favor of consideration of this matter on an expedited basis.

IV.
FINANCIAL INFORMATION

The Final DIP Order includes the Debtors original 13-week budget. During the Case, the Debtors continually updated the budget, including providing budget to actual comparisons for each period. A copy of the most recent budget is attached hereto as Exhibit "B". ADDITIONAL 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. Blue Sun Energy.

    a. Class 3.3.1 (Priority Non-Tax Claims). Class 3.3.1 consists of any Priority Non-Tax Claims against Blue Sun Energy.

    b. Class 3.3.2 (Secured Claims). Class 3.3.2 consists of any Secured Claims against Blue Sun Energy.

    c. Class 3.3.3 (Unsecured Claims). Class 3.3.3 consists of all Unsecured Claims against Blue Sun Energy.

    d. Class 3.3.4 (Equity Security Interests). Class 3.3.4 consists of all Equity Security Interests in Blue Sun Energy.

2. Blue Sun St. Joe Refining.

    a. Class 3.4.1 (Priority Non-Tax Claims). Class 3.4.1 consists

of any Priority Non-Tax Claims against Blue Sun St. Joe Refining.

b. Class 3.4.2 (Secured Claims). Class 3.4.2 consists of any Secured Claims against Blue Sun St. Joe Refining.

c. Class 3.4.3 (Unsecured Claims). Class 3.4.3 consists of all Unsecured Claims against Blue Sun St. Joe Refining.

d. Class 3.4.4 (Equity Security Interests). Class 3.4.4 consists of all Equity Security Interests in Blue Sun St. Joe Refining.

3. Blue Sun Advanced Fuels.

a. Class 3.5.1 (Priority Non-Tax Claims). Class 3.5.1 consists of any Priority Non-Tax Claims against Blue Sun Advanced Fuels.

b. Class 3.5.2 (Secured Claims). Class 3.5.2 consists of any Secured Claims against Blue Sun St. Advanced Fuels.

c. Class 3.5.3 (Unsecured Claims). Class 3.5.3 consists of all Unsecured Claims against Blue Sun Advanced Fuels.

d. Class 3.5.4 (Equity Security Interests). Class 3.5.4 consists of all Equity Security Interests in Blue Sun Advanced Fuels.

4. Blue Sun Biodiesel.

a. Class 3.6.1 (Priority Non-Tax Claims). Class 3.6.1 consists of any Priority Non-Tax Claims against Blue Sun Biodiesel.

b. Class 3.6.2 (Secured Claims). Class 3.6.2 consists of any Secured Claims against Blue Sun Biodiesel.

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

Unsecured Claims against Blue Sun Biodiesel.

d. Class 3.6.4 (Equity Security Interests). Class 3.6.4 consists of all Equity Security Interests in Blue Sun Biodiesel.

5. All Debtors.

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

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

1. DIP Obligations. Unless paid or satisfied sooner, or a different treatment is consented to in writing by the DIP Lender, the DIP Obligations shall be paid in full and in cash on the Effective Date before the payment of any other Claims against the Debtors. Any dispute regarding the amount of any DIP Obligations shall be resolved by the Bankruptcy Court on an expedited basis prior to the occurrence of the Effective Date. Notwithstanding anything to the contrary contained in the Plan or the Confirmation Order, the terms of the DIP Order and all liens granted to DIP Lender shall survive and shall remaining binding and enforceable until the DIP Obligations have been fully paid or satisfied. Upon payment in full of the DIP Obligations, all liens granted to the DIP Lender shall be deemed fully and forever released and discharged.

2. 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 Code requires that Allowed Administrative Expense Claims be paid on the Effective

Date, 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, or as otherwise provided herein.

3. Administrative Bar Date. Requests for payment of Administrative Expenses must be filed and served no later than thirty (30) days after the Confirmation Date.

4. 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 Confirmation 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 Confirmation 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 fees, costs and disbursements of Professional Persons not heretofore paid through the Effective Date of the Plan, shall be paid out of the Dividend Fund following entry of an order of the Bankruptcy Court authorizing and allowing same pursuant to Sections 327, 330 and 331 of the Bankruptcy Code. Fees, costs and disbursements of Professional

Persons shall be the subject matter of applications to the Court for allowance or award in the manner prescribed by the Code. Notwithstanding the foregoing, any Professional Person may apply to the Bankruptcy Court in the manner prescribed by the 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.

5. 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. Classes 3.3.1, 3.4.1, 3.5.1, and 3.6.1 are impaired under the Plan and are entitled to vote on the Plan. 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.

2. Classes 3.3.2, 3.4.2, 3.5.2, and 3.6.2 (Secured Claims). Classes 3.3.2, 3.4.2,

3.5.2, and 3.6.2 (consisting of Allowed Secured Claims against each Debtor) are impaired under the Plan. Each Secured Claim against each Debtor will be placed in a separate sub-class under Classes 3.3.2, 3.4.2, 3.5.2, and 3.6.2, as applicable. Holders of Allowed Claims will retain their Liens in their collateral. The holders of Allowed 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 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 Secured Claim. Except as otherwise agreed, holders of Allowed Secured Claims will have the right to assert a deficiency Claim which, as and when it becomes an Allowed Claim, shall be treated as an Unsecured Claim in the applicable class of Unsecured Claims.

3. 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.

4. 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. 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.

5. 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.

