

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)**

**In re:**

**CASE NO. 6:15-bk-7397-CCJ**

**BUNKERS INTERNATIONAL CORP.,  
*ET AL.*,**

**CHAPTER 11**

**Jointly-administered<sup>1</sup>**

**Debtor.**

\_\_\_\_\_ /

**DISCLOSURE STATEMENT OF  
BUNKERS INTERNATIONAL CORP.,  
ATLANTIC GULF BUNKERING, LLC and  
DOLPHIN MARINE FUELS, LLC**

**COUNSEL FOR DEBTORS**

**R. SCOTT SHUKER, ESQ.  
MARIANE DORRIS, ESQ.  
LATHAM, SHUKER, EDEN & BEAUDINE, LLP  
111 N. MAGNOLIA AVENUE, SUITE 1400  
ORLANDO, FLORIDA, 32801**

December 23, 2015

---

<sup>1</sup> Jointly-administered cases: Bunkers International Corp., Case 6:15-bk-7397-CCJ; Americas Bunkering, LLC, Case 6:15-bk-7400-CCJ; Atlantic Gulf Bunkering, LLC, Case 6:15-bk-7402-CCJ; Dolphin Marine Fuels, LLC, Case 6:15-bk-7404-CCJ

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re: CASE NO. 6:15-bk-7397-CCJ  
  
BUNKERS INTERNATIONAL CORP., CHAPTER 11  
*ET AL.*,  
  
Jointly-administered  
  
Debtor.

\_\_\_\_\_ /

DISCLOSURE STATEMENT OF  
BUNKERS INTERNATIONAL CORP., *ET AL.*

**I. INTRODUCTION AND SUMMARY**

This Disclosure Statement (“Disclosure Statement”) is filed pursuant to the requirements of § 1125 of Title 11 of the United States Code (the “Code”). This Disclosure Statement is intended to provide adequate, necessary, and material information to enable holders of claims in the above-captioned bankruptcy cases (“Bankruptcy Cases”) to make reasonably informed judgments about the Plan of Liquidation (the “Plan”) submitted by **BUNKERS INTERNATIONAL CORP.** (“BIC”), and its affiliated and related entities **ATLANTIC GULF BUNKERING, LLC** (“AGB”), and **DOLPHIN MARINE FUELS, LLC** (“DMF”), (collectively, hereinafter referred to as the “Debtors”). The Debtors are soliciting votes to accept the Plan. The overall purpose of the Plan is to liquidate the Debtors’ assets and liabilities in a manner designed to maximize recoveries to all creditors. The Debtors believe the Plan provides the best means currently available for the liquidation of assets and recovery for Unsecured Creditors and, thus, strongly recommend that you vote to accept the Plan.

**THIS DISCLOSURE STATEMENT AND ITS RELATED DOCUMENTS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT THE PLAN. THIS INTRODUCTION AND SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE REMAINING PORTIONS OF THIS DISCLOSURE STATEMENT, AND THIS DISCLOSURE STATEMENT, IN TURN, IS QUALIFIED IN ITS ENTIRETY BY THE PLAN. THE PLAN IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT, AND ANY HOLDER OF ANY CLAIM OR INTEREST SHOULD READ AND CONSIDER THE PLAN CAREFULLY, IN LIGHT OF THIS DISCLOSURE STATEMENT IN MAKING AN INFORMED JUDGMENT ABOUT THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN, THE PLAN CONTROLS. ALL CAPITALIZED TERMS USED IN THIS DISCLOSURE STATEMENT SHALL HAVE THE DEFINITIONS ASCRIBED TO THEM IN THE PLAN UNLESS OTHERWISE DEFINED HEREIN.**

**NO REPRESENTATION CONCERNING THE DEBTORS IS AUTHORIZED OTHER THAN AS SET FORTH HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS MADE THAT ARE OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED UPON IN ARRIVING AT A DECISION ABOUT THE PLAN.**

**THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO AUDIT. FOR THAT REASON, AS WELL AS THE COMPLEXITY OF THE DEBTORS' BUSINESSES AND FINANCIAL AFFAIRS, AND THE IMPOSSIBILITY OF MAKING ASSUMPTIONS, ESTIMATES AND PROJECTIONS WITH COMPLETE ACCURACY, THE DEBTORS ARE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT INACCURACY, ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO ENSURE THAT SUCH INFORMATION IS ACCURATE. THIS DISCLOSURE STATEMENT INCLUDES FORWARD-LOOKING STATEMENTS BASED LARGELY ON THE DEBTORS' CURRENT EXPECTATIONS AND PROJECTIONS ABOUT FUTURE EVENTS AND FINANCIAL TRENDS AND ARE SUBJECT TO A NUMBER OF RISKS, UNCERTAINTIES AND ASSUMPTIONS.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITY AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR**

**ADEQUACY OF THE INFORMATION CONTAINED HEREIN. AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, CAUSES OF ACTION, AND OTHER ACTIONS, THE DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.**

As prescribed by the Code and the Federal Rules of Bankruptcy Procedure (the “Rules”), claims asserted against, and equity interests in, the Debtors are placed into classes. The Plan designates twenty-five (25) separate Classes of Claims and Interests. The Plan contemplates a return of most collateral to holders of Allowed Lien claims and vesting of lien-free assets and Causes of Action in respective Liquidating Debtors. The Liquidating Debtors shall be controlled by the Manager, who will liquidate all Retained Assets, pursue Causes of Action, and distribute the proceeds to the respective Holders of Allowed Unsecured Claims.

To the extent the legal, contractual, or equitable rights with respect to any claim or interest asserted against the Debtors are altered, modified or changed by treatment proposed under the Plan, such claim or interest is considered “Impaired,” and the holder of such claim or interest is entitled to vote in favor of or against the Plan. A ballot for voting in favor or against the Plan (“Ballot”) will be mailed along with the order approving this Disclosure Statement.

**THE VOTE OF EACH CREDITOR OR INTEREST HOLDER WITH AN IMPAIRED CLAIM OR INTEREST IS IMPORTANT. TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED AT THE ADDRESS AND BY THE DATE SET FORTH IN THE BALLOT.**

**VOTING DEADLINE**

The last day to vote to accept or reject the Plan is \_\_\_\_\_, 2016. All Ballots must be received by the voting agent by 5:00 p.m. (EST) on that day.

Upon receipt, the Ballots will be tabulated, and the results of the voting will be presented to the Court for its consideration. As described in greater detail in Section IV of this Disclosure Statement, the Code prescribes certain requirements for confirmation of a plan. The Court will schedule a hearing to consider whether the Debtors have complied with those requirements (the “Confirmation Hearing”).

You should use the Ballot that will be sent to you to cast your vote for or against the Plan. You may *not* cast Ballots or vote orally or by facsimile. A ballot that does not indicate acceptance or rejection of the Plan will not be considered. Whether or not you vote, you will be bound by the terms and treatment set forth in the Plan if the Bankruptcy Court confirms the Plan. The Bankruptcy Court may disallow any vote accepting or rejecting the Plan if the vote is not cast in good faith.

