

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

<b>IN RE:</b>  <b>CLEAN BURN FUELS, LLC,</b>  <b>DEBTOR</b>	<b>CASE NO. 11-80562</b> <b>CHAPTER 11</b>
<b>AMENDED PLAN OF REORGANIZATION DATED JUNE 10, 2012</b>	

NOW COMES Clean Burn Fuels, LLC (the “Debtor”), pursuant to 11 U.S.C. § 1129 and Rule 3016 of the Federal Rules of Bankruptcy Procedure, and respectfully proposes the following Amended Plan of Reorganization Dated June 10, 2012 (as amended, the “Plan”).

**1. INTRODUCTION.** On April 3, 2011 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code and an Order for relief was entered.

**1.1.** As of the Petition Date, the Debtor owned and operated an ethanol plant located on a 500 acre tract of land in Raeford, North Carolina (the land and buildings thereon collectively referred to as the “Ethanol Plant”). Prior to the Petition Date, the Debtor stopped producing ethanol due to the high price of corn and shut down the Ethanol Plant. From the Petition Date through June of 2011, the Debtor continued in possession of its assets and tried to work with its secured lender, Cape Fear Farm Credit, ACA to maintain and repair the Ethanol Plant with the expectation that operations could resume in the late summer of 2011. However, these efforts failed and effective June 21, 2011, Cape Fear was granted relief from the automatic stay to foreclose on the Ethanol Plant. The Debtor liquidated all tangible assets, and with the assistance of the Committee has proceeded to evaluate and in some instances pursue potential litigation to recover assets for the benefit of creditors.

**1.2.** The Debtor filed a proposed Plan of Reorganization Dated December 28, 2011 (the “Original Plan”), which was a plan of liquidation and distribution in accordance with the priorities of the Bankruptcy Code. Subsequently, the Court appointed Sara A. Conti (the “Trustee”) as the Chapter 11 trustee for the Debtor. The Trustee adopted the Original Plan, the Court approved an Amended Disclosure Statement, and the Court scheduled and commenced the hearing to consider confirmation of the Original Plan on June 4, 2012.

Objections to confirmation were filed by the North Carolina Department of Revenue (“Revenue”) and by Perdue BioEnergy, LLC (“Perdue”), and a limited objection was filed by the Committee of Unsecured Creditors (the “Committee”). After considering the evidence presented and the arguments of counsel, the Court continued the hearing to afford the Trustee to file an Amended Plan of Reorganization to set forth proposed modifications offered by the Trustee at the hearing in response to the objections to confirmation.

**1.3.** Reference is made to the Amended Disclosure Statement submitted for the Original Plan (as amended, the “Disclosure Statement”) for a brief discussion of the Debtor’s history, business, results of operations, historical financial information and properties, the results of the Debtor’s liquidation of assets to date, and an analysis of the Plan. All creditors entitled to vote on the Plan should review the Disclosure Statement before voting to accept or reject the Plan. In addition, there may be other agreements and documents that have been filed which are referenced in the Plan and/or the Disclosure Statement and which are available for review. No solicitation materials, other than the Disclosure Statement, have been authorized by the Court for use in soliciting acceptances or rejections of the Plan.

**2. DEFINITIONS.** For purposes of this Plan and accompanying Disclosure Statement, the following definitions shall apply and, unless otherwise indicated, the singular shall include the plural:

**2.1. Administrative Claim:** The costs and expenses of administration of this case allowed under § 503(b) of the Bankruptcy Code that are entitled to priority under § 507(a)(2) of the Bankruptcy Code, including, without limitation, the actual, necessary costs and expenses of preserving the Debtor’s estate and liquidating the Debtor’s remaining assets, interim and final compensation for the Trustee, interim and final fees and expenses of professional persons employed by the Trustee and the Committee, and other costs and expenses necessary to the administration of the estates and the liquidation of the remaining assets or otherwise allowed as Administrative Expenses by Order of the Bankruptcy Court.

**2.2. Allowed Claim or Interest:** Any claim against or interest in the Debtor (a) for which a proof of claim was filed on or before the date designated by the Court as the last day on which to file such proofs of claim in this proceeding, or (b) which is listed in the Schedules filed by the Debtor (unless listed as unliquidated, disputed or contingent) and, in either case, to which (i) no objection has been filed within the applicable period of limitation

fixed by the Bankruptcy Code, the Bankruptcy Rules, or Order of this Court, or (ii) an objection has been timely filed and determined by Final Order, and then only to the extent the Order allows such claim.

**2.3. Available Cash:** All proceeds recovered or generated from the liquidation of assets, Bankruptcy Causes of Action, or from any other sources, less payment or provisions for Allowed Secured Claims having a lien upon such assets.

**2.4. Bankruptcy Administrator:** The United States Bankruptcy Administrator for the Middle District of North Carolina.

**2.5. Bankruptcy Causes of Action:** Any claim or cause of action which may be asserted by a trustee or a debtor-in-possession under Sections 541, 542, 543, 544, 546, 547, 548, 549, 550, or 553 of the Bankruptcy Code.

**2.6. Bankruptcy Code:** Provisions of Title 11, United States Code, as amended from time to time and applicable to this case. References to “§\_\_\_\_” shall refer to a section of the Bankruptcy Code unless otherwise specified.

**2.7. Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure, as amended from time to time and applicable to this case.

**2.8. Claim:** Any right to payment, or any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

**2.9. Claims Bar Date:** The date by which a proof of claim must be filed with the Court, which shall be, as applicable, (i) August 8, 2011 with respect to all creditors except a governmental unit, (ii) October 3, 2011 with respect to a governmental unit, and (iii) with respect to claims arising from the rejection of any lease or executory contract, sixty (60) days from the Confirmation Date, or such other (whether earlier or later) deadline as may be set by the Court generally or with respect to any lease or contract rejected.

**2.10. Class:** A group of Claims which are substantially similar to each other, as classified under the Plan.

**2.11. Collateral:** Property of the Debtor which has been duly and properly pledged to a creditor to secure indebtedness, and which pledge (of whatever nature) has not been avoided or subordinated.

