

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

IN THE MATTER OF: ) Chapter 11  
)  
GAS-MART USA, INC. *et al.*, ) Case No. 15-41915-abf11  
) (Jointly Administered)  
Debtors. )  
)

**DISCLOSURE STATEMENT WITH RESPECT TO FIRST AMENDED PLAN OF  
LIQUIDATION DATED JULY 21, 2016 PURSUANT TO 11 U.S.C. § 1125**

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*Counsel to Official Committee of Unsecured  
Creditors*

Dated: July 21, 2016

## I. INTRODUCTION

The Official Committee of Unsecured Creditors (the “*Committee*” of Gas-Mart USA, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “*Debtors*”) hereby submits this disclosure statement (the “*Disclosure Statement*”) to holders of Claims against and interests in the Debtors in connection with the solicitation of acceptances of the First Amended Plan of Liquidation Dated July 21, 2016, as the same may be amended (the “*Plan*”). Unless otherwise defined herein, all capitalized terms contained herein have the respective meanings assigned to them in the Plan.

This Disclosure Statement describes certain aspects of the Plan, the Debtors’ chapter 11 cases (the “*Cases*”), the Debtors’ liquidation and wind-down and the formation of the Creditor Trust. Under the Plan, (a) Holders of Allowed Professional Fee Claims, Allowed Other Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed UMB Claims and Allowed General Unsecured Claims will be deemed to hold Creditor Trust Interests and (b) the Equity Securities will be cancelled and terminated. The Creditor Trustee will be charged with: (i) pursuing claims and Causes of Action on behalf of the Debtors’ Creditors; (ii) analyzing and reconciling Claims that have been filed against the Debtors’ Estates; and (iii) making distributions on account of Allowed Claims in accordance with the Plan and the Creditor Trust Agreement entered into with respect thereto. For a complete understanding of the Plan, you should read the Disclosure Statement, the Plan and the exhibits and schedules thereto, in their entirety.

The Committee believes that confirmation of the Plan is in the best interests of all parties, including the Debtors’ Creditors and Estates. Accordingly, the Committee urges each Creditor that is Impaired hereunder, and entitled to vote with respect to the Plan, to vote to accept the Plan. Detailed voting instructions are set forth in Section III.A. of this Disclosure Statement. To be counted, a ballot containing your vote to accept or to reject the Plan must be received by the Debtors’ balloting agent, BMC Group (“*BMC Group*”) by no later than 5:00 p.m. (Central Time) on August 29, 2016.

**NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE PLAN ARE AUTHORIZED BY THE COMMITTEE OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE THAT ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION. ANY NON-DEBTOR OR COMMITTEE REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE COMMITTEE, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE COURT FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.**

**THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECTED TO A CERTIFIED AUDIT. HOWEVER, THE DATA IN THE COMMITTEE’S POSSESSION IS BASED ON THE RECORDS OF THE DEBTORS, WHICH HAVE BEEN MAINTAINED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THE COMMITTEE IS UNABLE TO WARRANT OR**

**REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH GREAT EFFORT HAS BEEN TAKEN TO MAKE SURE IT FAIRLY REPRESENTS THE CURRENT POSITION OF THE DEBTORS.**

**FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE, AND ARE SUBJECT TO AND QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENTS.**

**Section 1125 of the Bankruptcy Code requires that there be a post-petition disclosure in the form of a disclosure statement that provides “adequate information” to creditors before anyone may solicit acceptances of a chapter 11 plan. THIS DISCLOSURE STATEMENT IS PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE SO AS TO PROVIDE “ADEQUATE INFORMATION” TO THE CREDITORS IN THIS PROCEEDING. CREDITORS ARE URGED TO CONSULT WITH THEIR OWN INDIVIDUAL COUNSEL OR EACH OTHER AND TO REVIEW ALL OF THE RECORDS HEREIN IN ORDER TO FULLY UNDERSTAND THE DISCLOSURES MADE, ANY PLANS FILED HEREIN AND ANY OTHER PERTINENT INFORMATION IN THIS PROCEEDING. ANY PLAN WILL BE COMPLEX, ESPECIALLY SINCE IT REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT, AND ANY INTELLIGENT JUDGMENT CONCERNING ANY PROPOSED PLAN CANNOT BE MADE WITHOUT FULLY UNDERSTANDING THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE FULL COMPLEXITIES OF ANY PLAN PROPOSED HEREIN. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO TAKE THE PLACE OF THE PLAN. EACH CREDITOR IS URGED TO STUDY THE PLAN IN FULL AND TO CONSULT ITS COUNSEL WITH RESPECT TO THE PLAN, ITS TAX IMPLICATION(S) AND ITS EFFECT ON HIS, HER OR ITS RIGHTS.**