The Code permits a court to confirm a plan even if all Impaired Classes have not voted in favor of a plan. Confirmation of a plan over the objection of a Class is sometimes called “cramdown.” As described in greater detail in Section IV of this Disclosure Statement, the Debtors have expressly reserved the right to seek “cramdown” in the event all Impaired Classes do not vote in favor of the Plan.

## **II. DESCRIPTION OF DEBTORS’ BUSINESS**

### **A. In General**

The Debtors were part of a family of affiliated companies that provided a range of bunkering services around the globe, including physical marine fuel supply, trading, and brokering services. Prepetition, AGB and DMF provided marine fuel supply services in the

Atlantic Gulf Coast area from Mobile, Alabama, and for the ports of Long Beach and Los Angeles, California, respectively.

B. Significant Developments and Events Leading to Bankruptcy Filing

Prepetition, Bunkers had over 100 employees and provided a range of bunkering services from its offices in the United States, Colombia, the United Kingdom, Singapore, Greece, and South Africa to all types of vessels and companies, including general cargo, dry bulk, tanker operators, major container carriers, and leading cruise lines. Bunkers provided trading, physical fuel supply, and brokering services to ship operators around the world. Trading services included access to marine fuel products, advice on hedging and fixed contracts, information on pricing and global fuel trends, and logistics support during the product delivery process. Bunkers also provided trade credit to customers by using credit lines established with its suppliers. Bunkers' brokering services included market analysis; contract options, including hedging, fixed, and formula-based; technical guidance; logistics assistance; up-to-date pricing; and proactive and personalized service.

In January 2015, the Debtors' principal secured lender P.N.C. Bank, N.A. ("PNC") declared a default. Thereafter, Debtors and PNC entered several forbearance agreements with the last agreement expiring on July 31, 2015 (the "Forbearance Period").

Debtors' lending relationship with PNC was via an asset-based loan with advances tied to eligible accounts receivable and inventory (hereafter, the "Borrowing Base"). During the Forbearance Period, Debtors' Borrowing Base decreased and, as sales contracted, Debtors had less capital to operate. At the same time, the Debtors profit margin was shrinking due to deterioration in the price of oil.

The net results of the Borrowing Base restriction and lower profit margin substantially restricted the Debtors' ability to purchase inventory and, ultimately, a diminished ability to sell product and produce accounts receivable. The Debtors were caught in a downward trend through which they were gradually being squeezed out of existence. Because the Debtors had less and less cash to operate, they began to become delinquent with trade creditors.

Eventually, Debtors had no ability to borrow, no additional trade credit, and insufficient assets to continue operations outside of Chapter 11.

Unfortunately, during this desperate period, several trade creditors exerted undue influence on Debtors and extracted preferential payments. In one such transfer, Debtors sought to increase trade credit by initiating a large sale with World Fuel on August 8, 2015. Despite contrary indications, World Fuel set off approximately \$3,000,000 of an inventory sale against a balance allegedly owed to World Fuel; however, World Fuel did not make any new trade credit available.

From at least May 2015 forward, Debtors worked with numerous parties to explore a potential equity infusion or asset purchase. In the weeks leading to the filing, Debtors were also in significant negotiations to find a buyer for PNC's debt obligation. Debtors exhausted all efforts to find an out-of-court resolution, but the cash shortfall and increase in trade debt (with several threatened ship arrests) left Debtors with no choice but to seek protection under Chapter 11.

C. Events Subsequent to Chapter 11 Filing

Subsequent to Petition Date, each of BIC, AGB, and DMF have operated as debtors-in-possession and, initially, hoped to find a strategic partner to acquire assets in the ordinary course and obtain a fair market value for assets that included a going-concern

component. The Debtors' strategy was designed to increase asset value, decrease any deficiency held by PNC, and preserve jobs. To that end, Debtors sought and obtained several orders allowing use of cash collateral based on budgets that allowed scaled back operations but did not seek full liquidation (Doc. No. 13, 35, 53, and 70).

At the commencement of the case, Debtors also sought and obtained permission to jointly administer these cases to keep expenses low (Doc. No. 33). Debtors sought and obtained permission to obtain counsel, Latham, Shuker (Doc. No. 104), special maritime counsel, Simms Showers (Doc. No. 105), and a financial consultant, Consulting CFO (Doc. No. 106).

During the Chapter 11, Debtors received Court approval to resolve a dispute in respect of certain amounts owed by a vendor in Colombia (Doc. No. 129) and to partially resolve a dispute as to a fuel storage contract between AGB and a vendor (Doc. No. 99). These resolutions, respectively, produced \$300,000 for the BIC estate and reduced future administrative claims in AGB as well as allowing ordinary course fuel sales for AGB.

As noted above, Debtors initially hoped to achieve an ordinary course sale of all assets to preserve value and jobs. To that end, Debtors filed a motion to sell all assets, free and clear of liens to a foreign entity known as Bomin (Doc. No. 147). Unfortunately, the deal terms for the sale could not be consummated and, ultimately, Debtors withdrew the sale motion. Fortunately, AGB was able to sell almost all of its inventory to Bomin during the ordinary course of business and immediately prior to a large drop in the price of such inventory.

Ultimately, Debtors determined they could not successfully reorganize and, in early November, began the process of an orderly liquidation and cessation of operations with an eye to filing the Plan. The purpose of the Plan is to allow each Debtor to maintain existence as a



Liquidating Debtor under the control of the Manager. The Manager is a third party fiduciary who will control liquidation of the Retained Assets and prosecution of the Causes of Action and provide a dividend to Unsecured Creditors.

### **III. THE PLAN**

**THE FOLLOWING SUMMARY IS INTENDED ONLY TO PROVIDE AN OVERVIEW OF THE DEBTORS' PLAN. ANY PARTY IN INTEREST CONSIDERING A VOTE ON THE PLAN SHOULD CAREFULLY READ THE PLAN IN ITS ENTIRETY BEFORE MAKING A DETERMINATION TO VOTE IN FAVOR OF OR AGAINST THE PLAN. THIS SUMMARY IS QUALIFIED IN ITS ENTIRETY BY THE PLAN.**

#### **A. Overview.**

The Plan contemplates the creation of three (3) Liquidating Debtors controlled by the Manager. Each Liquidating Debtor will have respective Retained Assets, including the Causes of Action, and will liquidate such in an orderly fashion for the benefit of the respective Unsecured Classes (Classes 11, 18 and 24).

All Claims against the Debtors shall be classified and treated pursuant to the terms of the Plan. As noted more fully below, the Plan contains twenty-five (25) classes of Claims and Interests. There are three (3) classes of Priority Wage Claims, three (3) Classes of Secured Claims held by PNC, three (3) classes of general Unsecured Claims, thirteen (13) classes of quasi-Secured Claims that will receive return of collateral, and three (3) classes of Interests.