**2.12. Committee:** The Official Committee of Unsecured Creditors pursuant to the Order Appointing Committee of Unsecured Creditors in a Chapter 11 Reorganization filed in the Debtor's proceeding on April 19, 2011 [Docket #68], as amended by Order entered on May 11, 2011 [Docket #100].

**2.13. Confirmation Date:** The date on which the clerk enters on the Court's docket the Confirmation Order confirming the Plan.

**2.14. Confirmation Order:** The Order of the Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

**2.15. Consummation, Final:** The consummation of all things contained in or provided for in this Plan, and the entry of a Final Decree finally dismissing this reorganization case.

**2.16. Consummation, Substantial:** The date on which the Debtor has substantially completed all requirements of this Plan, as determined in accordance with § 1101(2) of the Bankruptcy Code or an Order of Substantial Consummation entered by this Court.

**2.17. Court:** The United States Bankruptcy Court for the Middle District of North Carolina, and any appellate court that exercises jurisdiction over this case.

**2.18. Debtor:** Clean Burn Fuels, LLC.

**2.19. Disputed Claim:** Any Claim which is not an Allowed Claim and with respect to which (i) an objection has been interposed and has not been resolved by agreement or Final Order, (ii) the Debtor has scheduled as disputed, contingent or unliquidated, or (iii) the claim is set forth in an improper proof of claim or a proof of claim untimely filed.

**2.20. Distribution Date:** Any date on which distributions are to be made to creditors pursuant to terms and provisions of this Plan or upon approval of this Court.

**2.21. Effective Date:** The first day of the month next following the Confirmation Date, provided that the Confirmation Order has not been stayed, reversed, or amended as of such day.

**2.22. Equity Interest:** Any membership interest in the Debtor.

**2.23. Escrow Account:** Any escrow account established for the purpose of collecting, maintaining, accounting and reporting for all proceeds from the liquidation of

assets, to be received and disbursed pursuant to the terms of this Plan and further Orders of the Court.

**2.24. Estate:** The property belonging to the Debtor on the date this case was commenced and as defined by § 541 of the Bankruptcy Code and other applicable law.

**2.25. Final Decree:** The final decree entered by the Court pursuant to Bankruptcy Rule 3022.

**2.26. Final Order:** An order (i) as to which the time to appeal or seek review or rehearing has expired and as to which no motion or petition for review or rehearing is pending, or (ii) if an appeal, motion or petition for review or rehearing is pending, the operation or effect of which order has not been stayed, reversed, or amended.

**2.27. Final Report:** A report to be filed with the Court upon and after completion of all acts required to achieve Final Consummation of the Plan, which report shall include, but not be limited to, all information necessary to meet the reporting requirements of the Court, the Bankruptcy Administrator, and the Plan.

**2.28. Lien:** A mortgage, judgment lien, materialman's lien, statutory lien, security interest, pledge, charging order, or other encumbrance on the Debtor's property, effective under applicable laws as of the Petition Date or thereafter as authorized by Order of the Court.

**2.29. Notice and Hearing:** Notice and hearing as defined by § 102 of the Bankruptcy Code.

**2.30. Perdue Adversary Proceeding:** The adversary proceeding brought by the Debtor against Perdue BioEnergy, LLC, Adv. Pro. No. 11-09046.

**2.31. Petition Date:** April 3, 2011, the date the petition was filed in this proceeding seeking relief pursuant to Chapter 11 of the Bankruptcy Code..

**2.32. Plan:** This Amended Plan of Reorganization and any modification thereof as approved by the Court.

**2.33. Priority Claim:** An allowed claim that is unsecured and is entitled to priority under § 507 or § 364 of the Bankruptcy Code, excluding Priority Tax Claims.

**2.34. Priority Tax Claim:** An allowed claim for federal, state or local (county or city) taxes that is unsecured and is entitled to priority under § 507 or § 364 of the Bankruptcy Code.

**2.35. Pro Rata:** The proportion that each allowed claim in a particular class of creditors or interests bears to the aggregate of all allowed claims or interests in that Class on the relevant date.

**2.36. Secured Claim:** An allowed claim that is secured by a Lien which has not been avoided, to the extent of the value of the Collateral subject to such Lien as determined under § 506 of the Bankruptcy Code.

**2.37. Subordinated Claim:** An Unsecured Claim the payment of which has been subordinated by agreement of the holder of such claim, an Order of the Court or the Plan to the payment of costs of administration and to distributions to holders of other Allowed Unsecured Claims with a priority equal or higher than that priority set forth in 11 U.S.C. § 726(a)(2).

**2.38. Trustee:** Sara A. Conti, or any successor thereto.

**2.39. Unsecured Claim:** An allowed claim that is unsecured and is not entitled to be treated as a Priority Claim.

### **3. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

**3.1.** Administrative Claims shall be allowed upon due request or application and in such amounts as may be determined by the Court after notice and hearing, subject to the following limitations and provisions as to payment.

**3.1.1.** Attorneys retained by the Debtor or the Trustee (which may include the Trustee serving as an attorney for the trustee) shall be compensated for services rendered in such capacity from the Petition Date through June 30, 2012 upon an hourly basis and at their customary hourly rates, payable upon approval by the Court. For the period from July 1, 2012 through the entry of a Final Decree, (A) for any legal services requested by the Trustee with respect to pending or potential litigation (i.e., investigation, evaluation, negotiation, commencement of an adversary proceeding, discovery, mediation, trial or appeal), the attorneys shall be entitled to receive (i) reimbursement for actual and necessary costs incurred in connection therewith, as and when funds are available for such purpose, and (ii) compensation which shall be contingent upon any recoveries realized by the estate from such pending or potential litigation, in an amount equal to 25% of the funds received by the estate as a result thereof; and (B) if and only to the extent any other legal services are requested and

authorized by the Trustee, upon an hourly basis and at their customary hourly rates, payable upon approval by the Court as and when funds are available for such purpose.