Any Creditor having questions regarding the Plan or the Disclosure Statement may contact counsel for the Committee:

Devon J. Eggert, Esq.  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
Telephone: 312.360.6000  
Facsimile: 312.360.6520  
E-Mail: [deggert@freeborn.com](mailto:deggert@freeborn.com)

The cost of distributing the Plan and Disclosure Statement as well as the costs, if any, of soliciting acceptances, will be paid from property of the Estates, as defined in the Plan and as allowed by the Bankruptcy Court. The Professional Fees of the Committee’s counsel are not contingent upon the acceptance of the Plan, and are payable as a cost of administration, upon Bankruptcy Court approval.

## II. SUMMARY OF THE PLAN

<b><u>General Overview of the Plan</u></b>	
<b>Plan</b>	First Amended Plan of Liquidation Dated July 21, 2016
<b>Plan Proponent</b>	The Committee. The members of the Committee are: (i) Farner-Bocken Company; (ii) Green Implementation Group, LLC; (iii) Dan John Properties, LLC and John Dan Properties, LLC; (iv) CG Batavia Holdings, LLC; (v) Klemm Tank Lines; (vi) Sunrise AG Service; and (vii) The Coca-Cola Company
<b>General Purpose</b>	The Creditor Trust Assets will be transferred to the Creditor Trust and will be held for the benefit of the holders of Allowed Professional Fee Claims, Allowed Other Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed UMB Claims and Allowed General Unsecured Claims. The holders of Allowed Professional Fee Claims, Allowed Other Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed UMB Claims and Allowed General Unsecured Claims will share in the beneficial interests in the Creditor Trust (the “ <i>Creditor Trust Interests</i> ”), but only to the extent provided in the Confirmation Documents. The provisions of the Creditor Trust will be implemented under the direction of the Creditor Trustee, who will be designated prior to the Confirmation Hearing, and with the oversight of the Oversight Committee.
<b><u>Summary of Claims</u></b>	
<b>Administrative Claims</b>	<p>Administrative Claims consist of two subcategories: (i) Allowed Professional Fee Claims; and (ii) Allowed Other Administrative Expense Claims.</p> <p>Allowed Professional Fee Claims consist of the Allowed Administrative Claims of Professional Persons, including attorneys, accountants and financial advisors retained by the Debtors or the Committee, or to be compensated under sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.</p> <p>Each holder of an Allowed Professional Fee Claim will be deemed to hold a Creditor Trust Interest on account of its Allowed Professional Fee Claim</p>

and will receive distributions of the Claim Portion of the Net Litigation Recoveries in accordance with the Confirmation Documents within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) make a distribution on account of Disputed Claims that are Professional Fee Claims; and (ii) pay the Creditor Trustee's Expenses in full.

The Committee estimates that Allowed Professional Fee Claims will not exceed \$735,000.00 for the Professionals of the Debtors and the Committee as of the Confirmation Date.

The estimated percentage recovery of the Allowed Professional Fee Claims is 100%.

Allowed Other Administrative Expense Claims consist of expenses which are or become allowed under section 503(b) of the Bankruptcy Code, other than Allowed Professional Fee Claims and UMB Post-Petition Claim, which are entitled to priority under section 507(a)(2) of the Bankruptcy Code and claims entitled to priority under section 364, 365(d)(3) and 507(b) of the Bankruptcy Code, and include: (i) any actual and necessary costs and expenses incurred by the Debtors after the Petition Date with respect to preserving the Estates and operating the Debtors' business; (ii) all fees and charges properly assessed against the Estates pursuant to 28 U.S.C. § 1930; and (iii) all Allowed 503(b)(9) Claims.

