

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:** : **CASE NO. 11-52338**  
: **CHAPTER 11**  
**GSW HOLDINGS, LLC** :  
**1408 Cowan Lorraine Road** :  
**Gulfport, MS 39507** :  
**Tax ID No: xx-xxx5769** :  
: **DEBTOR** :  
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**AMENDED DISCLOSURE STATEMENT  
DATED AS OF MARCH 8, 2013**

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE CHAPTER 11. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THERE WILL BE A HEARING ON THIS DISCLOSURE STATEMENT TO DETERMINE IF IT PROVIDES ADEQUATE INFORMATION. IF THE DISCLOSURE STATEMENT IS APPROVED BY THE BANKRUPTCY COURT, THERE WILL BE A SUBSEQUENT HEARING TO CONSIDER CONFIRMATION OF THE PLAN. ALL CREDITORS AND EQUITY INTEREST HOLDERS WILL BE NOTIFIED OF THE DATE OF SUCH CONFIRMATION HEARING.**

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.**

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**EXHIBITS TO DISCLOSURE STATEMENT**

EXHIBIT D-1

CHAPTER 11 PLAN OF REORGANIZATION

## INTRODUCTION

GSW Holdings, LLC, the debtor and debtor in possession in this bankruptcy case under chapter 11 of the Bankruptcy Code (the “Debtor”), or on and after the Effective Date of the Plan, the “Reorganized Debtor”, has filed a Chapter 11 Plan of Reorganization, dated as of March 8, 2013 (the “Plan”). The Plan is attached to this Disclosure Statement as **Exhibit D-1**. The Debtor submits this Disclosure Statement Dated as of March 8, 2013 (this “Disclosure Statement”), pursuant to Section 1125 of title 11 of the United States Code (the “Bankruptcy Code”), to holders of Claims against and Interests in the Debtor, in connection with (i) the solicitation of acceptances or rejections of the Plan (together with any modification, amendment or supplement, of the Plan), and (ii) the hearings to consider approval of the Plan to be scheduled before the United States Bankruptcy Court for the Southern District of Mississippi (the “Bankruptcy Court”) on the date(s) set forth in the accompanying notice.

In the event of a conflict or difference between the definitions used, and provisions contained, in this Disclosure Statement and the Plan, the definitions and provisions contained in the Plan shall control.

### I. PURPOSE AND SUMMARY OF THE PLAN

**THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A SUMMARY ONLY. HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW AND ANALYZE THE PLAN IN ITS ENTIRETY.**

The Plan will be implemented through a settlement of the Contested Matters between the Debtor and SPA which will result in a sale of the Kremer Marine Property to Wein-Air for the sum of \$1,900,000.00 and the transfer of the Hunter’s Chase Property on the Effective Date to SPA subject to whatever lien or liens exist on the property in favor of Hancock Bank. As part of the settlement out of the proceeds of the sale to Wein-Air, the Debtor will receive

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\$150,000.00 to be distributed to the interest holders and sufficient sums to pay allowed professional fees of up to \$88,000.00 and other administrative claims.

**II. SUMMARY OF CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN**

**A. TREATMENT OF CLAIMS AND INTERESTS**

The Plan contemplates to effectuate the settlement of the Contested Matters between the Debtor and SPA which will result in a sale of the Kremer Marine Property to Wein-Air and the transfer of the Hunter’s Chase Property on the Effective Date to SPA subject to whatever lien or liens exist on the property in favor of Hancock Bank

**B. CLAIMS UNDER THE PLAN**

The following is a summary of the classification and treatment of Claims under the Plan:

CLASS	TREATMENT
<p><b>Unclassified. Allowed Administrative Expense Claims.</b></p> <p>Professional Fee Claim of Heller Draper capped at \$88,000.00 plus costs.</p> <p>B.P. counsel paid on contingent fee basis.</p> <p>All other Administrative Claims and UST fees paid in full.</p>	<p>Unimpaired. Not entitled to vote.</p> <p>Subject to the bar date provisions herein, each holder of an Allowed Administrative Claim against the Debtor shall be paid on account of and in full satisfaction of such Allowed Administrative Claim, Cash equal to the amount of the Allowed Administrative Claim, on the later of: (a) the Effective Date, or (b) the date such Administrative Claim becomes an Allowed Administrative Claim, or, in either case, as soon thereafter as is practicable.</p> <p>On or before the Effective Date, the Debtor shall pay all fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, in Cash in full.</p> <p>Except as provided below for professionals and non-tax liabilities incurred in the ordinary course of business by the Debtor in Possession, requests for payment of Administrative Claims must be Filed no later than thirty (30) days after the Effective Date. Holders of Administrative Claims (including, without limitation, any governmental units asserting claims for federal, state, or local taxes) that are required to File a request for payment of such Claims and that do not File such requests by such bar date shall be forever barred from asserting such claims against the Debtor, Reorganized Debtor, any other person or entity, or any of their respective property.</p> <p>Holders of Allowed Administrative Claims shall not be entitled to interest on their Administrative Claims.</p> <p>All professionals or other entities requesting compensation or reimbursement of expenses under sections 327, 328, 330, 331, 503(b), 506 and 1103 of the</p>