**3.1.2.** Attorneys retained by the Committee shall be compensated for services rendered in such capacity from the Petition Date through June 30, 2012 upon an hourly basis and at their customary hourly rates, payable upon approval by the Court. For the period from July 1, 2012 through the entry of a Final Decree, (A) for any legal services requested by the Trustee with respect to pending or potential litigation (i.e., investigation, evaluation, negotiation, commencement of an adversary proceeding, discovery, mediation, trial or appeal as special counsel for the Trustee), the attorneys shall be entitled to receive (i) reimbursement for actual and necessary costs incurred in connection therewith, as and when funds are available for such purpose, and (ii) compensation which shall be contingent upon any recoveries realized by the estate from such pending or potential litigation, in an amount equal to 25% of the funds received by the estate as a result thereof; and (B) if and only to the extent any other legal services are requested and authorized by the Trustee, upon an hourly basis and at their customary hourly rates, payable upon approval by the Court as and when funds are available for such purpose. In the event the Committee wishes to further investigate or pursue potential litigation which the Trustee does not so authorize or request, the Committee may seek authorization from the Court to pursue such litigation on behalf of the estate and upon such terms or conditions as the Court may approve after notice and hearing.

**3.1.3.** Accountants and other professionals retained by the Debtor or the Trustee shall be compensated for services rendered in such capacity and reasonably necessary to the administration of this estate, upon an hourly basis and at their customary hourly rates, payable upon approval by the Court as and when funds are available for such purpose; provided however, with the consent and agreement of Ed Sanz, the Debtor's chief restructuring officer and the firm of Anderson Bauman Tourtellot Vos & Co., payment of the balance of their fees and expenses which have been approved by the Court but which remain outstanding as of the Effective Date shall be deferred until such time as the Perdue Adversary Proceeding has been resolved.

**3.1.4.** The Trustee shall be compensated for services rendered in such capacity and reasonably necessary to the administration of this estate, upon a commission

basis subject to the limitations set forth in § 326 of the Bankruptcy Code and as may be determined by the Court, but not to exceed reasonable compensation for such services.

**3.1.5.** Except as set forth above or otherwise agreed, the holders of Allowed Administrative Claims shall be paid from Available Cash (either in full or pro rata depending on the amount of Available Cash) on the later of (i) within thirty (30) days after the Effective Date or (ii) within thirty (30) days after the same can be determined and, if necessary, allowed by the Court.

**3.2.** The holders of Allowed Priority Tax Claims shall be paid from Available Cash (either in full or in regular installments, depending on the amount of Available Cash), with interest at the applicable statutory rate and over a period not exceeding five (5) years from and after the Petition Date.

**3.2.1.** The Trustee shall provide copies of the quarterly post-confirmation reports to holders of Allowed Priority Tax Claims, setting forth (among other information required by the Court and the Bankruptcy Administrator) the status of pending litigation, receipts, disbursements, funds on hand, and amounts available for distribution pursuant to the Plan.

**3.2.2.** The Trustee shall make disbursements to the holders of Allowed Priority Tax Claims of Available Cash, after first paying or establishing reasonable reserves for payment of Administrative Expense Claims and Class 11 Priority Unsecured Claims, within 30 days after each calendar quarter.

**3.2.3.** The Plan, and the confirmation and consummation thereof, shall not impair, limit or compromise any right of setoff provided under Section 553.

**4. DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS.** For purposes of the Plan, Claims and Equity Interests are classified as follows:

**4.1. Class 1** shall consist of the Secured Claim of Cape Fear Farm Credit, ACA (“Cape Fear”) in the aggregate amount of \$66,504,213.83 as set forth in Claim Number 88 filed by Cape Fear in the Debtor’s proceeding. This indebtedness consists of three Construction/Term Loan Notes and an RLOC Note dated March 31, 2008 (collectively, the “Notes”), each of which is secured by a first mortgage lien on the Ethanol Plant and a security interest in other assets of the Debtor, including equipment, inventory, accounts,



deposit accounts, general intangibles and the proceeds thereof (collectively, the “Cape Fear Collateral”).

**4.2. Class 2** shall consist of the Secured Claim of the Hoke County Tax Collector (“Hoke County”) in the amount of \$235,937.26 as set forth in Claim Number 17 filed in the Debtor’s proceeding for ad valorem taxes due on the Debtor’s real and personal property located in Raeford, North Carolina. Hoke County contends that \$69,023.09 of the claim is secured by the Ethanol Plant. The balance of the claim in the amount of \$169,914.17 is identified as an unsecured priority tax claim.

**4.3. Class 3** shall consist of the Secured Claim of Uretek ICR, Mid Atlantic, Inc. (“Uretek”) in the amount of \$264,222.99 as set forth in Claim Number 34 filed in the Debtor’s proceeding. Uretek asserts a materialman’s lien on the Ethanol Plant pursuant to N.C. Gen. Stat. §44A *et seq.* arising out of a contract between the Debtor and Uretek for the provision of soil improvement repair at the Ethanol Plant.

**4.4. Class 4** shall consist of the Secured Claim of Anixter, Inc. (“Anixter”) in the amount of \$83,158 as set forth in Claim Numbers 85 and 93 filed in the Debtor’s proceeding. Anixter, as a first-tier subcontractor, asserts a claim of lien on funds, if any, owed by the Debtor to Southeastern Industrial Electrical Contractors, Inc. (“Southeastern”), and a lien on the Ethanol Plant, through subrogation, pursuant to N.C. Gen. Stat. §44A *et seq.*

**4.5. Class 5** shall consist of the Secured Claim of Atlantic Services Group, Inc. (“Atlantic Services”) in the amount of \$1,212,024.88 as set forth in Claim Number 80 filed in the Debtor’s proceeding. Atlantic Services, as a first-tier subcontractor, asserts a claim of lien on funds, if any, owed by the Debtor to Southeastern, and a lien on the Ethanol Plant, through subrogation, pursuant to N.C. Gen. Stat. §44A *et seq.*