#### **B. Classification and Treatment of Claims.**

##### **1. Administrative Claims.**

##### **a. Nonordinary Course Administrative Claims.**

i. Any person, including any professional who has rendered services to the Debtors during the course of the Case, that asserts an Administrative Claim arising

before the Confirmation Date, including Claims under § 503(b) of the Code, but excluding Ordinary Course Administrative Claims as discussed below, shall, on or before the Administrative Claims Bar Date or other date as set by Bankruptcy Court order, file an application, motion, or request, as called for by the Rules, with the Bankruptcy Court for allowance of such Claim as an Administrative Claim specifying the amount of and basis for such Claim; provided, however, that applicants or movants who have previously filed applications, motions, or requests with the Bankruptcy Court need not file another such paper for the same Claim. Failure to file a timely application, motion, or request for allowance pursuant to this Section by any holder of a Nonordinary Course Administrative Expense Claim shall bar such a claimant from seeking recovery on such Claim.

ii. Each holder of a Nonordinary Course Administrative Claim of Debtors shall be paid by Debtors one hundred percent (100%) of its Allowed Claim in Cash, unless otherwise ordered by the Bankruptcy Court or agreed to by such Holder, on or before the Effective Date or such later date as may be agreed to by such holder, or, if the Claim does not become Allowed prior to the Effective Date, on the date the Allowed Amount of such claim is determined by Final Order of the Bankruptcy Court. As provided for in Article VI of the Plan, a respective Debtors' cash-on-hand, not subject to the PNC Lien, as of the Effective Date shall be first used to pay Nonordinary Course Administrative Claims, and to the extent such funds are insufficient, then payment on the Allowed Claims will be paid by the applicable Liquidating Debtor in Cash from Extraordinary Income. Due to the uncertain timing associated with the recovery of Extraordinary Income, it is not possible to project exactly when such payments will be made. However, nothing in this provision of the Plan shall preclude a respective Liquidating

Debtor from paying any holder of a Nonordinary Course Administrative Claim less than one hundred percent (100%) of its Allowed Claim in Cash on the Effective Date provided that such Claim holder consents to different payment terms.

b. Ordinary Course Administrative Expense Claims.

Ordinary Course Administrative Claims will be resolved through the performance of the obligation by Liquidating Debtors in accordance with the terms and conditions of the agreement or applicable law giving rise thereto. An applicant for such Claim need not file an application, motion, or request to protect its rights with respect to Ordinary Course Administrative Claims.

2. Priority Claims.

a. Priority Tax Claims. Except to the extent that the Holder and the Liquidating Debtors have agreed or may agree to a different treatment, each Holder of an Allowed Priority Tax Claim shall receive from the Liquidating Debtors, in full satisfaction of such Claim, payments equal to the Allowed Amount of such Claim. Allowed Priority Tax Claims will be paid based on a five (5) year amortization with final payment due on or before 5 years from Petition Date. Each Allowed Priority Tax Claim will accrue interest at five percent (5%); the payments will be made quarterly. Payments will commence on the later of the Effective Date, or on such date as a respective Priority Claim becomes Allowed. Debtors estimate that the filed amount of Priority Tax Claims will not exceed \$50,000.00.

b. Class 1 - Priority Wage, Vacation, and Benefit Claims (BIC).

Class 1 Claims consist of all Priority Claims, which are defined as those Claims against BIC entitled to priority pursuant to 11 U.S.C. §507(a)(3) and (4), and

exclusive of Priority Tax Claims under 11 U.S.C. §507(a)(8). Class 1 Priority Claims in this Case include unsecured Claims for wages, salaries or commissions, as described in §507(a)(3) as well as for benefits delineated in §507(a)(4). To the extent any Class 1 Allowed Priority Claim is unpaid as of the Effective Date, then such portion of the Allowed Amount of any such Claim shall be paid in quarterly installments over eighteen (18) months with interest at five percent (5%); provided, however, these Claims will be paid in full by the BIC Liquidating Debtor from BIC Extraordinary Income prior to any payments on Class 11 Allowed Unsecured Claims. Payments will commence on the Effective Date or the date on which such Priority Claim becomes allowed.

c. Class 13 - Priority Wage, Vacation, and Benefit Claims (AGB).

Class 13 Claims consist of all Priority Claims, which are defined as those Claims against AGB entitled to priority pursuant to 11 U.S.C. §507(a)(3) and (4), and exclusive of Priority Tax Claims under 11 U.S.C. §507(a)(8). Class 13 Priority Claims in this Case include unsecured Claims for wages, salaries or commissions, as described in §507(a)(3) as well as for benefits delineated in §507(a)(4). To the extent any Class 13 Allowed Priority Claim is unpaid as of the Effective Date, then such portion of the Allowed Amount of any such Claim shall be paid in quarterly installments over eighteen (18) months with interest at five percent (5%); provided, however, these Claims will be paid in full by the AGB Liquidating Debtor from AGB Extraordinary Income prior to any payments on Class 18 Allowed Unsecured Claims. Payments will commence on the Effective Date or the date on which such Priority Claim becomes allowed.

d. Class 20 - Priority Wage, Vacation, and Benefit Claims (DMF).

Class 20 Claims consist of all Priority Claims, which are defined as those Claims against DMF entitled to priority pursuant to 11 U.S.C. §507(a)(3) and (4), and

exclusive of Priority Tax Claims under 11 U.S.C. §507(a)(8). Class 20 Priority Claims in this Case include unsecured Claims for wages, salaries or commissions, as described in §507(a)(3) as well as for benefits delineated in §507(a)(4). To the extent any Class 20 Allowed Priority Claim is unpaid as of the Effective Date, then such portion of the Allowed Amount of any such Claim shall be paid in quarterly installments over eighteen (18) months with interest at five percent (5%); *provided, however*, these Claims will be paid in full by the DMF Liquidating Debtor from DMF Extraordinary Income prior to any payments on Class 24 Allowed Unsecured Claims. Payments will commence on the Effective Date or the date on which such Priority Claim becomes allowed.

3. Secured Claims.

a. Class 2 - Secured Claim of PNC (BIC).

Class 2 consists of the Allowed Secured Claim of PNC which arises from a prepetition Revolving Credit and Security Agreement dated October 15, 2013, an Export-Import Loan and Security Agreement dated October 15, 2013 and a Revolving Credit Note dated October 15, 2013. The Claim is secured by a perfected security interest in substantially all of the personal property assets of the owned by all Debtors, including without limitation, accounts receivable, inventory, equipment, and general intangibles.

In full satisfaction of the Allowed Class 2 Claim, PNC shall retain its Lien and: (a) receive all the Cash subject to its Lien on the Effective Date; and (b) either (x) the proceeds of liquidation of accounts and other BIC assets subject to PNC's Lien; or (y) return of the PNC collateral as the indubitable equivalent of such portion of the Secured Claim with the return to occur on the Effective Date. To the extent PNC elects to have the BIC Liquidating Debtor administer and collect on the PNC, non-cash collateral, PNC and the Liquidating Debtor

will first reach agreement as to fees and costs which be paid from such liquidation. PNC shall have an Allowed Class 11 Claim to the extent its Allowed Claim exceeds the value of the collateral subject to PNC's Lien.

b. Class 3 - Secured Claim of C1 Bank (BIC).

Class 3 consists of the Allowed Secured Claim of C1 Bank which arises from a prepetition loan on real property located at 110 Timberlachen Circle, Unit 1000, 1004, 1008 and 1012, Lake Mary, Florida 32746 (the "Real Property").