	<p>Bankruptcy Code for services rendered before the Effective Date (including any compensation requested by any professional for any other entity for making a substantial contribution in the Reorganization Case or under any Bankruptcy Code section) shall File and serve on the Reorganized Debtor an application for final allowance of compensation and reimbursement of expenses no later than sixty (60) days after the Effective Date.</p> <p>Holders of Administrative Claims based on liabilities incurred in the ordinary course of business of the Debtor in Possession prior to the Effective Date (other than professionals or other entities described above, and governmental units that hold claims for taxes or claims and/or penalties related to such taxes) shall not be required to File any request for payment of such claims. Such Administrative Claims shall be assumed and paid by the Reorganized Debtor in the ordinary course of business under the terms and conditions of the particular transaction giving rise to such Administrative Claim, without any further action by the holders of such claims.</p> <p>Estimated percentage recovery: 100%</p>
<p><b>Unclassified: Allowed Priority Tax Claims.</b></p> <p>Debtor is not aware of any Allowed Priority Tax Claims.</p>	<p>Unimpaired. Not entitled to vote.</p> <p>Each holder of an Allowed Priority Tax Claim, to the extent such a claim exists, shall receive one of the following two treatments, as determined by SPA in its sole and absolute discretion, on account of and in full satisfaction of such Allowed Priority Tax Claim: (a) Cash on the Effective Date, or on such other date on which such Priority Tax Claim becomes an Allowed Claim, in an amount equal to the amount of the Allowed Priority Tax Claim or (b) in 60 payments with the monthly payment calculated on a five (5) year amortization with interest calculated in accordance with 11 U.S.C. §511. Holders of Priority Tax Claims shall not be entitled to receive any payment on account of penalties with respect to or arising in connection with, such Priority Tax Claims except as an unsecured claim. It is believed Priority Tax Claims have been paid by Hancock Bank and SPA on their respective collateral.</p> <p>Estimated percentage recovery: 100%</p>
<p><b>Class 1. Central Progressive Bank and Trust/SPA Gulfport, LLC</b></p> <p>The total estimate of the Allowed Class 1 Claim is approximately \$8,600,000.00, exclusive of any amounts that may be owed pursuant to 11 U.S.C. § 506.</p>	<p>Impaired. Entitled to Vote.</p> <p>The CPB/SPA Allowed Secured Claim is treated in Class 1 of the Plan. Class 1 is impaired under the Plan. Under the Plan, CPB/SPA's Class 1 Claim shall be satisfied in the following manner:</p> <p><i>i. Payment:</i> On the Effective Date, the Debtor will transfer to Wein-Air the Kremer Marine Property for the sum of \$1,900,000.00. SPA shall receive in satisfaction of SPA's Allowed Secured Claim, the proceeds of the Kremer Marine Sale less and except for \$150,000.00 and sufficient funds to pay allowed professional fees up to \$88,000.00 and other administrative expenses which shall be retained by the Debtor. The Plan treatment is in settlement of the Contested Matters.</p> <p><i>ii Amount of Claim:</i> The Allowed Secured Claim of CPB/SPA shall include all sums allowed pursuant to 11 U.S.C. § 506(b) at the non-default rate of interest.</p> <p><i>iii. Defaults:</i> All defaults and/or events of default existing as of the Petition Date and as of the Effective Date, including without limitation, any default of a continuing nature, shall be deemed waived, and any defaults and events of default resulting from the confirmation of the Plan, the occurrence of the Effective Date and/or the actions and transactions contemplated by the Plan, shall also be deemed waived as of the Effective Date and the CPB/SPA debt shall be deemed satisfied and paid in full upon the</p>

	<p>transfer of the Hunter’s Chase Property and the proceeds of the Kremer Marine Sale less and except for the \$150,000.00, the professional fees and other administrative costs to be paid by the Debtor.</p> <p><b>iv. Default Interest/Penalties/Charges:</b> No default interest, late charges or other penalties, including but not limited to prepayment penalties, yield maintenance premiums, origination fees or monetary compensation shall be required to be paid to SPA in connection with the confirmation of the Plan or the treatment provided therein.</p> <p><b>v. Execution of Documentation:</b> The Debtor shall execute any and all mutually agreeable documentation to effectuate the treatment described above in the Plan.</p> <p><b>vi. Return of the Note:</b> Upon the transfer contemplated by the Plan to SPA, SPA shall return to the Debtor the note or notes executed by it marked “satisfied in full.”</p> <p><b>Estimated percentage recovery: 100%</b></p>
<p><b>Class 2: Hancock Bank</b></p> <p>The total estimate of the Allowed Class 2 Claim is approximately \$250,000.00.</p>	<p>Unimpaired. Not entitled to vote.</p> <p>The Allowed Secured Claim of Hancock Bank shall either: (i) be paid in full from the sale proceeds of the Kremer Marine Sale on the Effective Date or (ii) by mutual agreement between Hancock Bank and SPA, be assumed through assumption of the claim by SPA. The amount of the Allowed Secured Claim of Hancock Bank is subject to verification and review between Hancock Bank, SPA and the Debtor.</p> <p><b>Estimated percentage recovery: 100%</b></p>
<p><b>Class 3: Unsecured Claims.</b></p> <p>The total estimate of Allowed Unsecured Claims (non-insider) is comprised of the SPA deficiency claim. The Debtor is not aware of any other Class 3 Claims.</p>	<p>Impaired. Entitled to Vote.</p> <p>Class 3 is impaired under the Plan, and the holders of Class 3 Claims are entitled to vote on the Plan. The holder of the Allowed Class 3 Claim (except for insiders of the Debtor) shall receive title to the Hunter’s Chase Property subject to the claims of Hancock Bank.</p> <p><b>Estimated percentage recovery: approximately 100%.</b></p>

The Claims and Claim amounts listed above are amounts estimated by the Debtor as of the filing of this Disclosure Statement and all such Claims are still being reviewed by the Debtor. A listing of Claims, or any amounts with respect thereto, above or elsewhere in this Disclosure Statement shall not constitute, or be deemed to constitute, allowance of such Claims and all such Claims and amounts are subject, and will remain subject, to challenge and objection by the Debtor and the Reorganized Debtor prior to voting on the Plan and at any time thereafter as provided in the Plan.



**C. INTERESTS UNDER THE PLAN**

The following is a summary of the classification and treatment of Interests under the Plan:

<b>Class 4: Interests.</b>	<p>Impaired. Entitled to Vote</p> <p>Class 4 is impaired under the Plan and the holders of Class 4 Interests are entitled to vote on the Plan. Holders of Class 4 Interests shall receive \$150,000.00 and retain their Interests. They shall also receive ninety percent (90%) of the net proceeds of the BP Claim.</p>
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**III. GENERAL OVERVIEW AND BACKGROUND INFORMATION**

**A. BACKGROUND AND GENERAL INFORMATION**

On October 11, 2011 (the “Petition Date”), GSW Holdings, LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

GSW Holdings, LLC was formed in July 2005, as a limited liability company. The Debtor continues to operate its business and manage its assets as a Debtor-in-Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtor develops properties, and developed ‘Mariner’s Cove’ in Gulfport, Mississippi and ‘Hunters Chase Subdivision’, a subdivision consisting of 40 lots and also located in Gulfport, Mississippi.

Mariner’s Cove consists of approximately 66 acres on Bernard Bayou, a protected waterway one mile inland from the Gulf of Mexico and 70 miles east of New Orleans, LA.

The proposed community of Mariner’s Cove was envisioned to become the premier waterfront, mixed-use community in the Gulfport-Biloxi MSA. When completed, it was to feature 1,450 residential units, the first non-casino resort/convention hotel in the MSA with approximately 800 waterfront hotel units, and approximately 373,000 square feet of office, festival, retail and family-oriented entertainment space, all wrapped around a major full service marina which would accommodate 460 marina wet slips and 400 dry-stack slips.