**4.6. Class 6** shall consist of the Secured Claim of Hagemeyer North America, Inc. (“Hagemeyer”) in the amount of \$107,917.36 as set forth in Claim Number 65 filed in the Debtor’s proceeding. Hagemeyer, as a first-tier subcontractor, asserts a claim of lien on funds, if any, owed by the Debtor to Southeastern, and a lien on the Ethanol Plant, through subrogation, pursuant to N.C. Gen. Stat. §44A *et seq.*

**4.7. Class 7** shall consist of the Secured Claim of RSC Equipment (“RSC”) scheduled by the Debtor in the amount of \$7,182.26. As of the Petition Date, RSC, as a first-tier subcontractor, asserts a claim of lien on funds, if any, owed by the Debtor to

Southeastern, and a lien on the Ethanol Plant, through subrogation, pursuant to N.C. Gen. Stat. §44A *et seq.*

**4.8. Class 8** shall consist of the Secured Claim of Chartis Specialty Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, and certain other subsidiaries of Chartis, Inc. (collectively, “Chartis”) as set forth in Claim Number 89 filed in the Debtor’s proceeding. Chartis contends that it has an unliquidated claim arising out of the provision of insurance and insurance services to the Debtor. To the extent so allowed by the Court, Chartis asserts a right of recoupment and/or setoff with respect to any funds it may owe the Debtor.

**4.9. Class 9** shall consist of the Secured Claim of First Insurance Funding Corp. (“First Insurance”) in the amount of \$7,546.64 as set forth in Claim Number 81 filed in the Debtor’s proceeding. To the extent so allowed by the Court, First Insurance asserts a security interest or right of setoff in any unearned insurance premiums prepaid by the Debtor as of the Petition Date.

**4.10. Class 10** shall consist of the Secured Claim of Perdue BioEnergy, LLC in the amount of \$7,537,729.82 as set forth in Claim Number 94 filed in the Debtor’s proceeding. The claim arises out of certain agreements executed by Perdue and the Debtor on November 9, 2009, including a Master Agreement, Feedstock Supply Agreement and Co-Product Purchasing and Marketing Agreement (collectively, the “Perdue Agreements”). Perdue contends that the Debtor owes Perdue (1) \$6,677,053.94 for corn purchased by the Debtor from Perdue prior to the Petition Date, and (2) \$860,675.88 for damages arising out of the Debtor’s breach of the Perdue Agreements. To the extent so allowed by the Court, Perdue asserts a secured claim and right of setoff against funds owed by Perdue to the Debtor in the amount of \$2,131,448.86 pursuant to the Perdue Agreements. The Debtor has instituted an Adversary Proceeding against Perdue and Cape Fear (AP No. 11-09046, the “Perdue Adversary Proceeding”) seeking a determination as to the extent, validity and priority of the liens or interests of the Debtor, Perdue and Cape Fear in and to corn at the Ethanol Facility on the Petition Date, and the Debtor is also seeking to recover funds owed by Perdue to the Debtor pursuant to the Perdue Agreements. To the extent the Debtor recovers any amount from Perdue pursuant to the Perdue Adversary Proceeding, Perdue has reserved the right to amend its claim as necessary and appropriate.

**4.11. Class 11** shall consist of the Priority Unsecured Claims entitled to priority as specified in §507(a)(4) for unpaid wages, salaries, or commissions, including vacation, severance and sick leave, but only to the extent of \$11,725 for each individual or corporation, as the case may be, earned within 180 days before the Petition Date or the date of cessation of the Debtors' business, whichever comes first.

**4.12. Class 12** shall consist of the Unsecured Claims.

**4.13. Class 13** shall consist of the Cape Fear Subordinated Claim.

**4.14. Class 14** shall consist of the Equity Interests.

**5. TREATMENT OF CLASSES IMPAIRED UNDER THE PLAN.** Claims and Interests shall receive the following treatment under the Plan:

**5.1. Class 1: Secured Claim of Cape Fear.** The Secured Claim of Cape Fear in the amount of \$66,504,213.83 shall be treated as set forth in the Order Approving Compromise and Settlement entered in the Debtor's proceeding on September 19, 2011 (the "Cape Fear Order").

**5.1.1.** Pursuant to the Cape Fear Order, Cape Fear was granted stay relief to foreclose on the Ethanol Plant and exercise its rights with respect to Cape Fear Collateral, except as otherwise set forth in the Cape Fear Order. Cape Fear shall have a secured claim to the extent of the value of the Debtor's interest in the Cape Fear Collateral, and Cape Fear shall look solely to the Cape Fear Collateral for payment of its Secured Claim.

**5.1.2.** Pursuant to the Cape Fear Order, Cape Fear shall have an Allowed Unsecured Claim for the deficiency in the amount of \$30,000,000, which shall be treated as a Class 13 Subordinated Claim.

**5.1.3.** The Class 1 claim of Cape Fear is impaired.

**5.2. Class 2: Secured Claim of Hoke County.**

**5.2.1.** The Secured Claim of Hoke County for ad valorem taxes on the real property shall be allowed in the amount of \$66,023.29 and Hoke County shall retain its lien on the Debtor's real property and look solely to such property to satisfy its claim for taxes due thereon.

**5.2.2.** Hoke County shall have an Allowed Unsecured Priority Tax Claim in the amount of \$169,914.17 and shall be paid as provided in Section 3.2 of the Plan.

**5.2.3.** The Class 2 claim of Hoke County is impaired.

**5.3. Class 3: Secured Claim of Uretek.**

**5.3.1.** The Secured Claim of Uretek in the amount of \$264,222.99 shall be allowed as a secured claim to the extent of the value of its interest in the Debtor's interest in the Ethanol Plant, and Uretek shall look solely to the Ethanol Plant for payment of its Secured Claim, plus any post-petition interest, fees and costs allowed by the Court (the "Uretek Indebtedness").

**5.3.2.** In the event of any deficiency balance remaining on the Uretek Indebtedness after the sale of the Ethanol Plant, such deficiency amount shall be treated as a Class 12 Unsecured Claim.