In full satisfaction of the Allowed Class 3 Claim, C1 Bank shall retain its Lien and either be paid from the sale of the Real Property or shall receive the Real Property as the indubitable equivalent, and full satisfaction, of its Allowed Secured Claim. BIC Liquidating Debtor shall have six (6) months from the Effective Date to obtain a contract for a sale of the Real Property and, if such contract is obtained, another forty-five (45) days to close on such contract. If the sale contract is not in an amount sufficient to pay, in full, the Allowed Class 3 Claim, the Manager shall seek the consent of C1 prior to moving forward with the sale. Any sale of the Real Property will not be subject to taxes pursuant to Bankruptcy Code Section 1146(a).

c. Class 4 - Secured Claim of Ally Bank (BIC).

Class 4 consists of the Allowed Secured Claim of Ally Bank ("Ally") which arises from a prepetition loan to purchase a 2013 Ford Econoline.

In full satisfaction of the Allowed Class 4 Claim, Ally will receive the indubitable equivalent of its Allowed Secured Claim and will receive, on the Effective Date,

the 2013 Ford Econoline, and, to the extent the Allowed Claim exceeds the value of the Collateral, a Class 11 Claim.

d. Class 5 - M2 Lease Funds, LLC (BIC).

Class 5 consists of the Allowed Secured Claim of M2 Lease Funds, LLC (“M2 Lease”) which arises from prepetition lease of furniture, fixtures, and office equipment.

In full satisfaction of the Allowed Class 5 Claim, M2 Lease shall receive the indubitable equivalent of its Allowed Secured Claim and will receive, on the Effective Date, the collateral securing its Claim and, to the extent such value is less than the Allowed Claim, a Class 11 Claim.

e. Class 6 - Hand Arendall LLC (BIC).

Class 6 consists of the Allowed Secured Claim of Hand Arendall LLC (“Hand”). The Claim is allegedly secured by a Lien in the amount of \$1,545.00, which arises from prepetition legal work performed on behalf of the Debtor, on a \$20,000.00 deposit held by Hand for legal fees.

In full satisfaction of the Allowed Class 6 Claim, Hand will receive the indubitable equivalent of its Allowed Secured Claim and will receive, on the Effective Date, the collateral securing its Claim and, to the extent such value is less than the Allowed Claim, a Class 11 Claim.

f. Class 7 - Curacao Oil (Curoil), N.V (BIC).

Class 7 consists of the Allowed Secured Claim of Curacao Oil (Curoil), N.V. (“Curoil”) which arises from the prepetition purchase of fuel.

In full satisfaction of the Allowed Class 7 Claim, Curoil shall receive the indubitable equivalent of its Allowed Secured Claim and will receive, on the Effective Date, any remaining inventory sold by Curoil to BIC; however, BIC believes no such inventory exists and, as such, the entire Class 7 Claim will be treated pursuant to the terms of Class 11.

g. Class 8 - Curacao (Aruba) Freezone, N.V.(BIC).

Class 8 consists of the Allowed Secured Claim of Curacao (Aruba) Freezone, N.V. (“Curacao”) which arises from prepetition purchase of fuel.

In full satisfaction of the Allowed Class 8 Claim, Curacao shall receive the indubitable equivalent of its Allowed Secured Claim and will receive, on the Effective Date, any remaining inventory sold by Curacao to BIC; however, BIC believes no such inventory exists and, as such, the entire Class 8 Claim will be treated pursuant to the terms of Class 11.

h. Class 9 - World Fuel Services, Inc.(BIC).

Class 9 consists of the Allowed Secured Claim of World Fuel Services, Inc. (“World Fuel”) which arises from a prepetition agreement for the sale, purchase and trade of bunkers and/or other marine fuel/lubrication products. World Fuel has asserted the right of setoff against the Debtors; Debtors dispute the applicability of setoff.

In full satisfaction of its Allowed Class 9 Claim, World Fuel shall receive the indubitable equivalent of its Secured Claim; however, Debtor believes the only Secured Claim is the right to argue setoff in respect of any collection action. World Fuel shall retain such right; however, such will not impact the ability of the BIC Liquidating Debtor to pursue relief under Chapter 5 of the Bankruptcy Code. To the extent World Fuel’s Allowed Claim exceeds the value of its collateral, World Fuel shall have a Class 11 Claim.



i. Class 10 - Seminole County Tax Collector-Real Estate Taxes (BIC).

Class 10 consists of the Allowed Secured Claim of the Seminole County Tax Collector in respect of the 2015 ad valorem real estate taxes on the Real Property.

In full satisfaction of the Allowed Class 10 Claim, Seminole County shall retain its Lien and be paid the full amount of its Allowed Secured Claim upon the sale of the Real Property; however, to the extent the Real Property is returned to C1, any stay or injunction in place pursuant to the terms of the Plan shall be lifted and the Class 10 Claim Holder may pursue any and all nonbankruptcy rights and remedies.

j. Class 14 - Secured Claim of PNC (AGB).

Class 14 consists of the Allowed Secured Claim of PNC which arises from a prepetition Revolving Credit and Security Agreement dated October 15, 2013, an Export-Import Loan and Security Agreement dated October 15, 2013 and a Revolving Credit Note dated October 15, 2013. The Claim is secured by a perfected security interest in substantially all of the personal property assets of the owned by all Debtors, including without limitation, accounts receivable, inventory, equipment, and general intangibles.

In full satisfaction of the Allowed Class 14 Claim, PNC shall retain its Lien and: (a) receive all the Cash subject to its Lien on the Effective Date; and (b) either (x) the proceeds of liquidation of accounts and other AGB assets subject to PNC's Lien; or (y) return of the PNC collateral as the indubitable equivalent of such portion of the Secured Claim with the return to occur on the Effective Date. To the extent PNC elects to have the AGB Liquidating Debtor administer and collect on the PNC, non-cash collateral, PNC and the Liquidating Debtor will first reach agreement as to fees and costs which be paid from such liquidation. PNC shall

have an Allowed Class 18 Claim to the extent its Allowed Claim exceeds the value of the collateral subject to PNC's Lien.

k. Class 15- USB (AGB).

Class 15 consists of the Allowed Secured Claim of USBCDE Sub-CDE 88, LLC ("USB") which purports to be secured by a deposit account in the approximate amount of \$65,000 (the "USB Account").

In full satisfaction of the Allowed Class 15 Claim, USB will receive the indubitable equivalent of its Allowed Secured Claim and will receive, on the Effective Date, any remaining amount of the USB Account so long USB has a valid, first-priority lien on the USB Account. To the extent the Allowed Claim of USB exceeds the value of the USB Account, the balance of the Class 15 Claim will be treated pursuant to the terms of Class 18.

l. Class 16- ARC (AGB).

Class 16 consists of the Allowed Secured Claim of ARC Terminals Holdings, LLC ("ARC") which arises from an alleged Lien pursuant to the Maritime Lien Act.