The Debtor's goal was to create a resort destination/environment that catered to the family vacation and baby boomer second home/retirement market segments, but that would also appeal to year-round residents moving to the area for employment. Mariner's Cove was to provide the only protected marina for large luxury craft and sport fishing craft in the entire market area as well as the only modern dry-stack facilities for small and large craft accommodating boats up to 52 ft. in length.

The Debtor received an appraisal that the value of the Mariner's Cove was \$21,000,000.00. The value, to the extent not agreed by the parties, will be determined by the Court. CPB has received two recent appraisals on a portion of its collateral that value the property at \$7,056,000.00 and \$7,750,000.00 respectively. Debtor, immediately prior to the British Petroleum ("BP") spill, had a development and take out loan for the Mariner's Cove project. The loan was withdrawn as a result of the BP spill. The Debtor has a significant claim against BP. The value of the BP claim is unknown.

The Debtor's other asset, Hunters Chase Subdivision, is also located in Gulfport, Mississippi. The market in this area is at the beginning of a casino building boom with several \$1 billion dollar construction projects in planning or under construction (Harrah's -Jimmy Buffet's Margaritaville Casino) and more than 12 additional new casino licenses were recently issued that will require construction in the near future. It is estimated that up to 35,000 plus new homes will be required to support the needs of the casino service industry over the next 5 to 6 years.

In addition, a new 500-bed hospital has been announced for the area and it is also estimated that Keesler AFB will be requiring as many as 10,000 new personnel to support new commands that are being moved there in conjunction with the growth of the local aerospace

industry. Many of those jobs are highly paid private contractors who will require upscale off-base housing.

Gulfport will also enjoy another major growth catalyst in the form of the recently awarded U.S. Federal Grant of \$600 Million for existing port expansion and to construct a new cruise ship dock and a new major freight shipping and distribution center. One of the operators, China Seas, intends to employ 7,500 new hires over the next three years. It is understood that this will become the main port of entry for Chinese goods into the U.S., supplanting the Port of New York because of its closer proximity to the Panama Canal and major rail and highway infrastructure availability for distribution throughout the southeastern and southwestern U.S. By every measure, this area is beginning a transformative growth period. The newly renovated and expanded local airport shows traffic up 14% plus year-to-year, gaming revenues are up 26% year-to-year and retail sales are up 51% from 2005 to 2007.

**B. THE DEBTOR'S MANAGING MEMBERS**

The managing members of the Debtor are Charles M. Gant and Stephen L. Shivers with each member holding a 50% interest in the Debtor.

**C. THE DEBTOR'S DEBT STRUCTURE**

The Debtor's major creditor is CPB/SPA, which possesses a security interest in the 66 acres located in Gulfport, Mississippi ('Mariner's Cove'). The outstanding balance of the CPB/SPA debt on the Petition Date was \$8,600,000.00. The Debtor listed CPB on Schedule D. On February 26, 2011, the Debtor amended Schedule D to list the claim of CPB as disputed.

Recently, CPB was closed by State Regulators and its assets were transferred to First National Bank of Commerce. The Debtor received a notice dated February 3, 2012, indicating that the note was transferred to SPA effective December 29, 2011.

The Debtor owes approximately \$200,000.00 to Hancock Bank which is secured by the 40 lots that make up the Hunter's Chase Subdivision.

**D. EVENTS LEADING TO THE CHAPTER 11 CASE**

The Debtor is in the business of developing properties. The recent recession contributed to a slowdown in local property markets. Lower rates of economic growth and exposure to toxic subprime mortgage debt crippled US banks and led to a shortage of financing. In addition, a collapse in consumer confidence had a further negative impact on property market sentiment.

Over the last few years, the Debtor has been unable to sell its properties due to the current economic environment and was unable to generate sufficient funds to pay its debts. Prior to the Petition Date, CPB filed a complaint in the Circuit Court of Harrison County, Mississippi, First Judicial District, seeking damages for a breach of contract by the Debtor, among other allegations, in regard to the CPB debt. The matter is captioned *Central Progressive Bank v. GSW Holdings, LLC, Ray L. Wesson, Charles M. Gant, Stephen Shivers, Lissa L. Shivers, Gant & Shivers Homes, LLC and Gant & Shivers Properties, LLC*, Cause No. A2401-11-112. The Defendants filed an answer to the complaint on or about May 20, 2011. CPB filed a motion for summary judgment; the court has denied the Motion.

**E. SIGNIFICANT POST-PETITION EVENTS**

On October 11, 2011, the Petition Date, Debtor filed for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**1. Continuation of Business; Stay of Litigation.**

Following the Petition Date, the Debtor has continued to operate as debtor-in-possession with the protection of the Bankruptcy Court. The Bankruptcy Court has certain supervisory

powers over the Debtor's operations during the pendency of the Chapter 11 case, including the power to approve any transactions that are outside the ordinary course of the Debtor's business.

An immediate effect of the filing of a bankruptcy case is the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all litigation against the Debtor. This injunction will remain in effect until the Effective Date unless modified or lifted by order of the Bankruptcy Court.

**2. First Day Pleadings.**

As first day pleadings following the filing of the petition, the Debtor filed only an Application to Employ Heller Draper as its counsel, and Wheeler & Wheeler, PLLC as local counsel.

**3. Compliance with Bankruptcy Code, Bankruptcy Rules, Local Court Rules, and U.S. Trustee Deadlines.**

The Debtor filed its Statement of Financial Affairs, Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Lists of Equity Security Holders.

Pursuant to section 341 of the Bankruptcy Code, a meeting of creditors for the Debtor was held November 7, 2011.

**4. Adversary Proceeding**

The Debtor filed adversary proceeding no. 11-05050 captioned *GSW Holdings, LLC v. Central Progressive Bank* seeking an injunction against CPB/SPA for pursuing guarantee on the outstanding debt. The injunction was denied by the Court. This adversary proceeding has been withdrawn.

**5. BP Claim**

The Debtor filed an Application to Employ counsel to litigate its BP claim. The special counsel employed are Douglas S. Lyons, P.A., Lyons and Farrar, P.A., Howard & Associates

Attorneys at Law, P.A., Sheller P.C. and Law Offices of Samuel T. Adams. The Debtor is actively pursuing its claim against BP and will continue to prosecute the claim.