**5.3.3.** The Class 3 claim of Uretek is impaired.

**5.4. Class 4: Secured Claim of Anixter.**

**5.4.1.** The Secured Claim of Anixter in the amount of \$83,158 shall be allowed as a secured claim to the extent of the value of its interest in any funds owed by the Debtor to Southeastern, and Anixter shall look solely to such funds for payment of its Secured Claim, plus any post-petition interest, fees and costs allowed by the Court (the "Anixter Indebtedness").

**5.4.2.** In the event of any deficiency balance remaining on the Anixter Indebtedness, such deficiency amount shall be treated as a Class 12 Unsecured Claim.

**5.4.3.** The Class 4 claim of Anixter is impaired.

**5.5. Class 5: Secured Claim of Atlantic Services.**

**5.5.1.** The Secured Claim of Atlantic Services in the amount of \$1,212,024.88 shall be allowed as a secured claim to the extent of the value of its interest in any funds owed by the Debtor to Southeastern, and Atlantic Services shall look solely to such funds for payment of its Secured Claim, plus any post-petition interest, fees and costs allowed by the Court (the "Atlantic Services Indebtedness").

**5.5.2.** In the event of any deficiency balance remaining on the Atlantic Services Indebtedness, such deficiency amount shall be treated as a Class 12 Unsecured Claim.

**5.5.3.** The Class 5 claim of Atlantic Services is impaired.

**5.6. Class 6: Secured Claim of Hagemeyer.**

**5.6.1.** The Secured Claim of Hagemeyer in the amount of \$107,917.36 shall be allowed as a secured claim to the extent of the value of its interest in any funds owed by the Debtor to Southeastern, and Hagemeyer shall look solely to such funds for payment of its Secured Claim, plus any post-petition interest, fees and costs allowed by the Court (the “Hagemeyer Indebtedness”).

**5.6.2.** In the event of any deficiency balance remaining on the Hagemeyer Indebtedness, such deficiency amount shall be treated as a Class 12 Unsecured Claim.

**5.6.3.** The Class 6 claim of Hagemeyer is impaired.

**5.7. Class 7: Secured Claim of RSC.**

**5.7.1.** The Secured Claim of RSC in the amount of \$7,182.26 shall be allowed as a secured claim to the extent of the value of its interest in any funds owed by the Debtor to Southeastern, and RSC shall look solely to such funds for payment of its Secured Claim plus any post-petition interest, fees and costs allowed by the Court (the “RSC Indebtedness”).

**5.7.2.** In the event of any deficiency balance remaining on the RSC Indebtedness, such deficiency amount shall be treated as a Class 12 Unsecured Claim.

**5.7.3.** The Class 7 claim of RSC is impaired.

**5.8. Class 8: Secured Claim of Chartis.**

**5.8.1.** The Allowed Secured Claim of Chartis shall be paid by means of a set-off against funds on deposit with Chartis as of the Petition Date to the extent so allowed by the Court after notice and hearing.

**5.8.2.** No post-petition interest or attorneys’ fees or expenses shall be paid on the Allowed Secured Claim in this Class, unless and to the extent allowed by the Court upon motion, notice and hearing pursuant to § 506(b).

**5.8.3.** To the extent the Chartis claim is allowed in an amount greater than the setoff permitted by the Court, if any, the amount of the claim in excess of the permitted setoff shall be treated as a Class 12 Unsecured Claim.

**5.8.4.** The Class 8 Claim of Chartis is impaired.

**5.9. Class 9: Secured Claim of First Insurance.**

**5.9.1.** The Allowed Secured Claim of First Insurance shall be paid by means of a set-off against funds on deposit with First Insurance as of the Petition Date to the extent so allowed by the Court after notice and hearing.

**5.9.2.** No post-petition interest or attorneys' fees or expenses shall be paid on the Allowed Secured Claim in this Class, unless and to the extent allowed by the Court upon motion, notice and hearing pursuant to § 506(b).

**5.9.3.** To the extent the First Insurance claim is allowed in an amount greater than the setoff permitted by the Court, if any, the amount of the claim in excess of the permitted setoff shall be treated as a Class 12 Unsecured Claim.

**5.9.4.** The Class 9 Claim of First Insurance is impaired.

**5.10. Class 10: Secured Claim of Perdue.**

**5.10.1.** The Secured Claim of Perdue shall be paid by means of a set-off against funds owed by Perdue to the Debtor pursuant to the Perdue Agreements as of the Petition Date to the extent so allowed by the Court after notice and hearing.

**5.10.2.** No post-petition interest or attorneys' fees or expenses shall be paid on the Allowed Secured Claim in this Class, unless and to the extent allowed by the Court upon motion, notice and hearing pursuant to § 506(b).

**5.10.3.** To the extent the aforesaid claim is allowed in an amount greater than the setoff permitted by the Court, if any, the amount of the claim in excess of the permitted setoff shall be treated as a Class 12 Unsecured Claim.

**5.10.4.** The Plan shall not be construed nor shall any provisions of the Plan be in any way interpreted to prejudice, bar, preclude or otherwise affect any of the defenses, counterclaims or cross-claims that Perdue has or may assert in the Perdue Adversary Proceeding, and all rights, claims and defenses which Perdue may have relating to or regarding the Perdue Adversary Proceeding are and shall be deemed to have been expressly reserved. Further, the Order Granting Motion To Participate entered in the Perdue Adversary Proceeding (filed March 28, 2012, A.P. Docket # 71) regarding the extent to which the Committee or its counsel could have access to or participate in discovery shall remain binding upon all parties.

**5.10.5.** The Class 10 Claim of Perdue is impaired.

**5.11. Class 11: Priority Unsecured Claims.** Holders of Allowed Priority Unsecured Claims shall be paid within thirty (30) days after the same can be determined and, if necessary, allowed by the Court. The Class 11 Priority Unsecured Claims are impaired.