In full satisfaction of the Allowed Class 16 Claim, ARC shall retain its Lien under the Maritime Lien Act and shall be paid, out of the AGB cash-on-hand, to the extent the Lien is a valid first-priority Lien Claim. To the extent the Allowed Claim of ARC exceeds the value of the ARC collateral, the balance of ARC's claim shall be treated pursuant to Class 18.

m. Class 17-World Fuel (AGB).

Class 17 consists of the Allowed Secured Claim of World Fuel Services, Inc. ("World Fuel") which arises from a prepetition agreement for the sale, purchase and

trade of bunkers and/or other marine fuel/lubrication products. World Fuel has asserted the right of setoff against the Debtors; Debtors dispute the applicability of setoff.

In full satisfaction of its Allowed Class 17 Claim, World Fuel shall receive the indubitable equivalent of its Secured Claim; however, Debtor believes the only Secured Claim is the right to argue set off in respect of any collection action. World Fuel shall retain such right; however, such will not impact the ability of the AGB Liquidating Debtor to pursue relief under Chapter 5 of the Bankruptcy Code. To the extent World Fuel's Allowed Claim exceeds the value of its collateral, World Fuel shall have a Class 18 Claim.

n. Class 21 -Secured Claim of PNC (DMF).

Class 21 consists of the Allowed Secured Claim of PNC which arises from a prepetition Revolving Credit and Security Agreement dated October 15, 2013, an Export-Import Loan and Security Agreement dated October 15, 2013 and a Revolving Credit Note dated October 15, 2013. The Claim is secured by a perfected security interest in substantially all of the personal property assets of the owned by all Debtors, including without limitation, accounts receivable, inventory, equipment, and general intangibles.

In full satisfaction of the Allowed Class 21 Claim, PNC shall retain its Lien and: (a) receive all the Cash subject to its Lien on the Effective Date; and (b) either (x) the proceeds of liquidation of accounts and other DMF assets subject to PNC's Lien; or (y) return of the PNC collateral as the indubitable equivalent of such portion of the Secured Claim with the return to occur on the Effective Date. To the extent PNC elects to have the DMF Liquidating Debtor administer and collect on the PNC, non-cash collateral, PNC and the Liquidating Debtor will first reach agreement as to fees and costs which be paid from such liquidation. PNC shall

have an Allowed Class 24 Claim to the extent its Allowed Claim exceeds the value of the collateral subject to PNC's Lien.

o. Class 22 Vopak (DMF).

Class 22 consists of the Allowed Secured Claim of Vopak Terminal Los Angeles, Inc. ("Vopak").

In full satisfaction of the Allowed Class 22 Claim, Vopak shall retain the inventory which was stored in its facilities, free and clear of all liens, and be able to apply the deposit it is holding from DMF. Vopak shall have no other claim or interest in these cases.

p. Class 23-World Fuel (DMF).

Class 23 consists of the Allowed Secured Claim of World Fuel Services, Inc. ("World Fuel") which arises from a prepetition agreement for the sale, purchase and trade of bunkers and/or other marine fuel/lubrication products. World Fuel has asserted the right of setoff against the Debtors; Debtors dispute the applicability of setoff.

In full satisfaction of its Allowed Class 23 Claim, World Fuel shall receive the indubitable equivalent of its Secured Claim; however, Debtor believes the only Secured Claim is the right to argue set off in respect of any collection action. World Fuel shall retain such right; however, such will not impact the ability of the DMF Liquidating Debtor to pursue relief under Chapter 5 of the Bankruptcy Code. To the extent World Fuel's Allowed Claim exceeds the value of its collateral, World Fuel shall have a Class 24 Claim.

4. Unsecured Claims

a. Class 11 - General Unsecured Claims (BIC).

Class 11 consists of the Allowed Claims of the BIC Unsecured Creditors.

In full satisfaction of the Class 11 Claims, such holders shall be entitled to share, *pro rata*, in all Extraordinary Income. Distribution of Extraordinary Income shall be made by the Manager pursuant to the terms of the Plan and shall continue until the Final Distribution. The amount of Extraordinary Income cannot be determined at this time; however, Debtor believes recovery via the Plan will produce the highest possible return for holders of Class 11 Claims.

b. Class 18 - General Unsecured Claims (AGB).

Class 18 consists of the Allowed Claims of the AGB Unsecured Creditors.

In full satisfaction of the Class 18 Claims, such holders shall be entitled to share, *pro rata*, in all Extraordinary Income. Distribution of Extraordinary Income shall be made by the Manager pursuant to the terms of the Plan and shall continue until the Final Distribution. The amount of Extraordinary Income cannot be determined at this time; however, Debtor believes recovery via the Plan will produce the highest possible return for holders of Class 18 Claims.

c. Class 24 - General Unsecured Claims (DMF).

Class 24 consists of the Allowed Claims of the DMF Unsecured Creditors.

In full satisfaction of the Class 24 Claims, such holders shall be entitled to share, pro rata, in all Extraordinary Income. Distribution of Extraordinary Income shall be made by the Manager pursuant to the terms of the Plan and shall continue until the Final Distribution. The amount of Extraordinary Income cannot be determined at this time; however, Debtor believes recovery via the Plan will produce the highest possible return for holders of Class 24 Claims.

5. Equity Interests

a. Class 12 - Equity Interests in BIC.

Class 12 consists of any and all Equity Interests in BIC, which shall, on the Effective Date, be extinguished and of no further force or effect.

b. Class 19 - Interests in AGB.

Class 19 consists of the Interests in AGB which shall, on the Effective Date, be extinguished and of no further force or effect.

c. Class 25 - Equity Interests in DMF.

Class 25 consists of any and all Equity Interests in DMF which shall, on the Effective Date, be extinguished and of no further force or effect.

C. Means of Implementation.

1. Business Operations and Cash Flow.

The Plan contemplates that, upon entry of the Confirmation Order, the Debtors will, respectively, become Liquidating Debtors. All assets shall vest in the respective Liquidating Debtor with Liens attaching to the same, extent, validity, and priority which existed as of Petition Date. The equity of each Debtor will be extinguished and the Manager will

immediately commence control of each Liquidating Debtor to administer the Plan and pursue Extraordinary Income. There will be no on-going operations of any Liquidating Debtor other than liquidation of assets and pursuit of Extraordinary Income. The Debtors believe the proceeds of all Lien free assets and Extraordinary Assets will be sufficient to meet all required Plan payments. Manager shall deliver, via bill of sale, as is/whereis, all Returned Assets within ten (10) days of the Effective Date.

D. Separate Estates.

The Manager will be fully in control of each Liquidating Debtor; however, the Manager shall maintain separate accounts for each Liquidating Debtor and not co-mingle any funds or loan money between Liquidating Debtors.

E. Funds Generated During Chapter 11.

Funds generated from operations until the Effective Date will be used for Plan Payments; provided, however, any funds subject to the Lien of PNC may not be used for any purpose other than payment to PNC without the written consent of PNC.

F. Management and Control of Reorganized Debtors.

1. Directors/Managers/Officers. All prepetition directors/managers/officers shall be deemed to have resigned upon entry of the Confirmation Order and the administration and control of the Liquidating Debtors shall be vested in the Manager. The Manager shall have all corporate authority vested in managers under the applicable laws of the State of Delaware or, as applicable, Florida, including the power to take control of the Retained Assets, pursue the Causes of Action, make distributions, and to liquidate the Liquidating Debtors and to wind up their affairs.