**6. Hancock Bank**

The Debtor agreed to make adequate protection payments to Hancock Bank to use and or sell the collateral securing the debt. The Debtor paid Hancock Bank \$1,500.00 upon entry of the order and made payments of \$3,000.00 on January 15, 2012, April 15, 2012, July 15, 2012, October 15, 2012, and January 15, 2013. Future payments of \$3,000.00 are scheduled for April 15, 2013 and July 15, 2013. In addition, under the adequate protection order, the Debtor paid \$27,200.00 to Hancock Bank for the release of each lot sold in Hunter's Chase Subdivision. The Debtor sold four lots therefore an additional \$108,800.00 was paid to Hancock Bank.

**IV. THE PLAN**

The Debtor has proposed the Plan and believes that the classification and treatment of Claims and Interests provided for in the Plan are consistent with the requirements of the Bankruptcy Code. Under the Bankruptcy Code, holders of Allowed Claims against and Interests in the Debtor that are Impaired and that receive distributions under the Plan are entitled to vote on the Plan. A copy of the Plan accompanies this Disclosure Statement as **Exhibit D-1**. A summary of the classification and treatment of Claims and Interests under the Plan is set forth above in this Disclosure Statement.

**A. VALUATION OF THE DEBTOR**

The Debtor has an appraisal dated December 6, 2010 which lists the "as is" market value of the Mariner's Cove property at \$21,000,000.00. There is no current appraisal of the Hunters Chase Subdivision property, however, the Debtor believes the value to be approximately \$28,500.00 per lot. There are 39 lots remaining in the subdivision.

**B. TREATMENT OF UNCLASSIFIED CLAIMS UNDER THE PLAN**

The Plan provides for the payment of Claims against the Debtor, including the treatment of unclassified Claims. The principal Administrative Claims known to the Debtor are the fees and expenses of the Debtor's attorneys, Heller, Draper, Patrick & Horn, L.L.C. ("Heller Draper"). The Debtor believes that the fees of Heller Draper should not exceed \$88,000.00.

1. Administrative Claims.

**a. Generally.**

Subject to the bar date provisions herein, the Debtor shall pay each holder of an Allowed Administrative Claim against the Debtor on account of and in full satisfaction of such Allowed Administrative Claim, Cash equal to the amount of the Allowed Administrative Claim, on the later of: (a) the Effective Date, or (b) the date such Administrative Claim becomes an Allowed Administrative Claim, or, in either case, as soon thereafter as is practicable.

**b. Payment of Statutory Fees.**

On or before the Effective Date, the Debtor shall pay all fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, in Cash in full.

**c. Bar Date For Administrative Claims.**

i. General Provisions.

Except as provided below for professionals and non-tax liabilities incurred in the ordinary course of business by the Debtor in Possession, requests for payment of Administrative Claims must be Filed no later than thirty (30) days after the Effective Date. Holders of Administrative Claims (including, without limitation, any governmental units asserting claims for federal, state, or local taxes) that are required to File a request for payment of such Claims and that do not File

such requests by such bar date shall be forever barred from asserting such claims against the Debtor, Reorganized Debtor, any other person or entity, or any of their respective property.

Holders of Allowed Administrative Claims shall not be entitled to interest on their Administrative Claims.

ii. Professionals.

All professionals or other entities requesting compensation or reimbursement of expenses under sections 327, 328, 330, 331, 503(b), 506 and 1103 of the Bankruptcy Code for services rendered before the Effective Date (including any compensation requested by any professional for any other entity for making a substantial contribution in the Reorganization Case or under any Bankruptcy Code section) shall File and serve on the Reorganized Debtor an application for final allowance of compensation and reimbursement of expenses no later than sixty (60) days after the Effective Date.

iii. Ordinary Course Liabilities.

Holders of Administrative Claims based on liabilities incurred in the ordinary course of business of the Debtor in Possession prior to the Effective Date that were not paid during the case (other than professionals or other entities described in subparagraph (ii) above, and governmental units that hold claims for taxes or claims and/or penalties related to such taxes) shall not be required to File any request for payment of such claims. Such Administrative Claims shall be paid by the Reorganized Debtor in the ordinary course of business under the terms and conditions of the particular transaction giving rise to such Administrative Claim, without any further action by the holders of such claims.



**2. Priority Tax Claims.**

Each holder of an Allowed Priority Tax Claim, to the extent such a claim exists, shall receive one of the following two treatments, as determined by SPA in its sole and absolute discretion, on account of and in full satisfaction of such Allowed Priority Tax Claim: (a) Cash on the Effective Date, or on such other date on which such Priority Tax Claim becomes an Allowed Claim, in an amount equal to the amount of the Allowed Priority Tax Claim; or (b) payment in sixty (60) equal monthly payments with the monthly payment calculated on a fifty-two (52) month amortization with interest calculated in accordance with 11 U.S.C. § 511.

**C. TREATMENT OF CLASSIFIED CLAIMS UNDER THE PLAN**

**1. Class 1 – CPB/SPA**

The CPB/SPA Allowed Secured Claim is treated in Class 1 of the Plan. Class 1 is impaired under the Plan, and the holder of the Class 1 Claim is entitled to vote on the Plan. Under the Plan, CPB/SPA's Class 1 Claim shall be satisfied in the following manner:

*i. Payment:* On the Effective Date, the Debtor will transfer to Wein-Air the Kremer Marine Property for the sum of \$1,900,000.00. SPA shall receive the following in satisfaction of SPA's Allowed Secured Claim in Class 1: the proceeds of the Kremer Marine Sale less and except for \$150,000.00 and sufficient funds to pay allowed professional fees up to \$88,000.00 and other administrative costs such as U.S. Trustee fees, which shall be retained by the Debtor out of the Wein-Air sale. The Plan treatment of SPA in Classes 1 and 3 is in settlement of the Contested Matters asserted by the Debtor and the guarantors of the SPA debt.

ii. **Amount of Claim:** The Allowed Secured Claim of CPB/SPA shall include all sums allowed pursuant to 11 U.S.C. § 506(b), to the extent applicable, at the non-default rate of interest.

iii. **Defaults:** All defaults and/or events of default existing as of the Petition Date and as of the Effective Date, including without limitation, any default of a continuing nature, shall be deemed waived, and any defaults and events of default resulting from the confirmation of the Plan, the occurrence of the Effective Date and/or the actions and transactions contemplated by the Plan, shall also be deemed waived as of the Effective Date and the CPB/SPA debt shall be deemed satisfied and paid in full upon the transfer of the Hunter's Chase Property and the proceeds of the Kremer Marine Sale less and except for the \$150,000.00 and the professional fees retained by the Debtor.

iv. **Default Interest/Penalties/Charges:** No default interest, late charges or other penalties, including but not limited to prepayment penalties, yield maintenance premiums, origination fees or monetary compensation shall be required to be paid to SPA in connection with the confirmation of the Plan or the treatment provided herein.

v. **Execution of Documentation:** The Debtor shall execute any and all mutually agreeable documentation to effectuate the treatment described above in the Plan.

vi. **Return of the Note:** Upon the transfer contemplated in the Plan to SPA, SPA shall return to the Debtor the note or notes executed by it marked "satisfied in full."