**5.12. Class 12: Unsecured Claims.** Holders of Allowed Unsecured Claims will be paid in cash, in full or pro rata depending upon the amount of Available Cash, after payment in full of all Allowed Administrative Claims, Priority Tax Claims, Priority Unsecured Claims and Secured Claims, in one or more distributions after the Effective Date upon the realization of Available Cash and as determined by the Trustee from time to time. No post-petition interest shall be paid on any Allowed Unsecured Claims unless all Allowed Claims have been paid in full, in which event interest shall be calculated from the Petition Date and paid at the federal judgment rate in effect at the Petition Date. The Class 12 Unsecured Claims are impaired.

**5.13. Class 13: Cape Fear Subordinated Claim.** Pursuant to the Cape Fear Order, Cape Fear shall have a subordinated Allowed Unsecured Claim in the amount of \$30,000,000 which shall be paid in cash, in part or in full depending upon the amount of Available Cash after payment in full of all other Allowed Claims and in one or more distributions after the Effective Date upon the realization of Available Cash. No post-petition interest shall be paid on the Cape Fear Subordinated Claim unless all Allowed Claims have been paid in full, in which event interest shall be calculated and paid at the federal judgment rate in effect at the Petition Date. The Class 13 Subordinated Claim is impaired.

**5.14. Class 14: Equity Interests.** The existing Equity Interests shall be terminated and holders of Equity Interests shall receive no distribution unless and until all Allowed Claims are paid in full, plus interest as provided herein. In such event, any remaining Available Cash would be distributed pro rata to the holders of the Equity Interests in the Debtor. The Class 14 Equity Interests are impaired.

**6. MEANS FOR EXECUTION OF THE PLAN.** The Debtor shall execute and consummate the Plan as follows:

**6.1. Appointment of Trustee:** Sara A. Conti has been appointed by the Court as Trustee pursuant to § 1104 of the Bankruptcy Code, and the Trustee will serve in such capacity until a Final Decree is entered and the Trustee is discharged by the Court from

further obligations. The Trustee shall wind up the affairs of the Debtor, complete the final administration of the Debtor's bankruptcy case, and execute and consummate the Plan as set forth herein.

**6.2. Property of the Estate:** The Debtor has sold or stay relief has been granted with respect to all of the Debtor's tangible and intangible assets pursuant to orders of the Court entered after notice and hearing. All remaining assets (including but not limited to cash, funds on deposit, claims and causes of action) shall remain property of the estate and shall not vest in the Reorganized Debtor.

**6.3. Litigation:** The Trustee shall evaluate and pursue to the extent necessary, appropriate and warranted all claims or causes of action by or on behalf of the Debtor. The Trustee may employ herself, Debtor's counsel and/or Committee's counsel as special counsel to pursue such litigation, all as the Trustee may determine to be in the best interest of the estate.

**6.4. Distributions:**

**6.4.1.** Once the Court has determined the extent, validity and priority of liens or interests asserted by the Secured Creditors, Allowed Secured Claims will be paid to the extent of the value of such creditor's interest in the Debtor's interest in the property subject to such lien or interest as provided in the Plan provisions regarding treatment of such claims.

**6.4.2.** Available Cash will be distributed in payment of Allowed Administrative Claims, Priority Tax Claims and Priority Unsecured Claims in one or more distributions as may be determined by the Trustee from time to time until paid in full, subject to the provisions of Article 3 above.

**6.4.3.** After payment of all Allowed Administrative Claims, Priority Tax Claims and Priority Unsecured Claims as provided in the Plan, Available Cash will be distributed in payment of Allowed Unsecured Claims in one or more distributions as may be determined by the Trustee from time to time until paid in full or until all Available Cash has been realized and fully distributed.

**6.4.4.** After payment of all Allowed Administrative Claims, Priority Tax Claims Priority Unsecured Claims and Unsecured Claims to the extent provided in the Plan, Available Cash will be distributed in payment of the Cape Fear Subordinated Claim



in one or more distributions as may be determined by the Trustee from time to time until paid in full or until all Available Cash has been realized and fully distributed.

**6.4.5.** In the event all Allowed Claims are paid in full, then interest shall be paid to the holders of Allowed Unsecured Claims and the Cape Fear Subordinated Claim and any remaining Available Cash shall be disbursed pro rata to the holders of the Equity Interests.

**6.4.6.** A final distribution shall be made within sixty (60) days after the later of (i) the resolution of all Disputed Claims asserted against the Debtor or the Estate, (ii) the resolution of all causes of action asserted by or on behalf of the Debtor, and (iii) the sale, liquidation or abandonment of all remaining property of the Estate.

**6.4.7.** Distributions to holders of Allowed Claims shall be made at the address of each such holder as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address as set forth on the proof of claim filed by such holders or other subsequent writing notifying the Trustee of a change of address.

**6.4.8.** No interim or final distribution shall be made in an amount less than \$5.00, and any such distributions shall instead be paid over to the U.S. Treasury as provided in Section 347 and Bankruptcy Rule 3010 for small dividends as in a Chapter 7 proceeding.

**6.4.9.** If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Trustee has been notified of such holder's then current address, at which time all missed distributions shall be made to such holder, without additional interest, from the date of the first attempted distribution. All unclaimed distributions which exist as of the date of the final distribution to holders of Allowed Claims shall be paid over to the U.S. Treasury as provided in Section 347 and Bankruptcy Rule 3011 for unclaimed distributions as in a Chapter 7 proceeding.

**6.4.10.** Checks issued by the Trustee in respect of Allowed Claims or Equity Interests shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for re-issuance of any check shall be made to the Trustee by the holder of the Allowed Claim or Interest with respect to which such check originally was issued.

**6.4.11.** The Trustee may, in accordance with Section 553 of the Bankruptcy Code and applicable non-bankruptcy law, set off against any Allowed Claim the distributions to be made pursuant to this Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Trustee on behalf of the Estate, may possess against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Trustee or the Estate of any such claims, rights and causes of action that they may possess against such holder; and provided further, that any claims of the Trustee arising before the Petition Date shall first be set off against Claims against the Trustee arising before the Petition Date.