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 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 8.1 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. Sale of Substantially All Assets of Debtors. In conjunction with the Plan, the Debtors intend to seek a Final Order of the Bankruptcy Court approving a sale, under Bankruptcy Code § 363, of substantially all Assets of the Debtors, with the exception of Estate Claims and any other Assets specifically excluded under the terms of the sale. The Assets will be sold in accordance with sale and auction proceedings approved by the Bankruptcy Court. To the extent approved by the Bankruptcy Court, the sale may occur before or after the Confirmation Date, but will be completed before the Effective Date of the Plan.

3. Liquidating Trusts.[6]

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

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 Agreement and to establish the Liquidating Trust, including the transfer of the Remaining Assets of each Debtor to the applicable Liquidating Trust. Each Liquidating Trust

[6] A copy of the proposed form of Liquidating Trust Agreement is attached hereto as Exhibit "C". 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.

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 Agreement. From the Effective Date, the Liquidating Trustee shall be a representative of the Estates, pursuant to Bankruptcy Code section 1123, appointed for the purposes of, among other things, pursuing the Estate Claims on behalf of the Debtor's Estate. 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 Trust 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 or object to Claims as specified below. Each Liquidating Trust 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.

c. 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.

d. 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 placed by the Liquidating Trustee in the applicable Dividend Fund to the extent necessary to pay the Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Class 3.3.1, 3.3.2, 3.3.3, 3.4.1, 3.4.2, 3.4.3, 3.5.1, 3.5.2, 3.5.3, 3.6.1, 3.6.2, and 3.6.3 Claims as is provided by this Plan.

e. 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.

f. Each Liquidating Trust shall have a term of not greater than five 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 Trust that the Liquidating Trustee reasonably believes are necessary to maintain the value of the assets, to pay the costs and expenses of the Liquidating Trust, including the compensation of the Liquidating Trustee and the reasonable fees, expenses and costs of professionals retained by the Liquidating Trust, 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 Trust, make timely distributions and not unduly prolong the duration of the Liquidating Trust.

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 the 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 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 prosecute, settle or abandon Estate Claims without the need of further order of the Bankruptcy Court, and 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) subject to the provisions of this section of the Plan, make all distributions contemplated hereby; (iii) employ professionals to represent each Liquidating Trust in connection with the consummation of the terms of this Plan; and (iv) 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. Indemnification. The Liquidating Trustee and its Representatives shall be indemnified as provided in the Liquidating Trust Agreements.

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 and to recover any preferences, transfers, assets or damages to which it may be entitled under the applicable provisions of the 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. 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 to the holder thereof the distributions, if any, to which such holder is then entitled under the Plan in accordance with the provisions hereof. In respect of Disputed Claims such distributions shall be made within fifteen (15) days after such Disputed Claims become Allowed Claims by Final Order of the Bankruptcy Court.

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 and 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 $20.00 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 Twenty Dollars ($20.00) (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 Debtors 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 Debtors materially modify the Plan before Confirmation. The Debtors 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. Post-Confirmation Quarterly Fees. Quarterly fees pursuant to 28 U.S.C. Section 1930(a)(6) continue to be payable to the Office of the United States Trustee by the Liquidating Trustee from funds in the applicable Dividend Fund post-confirmation until such time as the case is converted, dismissed, or closed pursuant to a final decree.

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 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 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 reserves 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 DEBTOR 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 Debtors, 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

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. Certain Terminations. On the Effective Date, all instruments evidencing indebtedness of a Debtor discharged by the Plan shall be deemed canceled, unless the Plan provides for the retention of liens.

7. 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.

8. 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.

9. Revocation of Plan. The Debtors reserves the right to revoke and withdraw the Plan at any time before Confirmation.

10. Reservation of Rights. Nothing contained herein shall prohibit the Debtors 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 Debtors of any and all rights, remedies, objections, causes of action, the Debtors 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.

11. 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.

12. 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 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.

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

14. 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.

15. 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 Debtor, 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.

16. Exculpation. Except with respect to obligations under the Plan, neither the Liquidating Trustee, the Liquidating Trusts, the Debtors, the Committee 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 Liquidating Trusts, Liquidating Trustee, the Committee, the Debtors, 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 sixty (60) 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 14.16 of the Plan and the Exculpated Party shall not be relieved of any liability with respect thereto.

17. 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.

18. 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 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 Debtors:

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

b. Each Debtor shall have sufficient Cash to pay its accrued Administrative Expense Claims in accordance with the terms of the Plan.

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 _____, 20__. 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 DEBTORS ASSERT THAT THE TREATMENT OF CREDITORS UNDER THE PLAN IS THE BEST ALTERNATIVE FOR CREDITORS, AND THE DEBTORS 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 DEBTORS 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 _____, 20__Debtors.

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 Debtors have proposed the Plan 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 Debtors 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 Debtors 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 Debtors 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 Debtors 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 Debtors 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 Debtors have requested cramdown confirmation of the Plan with respect to any such non-accepting Class of Creditors. The Debtors 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 Debtors 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 Debtors 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 Debtors 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 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 Debtors believe that the Plan provides the best available alternative for maximizing the recoveries that Creditors will receive from the Debtors' Assets. Therefore, the Debtors recommend that all Creditors and Equity Security Interest holders that are entitled to vote on the Plan vote to accept the Plan.

DATED: NOVEMBER 12, 2015

BLUE SUN ENERGY, INC., a Colorado corporation

By: */s/Jerry Washburn*
Name: Jerry Washburn
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

BLUE SUN ST. JOE'S REFINING, LLC, a Missouri limited liability company

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

Prepared and submitted on behalf of the Debtors by:

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