**2. Class 2 – Hancock Bank.**

The Allowed Secured Claim of Hancock Bank shall either: (i) be paid in full from the sale proceeds of the Kremer Marine Sale, on the Effective Date, or (ii) by mutual agreement between Hancock Bank and SPA, be assumed through assumption of the claim by SPA. The

amount of the Allowed Secured Claim of Hancock Bank is subject to verification and review between Hancock Bank, SPA, and the Debtor. Class 2 is unimpaired under the Plan.

**3. Class 3 –Unsecured Claims.**

Class 3 is impaired under the Plan, and the holders of Class 3 Claims are entitled to vote on the Plan. SPA, the sole non-insider holder of a Class 3 Claim, shall have its Class 3 Claim satisfied by taking title to Hunter's Chase Property subject to the lien of Hancock Bank. Class 3 Claims of insiders shall be reclassified as Class 4 Interests.

**D. TREATMENT OF CLASSIFIED INTERESTS UNDER THE PLAN**

**Class 4 – Interests.**

Class 4 is impaired under the Plan and the holders of Class 4 Interests are entitled to vote on the Plan. Holders of Class 4 Interests shall receive \$150,000.00, retain their Interests and ninety percent (90%) of the net proceeds of the BP Claim.

**E. MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**1. Effective Date.**

The "Effective Date" of the Plan shall be the day on which the closing of (i) the Kremer Marine Sale, and (ii) the transfer of the Hunters Chase Property to SPA as contemplated therein, shall occur. The Effective Date shall take place on the day mutually agreed upon between the Debtor, SPA, and Wein-Air, which shall be no later than 3 business days after all of the Effective Date Conditions shown below have been either satisfied or waived by the Debtor, SPA, and Wein-Air.

**2. Effective Date Conditions.**

Notwithstanding any other provision of the Plan, the Effective Date shall not occur until each of the following conditions have been either satisfied or waived by the Debtor, SPA, and

Wein-Air (or will be satisfied or waived contemporaneously with the occurrence of the Effective Date):

- a. The Confirmation Order, in form and substance satisfactory to the Debtor, SPA, and Wein-Air shall have become a Final Order and not subject to appeal; and
- b. All sales or transfer contemplated by the Plan have occurred.

**3. Notice of Occurrence of Effective Date**

The Reorganized Debtor shall File with the Court a notice of the occurrence of the Effective Date within two Business Days of the occurrence of the Effective Date which notice shall state: (1) that the foregoing conditions to the occurrence of the Effective Date have occurred or been waived; (2) the date of the Effective Date, and (3) that the Effective Date has occurred on and as of said date.

From and after the Effective Date, any Person who desires notice of any pleading or document filed in the Reorganization Case, or of any hearing in the Court, or of any matter as to which the Bankruptcy Code requires notice to be provided, shall file a request for post-confirmation notice and shall serve the request on counsel for the Debtor; provided however, the United States Trustee shall be deemed to have requested post-confirmation notice.

**4. Vesting of Assets and Operations of Property.**

(a) All property of the Debtor's estate not transferred pursuant to the transactions contemplated by the Plan shall vest in the Reorganized Debtor on the Effective Date, subject to required disbursements of sale proceeds from the Kremer Marine Sale under the terms of the Plan and the payment of ten percent (10%) of the net proceeds of the BP claim to Wein-Air.

As of the Effective Date, all property of the Debtor and the Reorganized Debtor which is transferred pursuant to the Plan to Wein-Air shall be free and clear of all Liens, Claims and

interests of holders of Claims and Interests, except as otherwise expressly provided therein. Without limiting the foregoing, the following Liens, Claims and/or interests will be, and shall be deemed to be, canceled and released in their entirety: Any and all Liens, Claims, and/or interests which appear of record or are claimed by any party, as of the Effective Date.

As of the Effective Date, all property of the Debtor and the Reorganized Debtor which is transferred pursuant to the Plan to SPA shall be free and clear of all Liens, Claims and interests of holders of Claims and Interests, except for the claim of Hancock Bank which is expressly assumed by SPA. Without limiting the foregoing, the following Liens, Claims and/or interests will be, and shall be deemed to be, canceled and released in their entirety: Any and all Liens, Claims, and/or interests which appear of record or are claimed by any party, as of the Effective Date.

(b) On the Effective Date, pursuant to the Plan and the Confirmation Order, any receiver, custodian or similar person or entity appointed prior to the Effective Date for the Debtor or any of its property shall be terminated and discharged from its responsibilities and duties and all property, including Cash, of the Debtor held by such receiver, custodian or similar person or entity shall be immediately turned over to the Reorganized Debtor, without setoff or offset.

**5. Means to Implement the Plan.**

The Reorganized Debtor shall act as Disbursing Agent under the Plan and make all distributions required under the Plan. Charles Gant will manage the Reorganized Debtor and he will receive no compensation for his services.

**6. Means for Funding the Plan.**

The Plan will be implemented by a sale of the Kremer Marine Property to Wein-Air, a transfer of the Hunter's Chase Property to SPA and ninety percent (90%) of the net proceeds of the BP claim. The Debtor shall give to Wein-Air a payment of ten percent (10%) of the net

proceeds of the BP Claim.

**F. OBJECTIONS TO CLAIMS/ADMINISTRATIVE CLAIMS/INTERESTS**

**1. Objections to Claims or Interests; Prosecution of Disputed Claims or Disputed Interests.**

The Debtor or any creditor, before the Effective Date and the Reorganized Debtor or any creditor after the Effective Date, shall have the exclusive right to object to the allowance, amount or classification of Claims or Interests asserted in the Reorganization Case, and such objections may be litigated to Final Order by a creditor (to the extent such creditor does not assert an administrative claim or a claim for substantial contribution) who shall succeed to the rights and defenses to such claims possessed by Debtor or Reorganized Debtor. Unless otherwise provided therein or ordered by the Bankruptcy Court, all objections to Claims or Interests shall be filed no later than forty-five (45) days after the Effective Date, subject to any extensions granted pursuant to a further order of the Bankruptcy Court. Such extensions may be obtained by the Reorganized Debtor upon *ex parte* motion.