**6.5. Post-Confirmation:** The Trustee shall be authorized to perform all duties necessary to wind up the affairs of the Debtor, including without limitation, recovering or liquidating assets of the Estate, continuing or instituting litigation by or on behalf of the Debtor, reconciling claims filed against the Estate, and distributions to the holders of Allowed Claims and Equity Interests. The Court shall retain jurisdiction over all matters, and any party in interest may seek an Order in aid of consummation of the Plan in the event of any default or failure by any party to comply with the terms thereof. All causes of action brought by or on behalf of the Debtor shall be brought in the Court and are to be governed by Bankruptcy Rule 7001 et seq. Any compromise or other settlement of a controversy by or on behalf of the Debtor shall be approved in accordance with the Bankruptcy Rules.

**6.6. Executory Contracts and Leases:**

**6.6.1.** All executory contracts or leases which have not been rejected or assumed prior to the Confirmation Date (excluding those which are then subject to a pending motion to assume) are and shall be deemed rejected as of the Effective Date.

**6.6.2.** A Claim for damages arising from the rejection of an executory contract or lease shall be forever barred and shall not be enforceable against the Estate and no holder of any such Claim shall participate in any distribution under the Plan with respect to that Claim unless a Proof of Claim is served on the Trustee and filed with the Court within sixty (60) days from the Confirmation Date, or such other deadline as may be set by the Court generally or with respect to any lease or contract rejected, and said

Proof of Claim is determined to be an Allowed Claim, either because no timely objection is filed or because the Court allows the Claim after a timely filed objection.

**7. FINANCIAL INFORMATION.** The following information is or shall be made available to creditors and parties in interest:

**7.1. Monthly and Quarterly Reports:** A monthly report for each month the Debtor has been under the supervision of the Court has been and shall continue to be filed with the Court through and including the period ending June 30, 2012. Thereafter a post-confirmation report shall be filed by the Trustee on a quarterly basis until the filing of the Final Report. Such quarterly reports shall reflect any progress made in consummating the Plan during the period covered by the report, shall be filed in the format prescribed by the Bankruptcy Administrator, and shall set forth and disclose the aggregate receipts and disbursements, the funds on deposit and the location of such accounts, any unpaid but accrued payables or obligations, the status of pending litigation, amounts available for distribution pursuant to the Plan, and such other information which is reasonably necessary to accurately disclose the financial condition of the Estate. The Trustee shall file such reports by the 30<sup>th</sup> day of the next following month, and at the same time shall serve a copy thereon upon the Bankruptcy Administrator and any other party in interest making a written request therefore.

**7.2. Financial Information on Record:** The Debtor initially filed Schedules of Assets and Liabilities and a Statement of Financial Affairs. The monthly reports, the Schedules of Assets and Liabilities, and the Statement of Financial Affairs may be inspected by interested parties in order to obtain a broader financial picture of the Debtor and the Estate. These documents may be examined in the office of the Clerk of the United States Bankruptcy Court.

**7.3. Disclosure Statement:** The Trustee filed an Amended Disclosure Statement to accompany the filing of the Original Plan, to which reference is made for additional financial information.

**8. PROVISIONS FOR IMPAIRED CREDITORS NOT ACCEPTING PLAN**

**8.1.** With respect to any Class of Claims impaired by and not accepting this Plan by the requisite majority in number and two-thirds (2/3) in dollar amount of those casting ballots, adequate provision for the realization by them of the value of their claim shall

be provided in the Order confirming the Plan by such method as will, in the opinion of the Court and consistent with the circumstances of the case, fairly and equitably provide the requisite protection required by applicable provisions of the Bankruptcy Code.

**8.2.** With respect to the holders of Equity Interests, the existing Equity Interests shall be terminated and the holders shall receive pro rata distributions of any remaining Available Cash only after payment of all Allowed Claims as provided in the Plan.

**8.3.** To the extent Plan confirmation by “cramdown” is necessary or required, the Trustee requests confirmation thereof pursuant to Section 1129(b) without further motion or notice, which request shall be considered at the Confirmation Hearing.

**9. DISCHARGE AND RELEASE.** As the Plan provides for the liquidation of all assets of the Estate and the Debtor will not continue business operations, the Plan does not provide for the discharge of any claims or liabilities. However, all proceedings and court actions seeking to establish or enforce pre-petition liabilities and claims of any nature against property of the Estate or priorities received or retained by any creditor with respect to debts and obligations of the Debtor shall be stayed and treated as specifically provided for in the Plan.

**10. PROVISIONS FOR RETENTION OF JURISDICTION AND PROSECUTION AND DEFENSE OF CLAIMS AND CAUSES OF ACTION.** The Court shall retain and may exercise its jurisdiction for determination in this proceeding of any objections to claims not disposed of prior to the entry of the Order of confirmation of the Plan, the final determination of any causes of action (including Bankruptcy Causes of Action) belonging to the Debtor, and any other matters which might affect the Debtor, the Estate, or the consummation of the Plan, including but not limited to the following:

**10.1. General Jurisdiction:** Until the case is closed, the Court shall retain jurisdiction pursuant to Section 1142 of the Bankruptcy Code and Bankruptcy Rules 3020(d) and 3021 to the extent necessary to implement the Plan; to hear and determine all claims against the Debtor; to hear, determine, and enforce all causes of action (including all Bankruptcy Causes of Action) arising in, arising under, or related to this case and which may exist on behalf of the Debtor; and, to confirm after notice and hearing (except as otherwise provided herein) any proposed compromise of any cause of action (including all Bankruptcy Causes of Action). Nothing contained herein shall prevent the Trustee from taking such action as may be necessary in the enforcement of any cause of action which may exist on its

behalf, and nothing contained herein shall prevent any creditor from enforcing any claim it may have against third parties who may be liable as a result of the Debtor's obligations to such creditor.