2. Court Approval. Although full operational and managerial control of the Liquidating Debtors will be vested in the Manager, the Manager will be required to obtain Court approval for: (a) any compromise or settlement of any Cause of Action or Objection to Claim; (b) any asset sale not specifically authorized in the Plan in excess of \$10,000; and (c) any payment to the Manager or any professional employed by the Manager in excess of \$10,000. The approval required hereunder may be obtained by the use of negative notice upon fourteen (14) days' notice to PNC, the Office of the United States Trustee, and any party who provides notice that it wishes to be notified of the actions of the Manager contemplated hereunder ("Post Confirmation Notice"). A request to receive Post Confirmation Notice shall be filed with the Court and served on the Manager. The Manager does not need Court permission to retain or replace any professional.

G. Other Provisions.

1. Leases and Executory Contracts.

To the extent Debtors reject any executory contract or unexpired lease prior to the Confirmation Date, any party asserting a Claim pursuant to §365 of the Code arising from the rejection of an executory contract or lease shall file a proof of such Claim within thirty (30) days after the entry of an Order rejecting such contract or lease, and any Allowed Claim resulting from rejection shall be, respectively, either a Class 11, 18, or 24 Claim except as otherwise provided herein. Debtors shall have through and including the hearing on Confirmation within which to assume or reject any unexpired lease or executory contract; and, further, that in the event any such unexpired lease or executory contract is not rejected by such date, then such unexpired lease or executory contract shall be deemed rejected as of the Confirmation Date. It is the position



of Debtors that the executory contracts listed in the Schedule and Amended Schedule of Executory Contracts filed pursuant to Rule 1007, are the only executory contracts to which any of the Debtors was a party on the Petition Date.

2. Procedures for Resolving Disputed Claims.

a. Prosecution of Objections to Claims.

Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as otherwise provided in the Plan, any party in interest shall have the right to make and file objections to all Claims.

Pursuant to the Plan, unless another time is set by order of the Bankruptcy Court, all objections to Claims and Equity Interests shall be Filed with the Court and served upon the Holders of each of the Claims and Equity Interests to which objections are made within 90 days after the Confirmation Date.

Except as may be specifically set forth in the Plan, nothing in the Plan, the Disclosure Statement, the Confirmation Order or any order in aid of Confirmation, shall constitute, or be deemed to constitute, a waiver or release of any claim, cause of action, right of setoff, or other legal or equitable defense that, any Debtor had immediately prior to the commencement of the Chapter 11 Cases, against or with respect to any Claim or Equity Interest. Except as set forth in the Plan, upon Confirmation, the Debtors and the Liquidating Debtors shall have, retain, reserve and be entitled to assert all such claims, Causes of Action, rights of setoff and other legal or equitable defenses that any Debtor had immediately prior to the commencement of the Chapter 11 Cases as if the Chapter 11 Cases had not been commenced.

b. Estimation of Claims.

Pursuant to the Plan, the Debtors may, at any time, request that the Bankruptcy Court estimate any contingent, disputed or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, disputed or unliquidated Claim, that estimated amount will constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim.

c. Cumulative Remedies.

In accordance with the Plan, all of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. Until such time as an Administrative Claim, Claim or Equity Interest becomes an Allowed Claim, such Claim shall be treated as a Disputed Administrative Claim, Disputed Claim or Disputed Equity Interest for purposes related to allocations, Distributions, and voting under the Plan.

d. Payments and Distributions on Disputed Claims.

As and when authorized by a Final Order, Disputed Claims that become Allowed Claims shall be paid from the Liquidating Debtors' Cash and Assets, such that the Holder of such Allowed Claim receives all payments and Distributions to which such Holder is entitled under the Plan in order to bring payments to the affected Claimants current with the other participants in the particular Class in question. Except as otherwise provided in the Plan, no partial payments and no partial Distributions will be made with respect to a Disputed Claim until the resolution of such disputes by settlement or Final Order. Unless otherwise agreed by the Liquidating Debtors or as otherwise specifically provided in the Plan, a Creditor who holds both an Allowed Claim and a Disputed Claim will not receive a Distribution until such dispute is resolved by settlement or Final Order.

e. Allowance of Claims and Interests.

(i) Disallowance of Claims.

According to the Plan, all Claims held by Entities against whom any Debtor has obtained a Final Order establishing liability for a cause of action under Sections 542, 543, 522(f), 522(h), 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code shall be deemed disallowed pursuant to Section 502(d) of the Bankruptcy Code, and Holders of such Claims may not vote to accept or reject the Plan, both consequences to be in effect until such time as such causes of action against that Entity have been settled or resolved by a Final Order and all sums due the related Debtor by that Entity are turned over to such Debtor.

(ii) Allowance of Claims.

Except as expressly provided in the Plan, no Claim or Equity Interest shall be deemed Allowed by virtue of the Plan, Confirmation, or any Order of the

Bankruptcy Court in the Chapter 11 Cases, unless and until such Claim or Equity Interest is deemed Allowed under the Bankruptcy Code or the Bankruptcy Court enters a Final Order in the Chapter 11 Cases allowing such Claim or Equity Interest.

f. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Equity Interests or any Class of Claims or Equity Interests are Impaired under the Plan, the Bankruptcy Court, after notice and a hearing, shall determine such controversy before the Confirmation Date. If such controversy is not resolved prior to the Effective Date, the Debtors' interpretation of the Plan shall govern.

g. Intercompany Claims.

The Plan contemplates the elimination and cancellation of all intercompany claims. Any such claims were largely bookkeeping entries and arose due to a consolidated cash management system and a common disbursement account related to Debtors prepetition asset based loan.

3. Effect of Confirmation.

a. Cancellation of Equity.

On the Effective Date, all of the Debtors' outstanding Preferred and Common Stock, and Membership Interests will be extinguished. The equity in the Debtors will receive no distribution unless and until all Allowed Claims, in the respective cases, have been paid in full.

b. Authority to Effectuate the Plan.

Upon the entry of the Confirmation Order by the Bankruptcy Court, the Plan provides all matters provided under the Plan will be deemed to be authorized and approved without further approval from the Bankruptcy Court. The Confirmation Order will act as an order modifying the Debtors' by-laws such that the provisions of this Plan can be effectuated. The Liquidating Debtors and Manager shall be authorized, without further application to or order of the Bankruptcy Court, to take whatever action is necessary to achieve Consummation and carry out the Plan.

c. Post-Confirmation Status Report.

Pursuant to the Plan, within 120 days of the entry of the Confirmation Order, the Manager will file status reports with the Court explaining what progress has been made toward consummation of the confirmed Plan. The status report will be served on the United States Trustee, the Creditor Agent, and those parties who have requested special notice post-confirmation. The Bankruptcy Court may schedule subsequent status conferences in its discretion.