**2. Estimation of Disputed Claims.**

The Debtor, and after the Effective Date, the Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate for all purposes, including distribution under the Plan, any Disputed, contingent or unliquidated Claim or Interest pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Reorganized Debtor have previously objected to such Claim or Interest. The Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest at any time, including, without limitation, during the pendency of an appeal relating to such objection.

**3. No Distribution on Account of Disputed Claims.**

No Distribution shall be made with respect to all or any portion of any Disputed, contingent, or unliquidated Claim or Interest until the entire Claim or Interest becomes an Allowed Claim or an Allowed Interest. The Reorganized Debtor shall set aside or reserve a portion of the consideration payable to the holders of Allowed Claims and Allowed Interests in a particular Class to be held in the Disputed Claims or Disputed Interests reserve for such Class in an amount sufficient to pay to the holders of all Disputed Claims or Disputed Interests in such Class the full distributions they may be entitled to if their respective Claims or Interests were allowed in full.

**G. DISPUTED CLAIMS**

Pending resolution of a Disputed Claim, all Cash to be distributed to the holder of the Disputed Claim shall be placed in a segregated bank account at a federally insured financial institution and maintained by the Disbursing Agent until distribution to the holder of such Claim under the Plan. Distribution shall be made only from the Disputed Claims reserve and only at such time as a particular Claim is determined to be an Allowed Claim. Interest earned, incident to the escrow account, shall be distributed, shall accrue or will be paid with respect to any Disputed Claim for the period from the Effective Date to the date of a distribution. To the extent that a Disputed Claim ultimately is disallowed or allowed in an amount less than the amount of the reserves for such Disputed Claim, any resulting surplus in the reserve shall be transferred from the reserve to the Reorganized Debtor.

**H. EXECUTION OF DOCUMENTS AND TO IMPLEMENT THE PLAN**

The Debtor and Debtor in Possession, on behalf of themselves and the Reorganized Debtor, shall execute such documents and take such other action as is necessary to effectuate the transactions provided for in the Plan.

## **I. CLAIMS AGAINST OTHERS**

The Debtor has not conducted a complete analysis of its avoidance claims arising under the Bankruptcy Code. The Debtor does not believe that it will pursue any Avoidance Actions or other actions. A claim ("BP Claim") has been asserted against BP Exploration & Production and the BP claims program ("BP") as a result of damages incurred by the Debtor due to the oil spill in the Gulf of Mexico and the Debtor will continue to prosecute that claim in conjunction with the Kremer Marine Sale, as of the Effective Date, the Debtor shall pay ten percent (10%) of the net proceeds of the BP Claim to Wein-Air.

## **V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **A. REJECTION**

Each executory contract or unexpired lease of the Debtor that has not expired by its own terms before the Effective Date, has not been stated as being assumed either in the Plan or by separate Motion or previously been rejected by the Debtor in Possession pursuant to an order of the Bankruptcy Court, shall be rejected by the Debtor as of the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code. The Debtor has no executory contracts.

### **B. BAR DATE FOR REJECTION DAMAGES**

Any claims for damages arising from the rejection under the Plan of an executory contract or unexpired lease must be Filed within thirty (30) days after the Effective Date or be forever barred and unenforceable against the Debtor, Reorganized Debtor, and their properties and barred from receiving any distribution under the Plan.

## **VI. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and certain U.S. holders of Claims and Interests.



The following summary is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rules and pronouncements of the Internal Revenue Service (the “IRS”), all as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the tax consequences described below.

The U.S. federal income tax consequences of the Plan are complex and are subject to significant uncertainties. No assurance can be given that legislative or administrative changes or court decisions may not be forthcoming which would require significant modification of the statements expressed in this section. Certain tax aspects of the Plan are uncertain due to the lack of applicable regulations and other tax precedent. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt.

TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND ANY INTERESTS ARE HEREBY NOTIFIED THAT (a) ANY DISCUSSION OF TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE TAX CODE, AND (b) THIS DISCUSSION WAS WRITTEN IN CONNECTION WITH THE PROMOTION OF THE PLAN.

HOLDERS OF CLAIMS AND INTERESTS SHOULD CONSULT THEIR TAX ADVISOR TO DETERMINE THE AMOUNT AND TIMING OF ANY INCOME OR LOSS SUFFERED AS A RESULT OF THE CANCELLATION OF THE CLAIMS OR STOCK OPTIONS HELD BY SUCH PERSON, WHETHER SUCH INCOME OR LOSS IS

ORDINARY OR CAPITAL AND THE TAX EFFECT OF ANY RIGHT TO, AND RECEIPT OF DEFERRED PAYMENT.

THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, ALL HOLDERS SHOULD CONSULT THEIR TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

The Debtor is a conduit entity and, as such, pays no taxes. The plan treatment of the Debtor's assets generates a potential tax event for the equity holders of the Debtor. The tax event can be a gain or loss depending on the equity owner's basis in the corporation and the gain or loss can either be a capital gain or ordinary income depending on the individual's treatment of the investment in the Debtor.

## **VII. LIQUIDATION ANALYSIS UNDER CHAPTER 7**

Under the Bankruptcy Code, in order for a plan to be confirmed, each creditor must receive or retain under the Plan a recovery that has a value at least equal to the value of the distribution that such creditor would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Debtor asserts the value under the Plan is at least equal to any distribution under a chapter 7, as the Debtor is surrendering property to CPB/SPA or paying CPB/SPA the cost of purchasing the loan.

## **VIII. CONFIRMATION PROCEDURE**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

**A. VOTING AND OTHER PROCEDURES**

A Ballot for the acceptance or rejection of the Plan is enclosed with the Disclosure Statement submitted to the holders of Claims that are entitled to vote to accept or reject the Plan.

Pursuant to the provisions of the Bankruptcy Code, only holders of claims in classes of claims that are impaired under the terms and provisions of a chapter 11 plan and are to receive distributions thereunder are entitled to vote to accept or reject the plan. Classes of claims in which the holders of claims and interests will not receive or retain any property under a chapter 11 plan are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan. Classes of claims in which the holders of claims or interests are Unimpaired under a Chapter 11 plan are deemed to have accepted the plan and also are not entitled to vote to accept or reject the plan.

The Bankruptcy Code defines “acceptance” of a plan by a class of: (i) claims, as acceptance by creditors actually voting in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims; and (ii) Interests, as acceptance by interest holders in that class actually voting that hold at least two-thirds in number of the shares of the common stock of a debtor.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or otherwise in accordance with the provisions of the Bankruptcy Code.