**10.2. Causes of Action:** Notwithstanding the confirmation and substantial consummation of the Plan, the Trustee shall retain the right and standing to assert and shall have the sole and exclusive right to commence, pursue, settle, compromise, abandon, waive, or release any claim or cause of action which may exist by or on behalf of the Debtor (including Bankruptcy Causes of Action) which accrued and were asserted or capable of assertion by the Debtor as a debtor-in-possession as of the Petition Date. In the event the Committee wishes to further investigate or pursue potential litigation which the Trustee does not so authorize or request, the Committee may seek authorization from the Court to pursue such litigation on behalf of the estate and upon such terms or conditions as the Court may approve after notice and hearing.

**10.3. Specific Retention of Powers:** In addition to the general provisions set forth above, the Court shall retain sole jurisdiction of this case pursuant to the provisions of Chapter 11 of the Bankruptcy Code for the following purposes, *inter alia*:

**10.3.1.** To classify, allow or disallow Claims and Equity Interests, to direct distributions of funds under the Plan, and to hear and determine any controversies pertaining thereto.

**10.3.2.** To hear and determine any and all applications, adversary proceedings or other matters arising out of or related to the Plan.

**10.3.3.** To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated.

**10.3.4.** To liquidate or estimate the amount of any claim, or to determine the manner and time for such liquidation or estimation in connection with any contingent or unliquidated claim.

**10.3.5.** To adjudicate all disputes with respect to claims or any lien on any property of the Debtor.

**10.3.6.** To adjudicate all claims or controversies arising during the pendency of this case.

**10.3.7.** To recover all assets and properties of the Debtor or the Estate, wherever located, including recoveries on all claims and causes of action brought by the Debtor prior or subsequent to the Effective Date or capable of being brought by the Debtor, or the Trustee on behalf of the Debtor, prior or subsequent to the Effective Date which are not released, settled or otherwise compromised by the terms of this Plan.

**10.3.8.** To hear and determine matters covering federal, state, and local taxes pursuant to Sections 346, 1146, 505 and 525 of the Bankruptcy Code.

**10.3.9.** To allow fees and reimbursement of the expenses of the Trustee and of professional persons employed by the Trustee or the Debtor during this case or any other person or entity applying for compensation.

**10.3.10.** To construe or enforce the Plan so as to effectuate payments thereunder or to compel performance by any person reasonably necessary to achieve Final Consummation in accordance with the provisions hereof.

**10.3.11.** To make and enforce such orders as are necessary or appropriate to carry out the provisions of the Plan.

**10.3.12.** To enter such orders as may be necessary and proper for the orderly administration of the Debtor's bankruptcy proceeding.

**10.3.13.** To decide such other matters and for such other purposes as may be provided for in the Confirmation Order.

**11. PROVISIONS FOR AMENDMENT OF THE PLAN.** The Plan may be modified as follows:

**11.1. Non-material Amendment:** This Plan may be altered or modified by the Trustee after its submission for acceptance and before or after its confirmation, without notice and hearing, if the alteration or modification does not adversely change the treatment of the claim of any creditor as provided in Section 1127 of the Bankruptcy Code and in Bankruptcy Rule 3019.

**11.2. Material Amendment:** This Plan may be altered or modified by the Trustee after submission for acceptance and before or after confirmation in a manner which adversely affects the interests of creditors, only (i) after notice and hearing before the Court for the confirmation of such alteration or modification, as provided in Section 1127 of the Bankruptcy Code, or (ii) with the written consent of the creditors who are adversely affected.

## **12. OBJECTIONS TO CLAIMS, RESERVES AND DISTRIBUTIONS**

**12.1. Claims:** The Trustee or any party in interest may file an objection to any claim within one hundred eighty (180) days after entry of the Order confirming the Plan. Objections not filed within such time shall be deemed waived unless the period within which to file objections to claims is extended by Order of this Court in response to one or more motions for such extension filed prior to the expiration of the then existing period for such objections to be filed. The absence of an objection prior to the Confirmation Date, whether as to a scheduled or filed claim, shall not be deemed an acceptance of any Claim nor a waiver of the right to object to any Claim, and the holder of any such Claim shall not be entitled to assert reliance upon any implied acceptance of such Claim when voting to accept or reject the Plan.

**12.2. Reserves:** Any claim, or portion thereof, which is to be paid in cash under the Plan and which is challenged, shall be protected by requiring the Trustee to segregate and set aside in an escrow account a reserve based on the Court's estimate of such claim and sufficient to treat said claim in the same fashion as though the objection were denied. The reserve so segregated shall be distributed in accordance with the Plan in the event the objection is overruled or a dispute is resolved in favor of the party asserting the claim. In the event the Disputed Claim is disallowed, the retained cash so segregated shall be retained by the Trustee and available for distribution as Available Cash in accordance with the provisions of this Plan, with the disallowed claimant being excluded from the appropriate Class.

## **13. GENERAL PROVISIONS**

**13.1. Exculpation.** Neither the Debtor, the Trustee or any of their respective employees, advisors, attorneys, accountants, consultants or agents shall have or incur any liability for or to any holder of a Claim or Equity Interest for any act or omission in connection with, or arising out of, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**13.2. Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Trustee, the Debtor, the holders of Claims and the holders of Equity Interests, and their respective successors and assigns.

**13.3. Injunctions or Stays.** Unless otherwise provided in the Plan, the Confirmation Order or other Orders of this Court, all injunctions or stays generally provided for Chapter 11 cases under Section 105 or 362 of the Bankruptcy Code or otherwise in existence on the date the Plan is confirmed shall remain in full force and effect until the entry of a Final Decree dismissing the case.

**13.4. Notices.** Any notice required to be provided to parties in interest under the Bankruptcy Code or Rules or under the Plan shall be in writing and served by (a) regular mail, postage prepaid, (b) hand delivery, or (c) overnight delivery service, addressed to the appropriate parties and with copies of any such notice to be sent to the Bankruptcy Administrator and to counsel for the Trustee.

**13.5. Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules), or, as to corporate matters, the laws of the jurisdiction in which the Debtor is incorporated, the laws of the State of North Carolina, shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan.

RESPECTFULLY submitted on behalf of the Trustee, this the 10<sup>th</sup> day of June, 2012.

/s/John A. Northen

**Counsel for the Trustee:**

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