4. Means for Implementation of Classes 11, 18, and 24

a. Liquidating Debtors. On the Effective Date, all Retained Assets and Causes of Action shall be transferred to the Liquidating Debtors to be asserted and prosecuted by the Manager. From and after Effective Date, the Manager and no other person shall be authorized to litigate any Causes of Action. The Manager shall also be vested with all right, powers and benefits afforded a "trustee" under Sections 704 and 1106 of the Bankruptcy Code.

b. Manager. The Debtors have selected Robert Morrison to an serve as the Manager of the Liquidating Debtors for a period of time commencing on the Effective Date. The Manager shall be deemed a fiduciary of the Estates and the Classes 11, 18, and 24 Creditors who may be entitled to receive distributions from the respective Liquidating Debtor under the Plan. The Manager shall perform the duties and have the rights and obligations proscribed herein.

The Debtors shall be authorized and directed to execute, deliver, receive and exchange on behalf of the Estates any and all documents necessary to effectuate the transfer control of the Liquidating Debtors to the Manger on the Effective Date.

c. Compensation for Manager. The Manager shall be paid on a per hour basis plus actual out-of-pocket expenses, to be paid quarterly upon Court approval. Mr. Morrison's current rate is \$350 per hour.

d. Removal of Manager. The Manager may be removed, for good cause, upon notice and hearing and after order by the Bankruptcy Court.

e. Preservation, Prosecution and Defense of Causes of Action.

On behalf of the Liquidating Debtors, the Manager shall have the right to pursue any and all Causes of Action of the Debtors that will be transferred to the respective Liquidating Debtor, including all pending adversary proceedings, whether or not such causes of action have been commenced as of the Effective Date, and the Liquidating Debtor shall be substituted as the real party in interest in any such actions commenced by or against the Debtors, the Debtors' Estates or the Committee. The Manager shall prosecute or defend, as appropriate, such actions through final judgment, any appeals deemed necessary and appropriate by the Manager and collection; provided, however, that the Manager shall be authorized at any

point in any litigation (a) to enter into such settlements as the Manager deems to be in the best interest of creditors, subject to Bankruptcy Court approval after notice and a hearing in accordance with Bankruptcy Rule 9019; or (b) to abandon, dismiss and/or decide not to prosecute any such litigation if the Manager deems such action to be in the best interest of creditors without Bankruptcy Court or other approval.

f. Retention of Professionals. The Liquidating Debtors via the Manager may retain professionals on such terms as the Manager deems reasonable, without Bankruptcy Court approval, except that payments to the professionals for post-confirmation services and expenses shall be made only upon application and Court approval and no more than quarterly.

g. Payment of Costs/Expenses. All costs and expenses and obligations incurred by the Manager in administering the Plan or in any manner connected, incidental or related thereto shall be a charge against the respective Liquidating Debtor, including but not limited to, payments to the Manager and any attorneys, accountants, brokers or other professionals employed by the Liquidating Debtor.

5. Dissolution of Creditors' Committee.

As of the Effective Date, or as soon as practical thereafter, the duties of the Committee and any professionals retained by the Committee in this case shall terminate except as to: (i) applications under Section 330 and 503 of the Bankruptcy Code and the Committee's objections to such application; and (ii) enforcement of the provisions of the Plan until the Plan is substantially consummated. On the Effective Date, the BIC Liquidating Debtor shall be substituted in place of the Committee in any legal proceedings in which the Committee is a named

party and shall have all rights and duties of the Committee in such proceeding. No further action between the BIC Liquidating Debtor and Committee shall be necessary to effectuate such transfer.

#### **IV. CONFIRMATION**

##### **A. Confirmation Hearing.**

Section 1128 of the Code requires the Court, after notice, to hold a Confirmation Hearing on the Plan at which time any party in interest may be heard in support of or in opposition to Confirmation. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement to be made at the Confirmation Hearing. Any objection to Confirmation must be made in writing and filed with the Clerk, and delivered to the following persons, at least seven (7) days prior to Confirmation Hearing:

Counsel for the Debtor:

R. Scott Shuker, Esquire  
Mariane L. Dorris, Esquire  
Latham Shuker Eden & Beaudine, LLP  
111 N. Magnolia Avenue, Suite 1400  
Orlando, Florida 32801

Debtor:

Mr. John Canal  
Bunkers International Corp  
1071 S Sun Drive, Suite 3  
Lake Mary, FL 33746

If to Official Committee of Unsecured Creditors:

John Hutton, Esquire  
Greenberg Traurig, PA  
333 SE Second Avenue, Suite 4400  
Miami, FL 33131



United States Trustee  
400 West Washington St  
Orlando, Florida 32801

B. Financial Information Relevant to Confirmation.

Attached as **Exhibit “A”** to the original of the Disclosure Statement filed with the Court, and incorporated herein, is a copy of the Debtors’ Chapter 7 liquidation analysis (“Liquidation Analysis”) establishing that Creditors of the Debtors will fair materially poorer in the event the Debtors were forced into Chapter 7 as compared to the Plan.<sup>2</sup>

C. Confirmation Standards

For a plan of reorganization to be confirmed, the Code requires, among other things, that a plan be proposed in good faith and complies with the applicable provisions of Chapter 11 of the Code. Section 1129 of the Code also imposes requirements that at least one class of Impaired Claims accept a plan, that confirmation of a plan is not likely to be followed by the need for further financial reorganization (unless the plan provides for the liquidation of the debtor), that a plan be in the best interests of creditors, and that a plan be fair and equitable with respect to each class of Claims or Interests which is Impaired under the plan.

The Court shall confirm a plan only if it finds that all of the requirements enumerated in § 1129 of the Code have been met. The Debtors believe that the Plan satisfies all of the requirements for Confirmation.

1. Best Interests Test.

Before the Plan may be confirmed, the Court must find (with certain exceptions) that the Plan provides, with respect to each Class, that each holder of an Allowed

---

<sup>2</sup> The Liquidation Analysis will be filed and served two (2) weeks prior to the Ballot Deadline.

Claim or Interest of such Class either (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were, on the Effective Date, liquidated under Chapter 7 of the Code. The Debtors believe that satisfaction of this test is established by the Liquidation Analysis.

To determine what holders of Claims and Equity Interests would receive if the Debtors were liquidated, the Court must determine how the assets and properties of the Debtors would be liquidated and distributed in the context of a Chapter 7 liquidation cases.

The Debtors' costs of liquidation under Chapter 7 cases would include the fees payable to a trustee in bankruptcy and to any additional attorneys and other professionals engaged by such trustee and any unpaid expenses incurred by the Debtors during the Chapter 11 Case, including compensation of attorneys and accountants. The additional costs and expenses incurred by a trustee in a Chapter 7 liquidation could be substantial and would decrease the possibility that Unsecured Creditors would receive meaningful distributions. The foregoing types of Claims arising from Chapter 7 administration and such other Claims as may arise in Chapter 7 or result from the pending Chapter 11 Cases would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay the Claims of Unsecured Creditors. Liquidation in Chapter 7 might substantially delay the date at which Creditors would receive any Payment.