With respect to the Plan, any holder of a Claim in an Impaired Class (i) whose Claim has been listed by the Debtor in the Schedules filed with the Bankruptcy Court (provided that such Claim has not been scheduled as disputed, contingent or unliquidated), or (ii) who filed a proof of claim on or before the applicable bar date (or, if not filed by such date, any proof of claim

filed within any other applicable period of limitations or with leave of the Bankruptcy Court), which Claim has not been disallowed and is not the subject of an objection, is entitled to vote. Holders of Claims that are disputed, contingent and/or unliquidated are entitled to vote their Claims only to the extent that such Claims are Allowed for the purpose of voting pursuant to an order of the Bankruptcy Court. The Debtor may seek a determination that any Class of Claims that is entitled to vote to accept or reject the Debtor's Plan that does not vote to accept or reject the Debtor's Plan be deemed to accept the Plan, as applicable.

After carefully reviewing this Disclosure Statement, including any exhibits, each holder of an Allowed Claim or Interest entitled to vote may vote whether to accept or reject the Debtor's Plan. A Ballot for voting on the Plan accompanies this Disclosure Statement. If you hold a Claim or Interest in more than one Class and you are entitled to vote Claims in more than one Class, you may receive a Ballot or Ballots, which will permit you to vote in all appropriate Classes of Claims. Please vote and return your Ballot to Heller, Draper, Patrick & Horn, LLC as follows, whether by U.S. mail, or by hand delivery or courier service:

**Heller, Draper, Patrick & Horn, L.L.C.**  
**Attention: Douglas S. Draper**  
**650 Poydras Street, Suite 2500**  
**New Orleans, LA 70130**

ANY EXECUTED BALLOT THAT FAILS TO INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED. BALLOTS RETURNED TO THE HELLER, DRAPER, PATRICK & HORN, L.L.C. BY FACSIMILE TRANSMISSION OR ANY OTHER ELECTRONIC MEANS WILL NOT BE COUNTED.

**THE VOTING DEADLINE IS  
5:00 P.M., CENTRAL  
TIME ZONE, ON  
\_\_\_\_\_, 201\_\_.**

APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN. ALL CREDITORS THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.

**Ballots must be received by Heller, Draper, Patrick & Horn, LLC by the Voting Deadline.** If a Ballot is received after the Voting Deadline, it will not be counted. Complete the Ballot by providing all the information requested, and sign, date and return the Ballot by mail, overnight courier or personal delivery to Heller, Draper, Patrick & Horn, LLC at the address set forth above.

TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN THE TIME AND DATE SET FORTH IN THE ACCOMPANYING NOTICE.

ANY OBJECTIONS TO THE CONFIRMATION OF THE PLAN MUST BE FILED IN ACCORDANCE WITH AND NO LATER THAN THE TIME AND DATE SET FORTH IN THE ACCOMPANYING NOTICE.

If you are entitled to vote on the Plan and you did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the procedures for voting on the Plan, please telephone the Voting Agent, Douglas S. Draper at the following telephone number: **1-504-299-3300**.

**B. DISCLAIMERS AND ENDORSEMENTS**

This Disclosure Statement contains information about the Debtor's Plan. Holders of Claims or Interests are urged to study the text of the Plan carefully to determine the impact of the Plan on their Claims or Interests and to consult with their financial, tax and legal advisors.

Nothing contained in this Disclosure Statement or the Plan will be deemed an admission or statement against interest that can be used against the Debtor in any pending or future litigation. Any reference to creditors or Claims or Interests in this Disclosure Statement is not an admission with respect to the existence, ownership, validity, priority, or extent of any alleged Claim, Interest or encumbrance.

Certain statements and assertions in this Disclosure Statement may be subject to dispute by parties in interest.

**C. THE CONFIRMATION HEARING**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a Confirmation Hearing with respect to the Plan. The Confirmation Hearing in respect of the Plan has been scheduled for the date and time set forth in the accompanying notice before the Honorable \_\_\_\_\_, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of Mississippi, insert date. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice other than an announcement of the adjourned date made at the Confirmation Hearing or posted at the courthouse at the Confirmation Hearing or at an adjournment thereof. Any objection to confirmation (i) must be made in writing, (ii) must specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or a description of the interest in the Debtor held by the objector, and (iii) must be timely made. Any such objections must be filed with the

Bankruptcy Court and served so that they are received by the Bankruptcy Court, and the following counsel, on or before the date and time set forth in the accompanying notice:

**Counsel to the Debtor:**

Heller, Draper, Patrick & Horn, L.L.C.  
Douglas S. Draper, La. Bar Roll No 5073  
Leslie A. Collins, La. Bar Roll No. 14891  
650 Poydras Street, Suite 2500  
New Orleans, Louisiana 70130-6103  
Telephone: (504) 299-3300  
Fax: (504) 299-3399

**D. CONFIRMATION**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan if the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the plan is (i) accepted by all Impaired Classes of Claims or, if rejected by an Impaired Class, that the plan "does not discriminate unfairly" and is "fair and equitable" as to such Class, (ii) feasible, and (iii) in the "best interests" of creditors that are Impaired under the Plan.

**E. UNFAIR DISCRIMINATION AND FAIR AND EQUITABLE TESTS**

Under the Bankruptcy Code, a plan does not have to be accepted by every class of creditors or interest holders to be confirmed. If a class of claims rejects a plan or is deemed to reject a plan, the plan proponent has the right to request confirmation of the plan pursuant to Section 1129(b) of the Bankruptcy Code the so-called "cramdown" provision of the Bankruptcy Code. Section 1129(b) permits the confirmation of a plan notwithstanding the non-acceptance of such plan by one or more impaired classes of claims and interests. Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and

equitable” with respect to each non-accepting class, and meets the other legal criteria for confirmation.

In the event that any Class of Claims or Interests fails to accept the Plan in accordance with section 1129(a)(8) of the Bankruptcy Code, the Debtor reserves the right to (a) request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, and/or (b) modify the Plan in accordance with section 1127(a) of the Bankruptcy Code.

Accordingly, to obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan does not “discriminate unfairly” and is “fair and equitable” with respect to each Impaired, non-accepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable.” The Bankruptcy Code establishes “cram down” tests for Classes of Secured Claims, unsecured Claims and Interests that do not accept the plan, as follows:

**1. Secured Creditors**

Either (a) each Impaired secured creditor retains the Liens securing its Secured Claim and receives on account of its Secured Claim deferred Cash payments (x) totaling at least the Allowed Amount of the Secured Claim and (y) having a present value at least equal to the value of the secured creditor’s collateral, (b) each Impaired secured creditor realizes the “indubitable equivalent” of its Allowed Secured Claim, or (c) the property securing the Claim is sold free and clear of Liens with the secured creditor’s Lien to attach to the proceeds of the sale and such Lien on proceeds is treated in accordance with clause (a) or (b) of this subparagraph.

**2. Unsecured Creditors**

Either (a) each Impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its Allowed Claim, or (b) the holders of Claims and Interests that



are junior to the Claims of the dissenting Class will not receive any property under the plan, and the “best interest” test is met so that each Impaired unsecured creditor recovers at least what that creditor would receive if the case was converted to a chapter 7 case.

### **3. Holders of Interests**

Either (a) each holder of Impaired Interests receives or retains under the plan property of a value equal to the greatest of the Allowed Amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest, or (b) no holder of junior interests receives or retains any property, and the “best interest” test is met, so that each Impaired Interest holder recovers at least what that Interest holder would receive if the case was converted to a chapter 7 case.

### **4. No Unfair Discrimination**

In addition, the “cram down” standards of the Bankruptcy Code prohibit “unfair discrimination” with respect to the claims of any impaired, non-accepting class. While the “unfair discrimination” determination depends upon the particular facts of a case and the nature of the claims at issue, in general, courts have interpreted the standard to mean that the impaired, non-accepting class must receive treatment under a plan of reorganization which allocates value to such class in a manner that is consistent with the treatment given to other classes with claims against the debtor of equal or junior status.

All Classes of creditors will receive distributions under the Plan; thus, no Class of creditors is conclusively presumed to have rejected the Plan. The Debtor believes that the treatment of all Classes of Claims and Interests under the Plan satisfies the “no unfair discrimination” requirement for nonconsensual confirmation of the Plan under section 1129(b) of the Bankruptcy Code. With respect to each such Impaired, non-accepting Class, there is no

Class of equal priority receiving more favorable treatment under the Plan, and no Class that is junior to such Impaired, non-accepting Class will receive or retain any property under the Plan on account of the Claims or Interests in such Class.

**F. FEASIBILITY**

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization unless the liquidation of the debtor is provided for in the plan. It is not likely that the confirmation will be followed by liquidation or the need for further financial reorganization of the Debtor.

**G. BEST INTEREST TEST**

In order to confirm a plan of reorganization, the Bankruptcy Court must determine that the plan is in the best interests of all classes of creditors and equity security holders impaired under that plan. The "best interest" test requires that the Bankruptcy Court find that the plan provides to each member of each impaired class of claims and interests (unless each such member has accepted the plan) a recovery which has a value at least equal to the value of the distribution that each creditor or interest holder would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

All Classes of creditors will receive distributions under the Plan; thus, no Class of creditors is conclusively presumed to have rejected the Plan. The Debtor requests confirmation of the Plan over the rejection of any Classes. In so doing, the Debtor seeks to establish that the Plan complies with the best interest of creditors test with respect to any such Class or Classes, and satisfy all other legal criteria for confirmation.

The Plan provides to each holder of a Claim and Interest holder a value at least equal to the value of the distribution that each holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

#### **H. CERTAIN RISK FACTORS TO BE CONSIDERED**

HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, THE PLAN (AND ANY DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE), BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND THE IMPLEMENTATION OF THE PLAN. The major risk factor is that the Debtor will be unable to achieve the projections set forth in the Plan and make the payments required by the Plan.

The Plan filed by the Debtor proposes that equity retains its interest under the Plan. The Plan may not be confirmable if the Class 4 creditors vote against the plan since the plan will violate the “absolute priority rule” if the Debtor does not solicit bids to purchase the equity in the Debtor. If Class 4 votes to accept the Plan, then the “absolute priority rule” is not applicable.

#### **I. CERTAIN BANKRUPTCY CONSIDERATIONS**

##### **1. Risk of Liquidation of the Debtor’s Estate**

If the Plan is not confirmed and consummated, there can be no assurance that the Debtor’s Chapter 11 Case will continue as a chapter 11 reorganization case rather than be converted to liquidation, or that any alternative plan of reorganization would be on terms as favorable or more favorable to holders of Claims and Interests as the terms of the Plan. If a

liquidation or different reorganization were to occur, the distributions to certain holders of Allowed Claims may be reduced, or possibly completely eliminated. As previously noted, the Debtor believes that in a liquidation under chapter 7, additional administrative expenses of a chapter 7 trustee and such trustee's attorneys, accountants, and other professionals, would cause a diminution in the value of the Debtor's Estate. In addition, certain additional Claims may arise in a chapter 7 liquidation and from the rejection of unexpired leases and other executory contracts in connection with any cessation of the Debtor's operations. As described above, this might negatively impact the amount of distributions under the Plan, if any, to holders of Allowed Claims or Allowed Interests. As a result of these circumstances, the Debtor believes that the Plan provides a significantly higher return to holders of Claims against and Interests in the Debtor, as compared to liquidation.

**2. Risk of Non-Occurrence of the Effective Date**

The occurrence of the Effective Date in the Plan is conditioned upon the happening of certain events. There can be no assurance that all of these events will occur or that those that do not occur will be waived. Accordingly, even if the Plan is confirmed, there can be no assurance that the Effective Date will occur.

**3. Uncertainty Regarding Objections to Claims**

The Plan provides that certain objections to Claims can be filed with the Bankruptcy Court after the Effective Date. A creditor may not know that its Claim will be objected to until after the Effective Date.

**4. Performance of Obligations by the Debtor under the Plan**

Although the Debtor believes that it can successfully perform all of its obligations under the Plan, there can be no assurance that it will do so. This could result in a subsequent bankruptcy, and possible liquidation, of the Reorganized Debtor.

**IX. CONCLUSION AND RECOMMENDATION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any alternative. In addition, any other alternative would involve significant delay, litigation, uncertainty, substantial additional administrative costs, and may result in the Debtor's liquidation. The Debtor urges holders of Impaired Claims against and Interests in the Debtor to vote in favor of the Plan.

Dated: March 8, 2012

DISCLOSURE STATEMENT FILED BY:

/s/ Douglas S. Draper

Douglas S. Draper, La. Bar No. 5073

Leslie A. Collins, La. Bar No. 14891

Greta M. Brouphy, La. Bar No. 26216

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