The Debtors have carefully considered the probable effects of liquidation under Chapter 7 on the ultimate proceeds available for distribution to Creditors and holders of Equity Interests, including the following:

- a. the possible costs and expenses of the Chapter 7 trustee or trustees;
- b. the possible adverse effect on recoveries by Creditors under Chapter 7 due to reduced sale prices for the Debtors' assets caused by the forced Chapter 7 liquidation; and
- c. the possible substantial increase in Claims, which would rank prior to or on parity with those of Unsecured Creditors.

2. Financial Feasibility.

The Code requires, as a condition to Confirmation, that Confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor, unless the liquidation is proposed in the plan. Because the Plan contemplates liquidation, this requirement is not relevant.

3. Acceptance by Impaired Classes.

The Code requires as a condition to Confirmation that each Class of Claims or Interests that is Impaired under the Plan accept such plan, with the exception described in the following section. A Class of Claims has accepted the Plan if the Plan has been accepted by creditors that hold at least two-thirds (2/3) in amount of the Allowed Interests of such Class that vote to accept or reject the Plan. Holders of Claims or Interests who fail to vote are not counted as either accepting or rejecting the Plan.

A Class that is not Impaired under a Plan is deemed to have accepted such Plan; solicitation of acceptances with respect to such Class is not required. A Class is Impaired unless (i) the legal, equitable and contractual rights to which the Claim or Interest entitles the holder of such Claim or Interest are not modified; (ii) with respect to Secured Claims, the effect of

any default is cured and the original terms of the obligation are reinstated; or (iii) the Plan provides that on the Effective Date the holder of the Claim or Interest receives on account of such claim or interest, Cash equal to the Allowed Amount of such Claim or, with respect to any Interest, any fixed liquidation preference to which the holder is entitled.

4. Confirmation Without Acceptance by all Impaired Classes: “Cramdown.”

The Code contains provisions that enable the Court to confirm the Plan, even though the Plan has not been accepted by all Impaired Classes, provided that the Plan has been accepted by at least one Impaired Class of Claims. Section 1129(b)(1) of the Code states:

Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and had not accepted, the plan.

This section makes clear that the Plan may be confirmed, notwithstanding the failure of an Impaired Class to accept the Plan, so long as the Plan does not discriminate unfairly, and it is fair and equitable with respect to each Class of Claims that is Impaired under, and has not accepted, the Plan.

**THE DEBTORS BELIEVE THAT, IF NECESSARY, THEY WILL BE ABLE TO MEET THE STATUTORY STANDARDS SET FORTH IN THE CODE WITH RESPECT TO THE NONCONSENSUAL CONFIRMATION OF THE PLAN AND WILL SEEK SUCH RELIEF.**

D. Consummation.

The Plan will be consummated and Payments made if the Plan is confirmed pursuant to a Final Order of the Court, the Sale closes, and the Effective Date occurs. It will not

be necessary for the Liquidating Debtors or Manager to await any required regulatory approvals from agencies or departments of the United States to consummate the Plan. The Plan will be implemented pursuant to its provisions and the Bankruptcy Code.

E. Exculpation from Liability.

The Debtors, the Liquidating Debtors, the Manager, and their respective members, managers, executive officers, and Professionals (acting in such capacity), shall neither have nor incur any liability whatsoever to any Person or Entity for any act taken or omitted to be taken in good faith in connection with or related to the formulation, preparation, dissemination, or confirmation of the Plan, this Disclosure Statement, any Plan Document, or any contract, instrument, release or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or the Bankruptcy Case; provided, however, that this exculpation from liability provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from fraud or the willful misconduct or gross negligence of any such party. With respect to the Professionals, the foregoing exculpation from liability provision shall also include claims of professional negligence arising from the services provided by such Professionals during the Bankruptcy Case.

The rights granted hereby are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Debtor, the Liquidating Debtor, and their respective agents have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law, or any agreement. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained herein, the provisions hereof shall not release or be deemed a release of any of the Causes of Action otherwise preserved

by the Plan. The terms of this exculpation shall only apply to liability arising from actions taken on or prior to the Effective Date.

**ANY BALLOT VOTED IN FAVOR OF THE PLAN SHALL ACT AS CONSENT BY THE CREDITOR CASTING SUCH BALLOT TO THIS EXCULPATION FROM LIABILITY PROVISION. MOREOVER, ANY CREDITOR WHO DOES NOT VOTE IN FAVOR OF THE PLAN MUST FILE A CIVIL ACTION IN THE BANKRUPTCY COURT ASSERTING ANY SUCH LIABILITY WITHIN THIRTY (30) DAYS FOLLOWING THE EFFECTIVE DATE OR SUCH CLAIMS SHALL BE FOREVER BARRED.**

Notwithstanding the foregoing, (i) the Liquidating Debtor shall remain obligated to make payments to Holders of Allowed Claims as required under the Plan, and (ii) the Debtors' members, managers, executive officers shall not be relieved or released from any personal contractual liability except as otherwise provided in the Plan.

F. Police Power.

Nothing in this Article IV shall be deemed to effect, impair, or restrict any federal or state governmental unit from pursuing its police or regulatory enforcement action against any person or entity, other than to recover monetary claims against the Debtor for any act, omission, or event occurring prior to the Confirmation Date to the extent such monetary claims are discharged pursuant to § 1141 of the Bankruptcy Code.

G. Revocation and Withdrawal of this Plan.

The Debtors reserve the right to withdraw this Plan at any time before entry of the Confirmation Order. If (i) the Debtors revoke and withdraw this Plan, (ii) the Confirmation Order is not entered, (iii) the Effective Date does not occur, (iv) this Plan is not substantially

consummated, or (iv) the Confirmation Order is reversed or revoked, then this Plan shall be deemed null and void.

H. Modification of Plan.

The Debtors may seek to amend or modify this Disclosure Statement and the Plan in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

On or before substantial consummation of the Plan, the Debtors may issue, execute, deliver, or file with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate, and further evidence the terms and conditions of the Plan.

V. ALTERNATIVE TO THE PLAN.

If the Plan is not confirmed and consummated, the Debtors believe that the most likely alternative is a liquidation of the Debtors under Chapter 7 of the Code. In a liquidation or sale in Chapter 7, the Debtors believe the deficiency claims from the secured lender could be as much as \$10,000,000.00, and, as such, the pool of Allowed Unsecured Claims would be increased and the dividend to such group greatly diminished. The Debtors believe that liquidation of the Retained Assets and Causes of Action in a Chapter 7 scenario would dramatically reduce the total amount available to creditors. In a case under Chapter 7 of the Code, a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to Creditors in accordance with the priorities established by the Code. The Debtors' analysis of the probable recovery to Creditors and holders of equity Interest is set forth in the Liquidation Analysis.

**VI. CONCLUSION**

The Debtors recommend that holders of Claims and Interests vote to accept the Plan.

**DATED** this 23<sup>rd</sup> day of December 2015 in Orlando, Florida.

/s/ R. Scott Shuker

R. Scott Shuker, Esquire

Florida Bar No. 0984469

Mariane L. Dorris, Esquire

Florida Bar No. 0173665

Latham Shuker Eden & Beaudine, LLP

111 N. Magnolia Avenue, Suite 1400

Orlando, Florida 32801

Telephone: (407) 481-5800

*Attorneys for the Debtors*