Each holder of an Allowed Other Administrative Expense Claim will be deemed to hold a Creditor Trust Interest on account of its Allowed Other Administrative Expense Claim and will receive distributions of the Claim Portion of the Net Litigation Recoveries in accordance with the Confirmation Documents within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all alleged Professional Fee Claims in full; (ii) make a distribution on account of Disputed Claims that are Other Administrative Expense Claims; and (iii) pay the Creditor Trustee's Expenses in full.

The Committee estimates that unpaid Allowed Other Administrative Expense Claims will not exceed \$3,936,635.50 as of the Confirmation Date, which are against each Debtor as follows:

<b>Debtor</b>	<b>Allocated Other Administrative Expense Claims</b>
Gas-Mart	\$3,434,992.04
Aving-Rice	\$19,562.75

	<table border="1"> <tr> <td>Fran Transport</td> <td>\$0.00</td> </tr> <tr> <td>G&amp;G</td> <td>\$0.00</td> </tr> <tr> <td>Fuel Service</td> <td>\$482,080.71</td> </tr> </table>	Fran Transport	\$0.00	G&G	\$0.00	Fuel Service	\$482,080.71	<p>The estimated percentage recovery of the Allowed Other Administrative Expense Claims is 18.4%.</p>						
Fran Transport	\$0.00													
G&G	\$0.00													
Fuel Service	\$482,080.71													
<p><b>Priority Tax Claims</b></p>	<p>Priority Tax Claims consist of Unsecured Claims of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.</p> <p>Each holder of an Allowed Priority Tax Claim will be deemed to hold a Creditor Trust Interest on account of its Allowed Priority Tax Claim and will receive distributions of the Claim Portion of the Net Litigation Recoveries in accordance with the Confirmation Documents within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all alleged Administrative Claims in full; (ii) make a distribution on account of Disputed Claims that are Priority Tax Claims or Priority Claims; and (iii) pay the Creditor Trustee's Expenses in full. In addition, the first \$35,000 of the GUC Portion of the Net Litigation Recoveries will be distributed to the Illinois DOR (\$25,000) and the Iowa DOR (\$10,000) and the balance of the GUC Portion of the Net Litigation Recoveries will be distributed Pro Rata to the Illinois DOR, the Iowa DOR and holders of Allowed Claims in Classes 3A-3E.</p> <p>The Committee estimates that Allowed Priority Tax Claims will not exceed \$8,504,190.74 as of the Confirmation Date, which are against each Debtor as follows:</p> <table border="1"> <thead> <tr> <th>Debtor</th> <th>Priority Tax Claims</th> </tr> </thead> <tbody> <tr> <td>Gas-Mart</td> <td>\$7,972,536.16</td> </tr> <tr> <td>Aving-Rice</td> <td>\$476,485.90</td> </tr> <tr> <td>Fran Transport</td> <td>\$52,735.52</td> </tr> <tr> <td>G&amp;G</td> <td>\$83.16</td> </tr> <tr> <td>Fuel Service</td> <td>\$2,350.00</td> </tr> </tbody> </table>	Debtor	Priority Tax Claims	Gas-Mart	\$7,972,536.16	Aving-Rice	\$476,485.90	Fran Transport	\$52,735.52	G&G	\$83.16	Fuel Service	\$2,350.00	<p>The estimated percentage recovery of the Allowed Priority Tax Claims is 0%.</p>
Debtor	Priority Tax Claims													
Gas-Mart	\$7,972,536.16													
Aving-Rice	\$476,485.90													
Fran Transport	\$52,735.52													
G&G	\$83.16													
Fuel Service	\$2,350.00													
<p><b>Priority Claims</b></p>	<p>Classes 1A-1E consist of all Allowed Priority Claims (other than Priority Tax Claims) that are not Secured Claims and that are entitled to priority in payment under section 507(a) of the Bankruptcy Code. With respect to the Claims of employees or former employees, such Claims constitute Priority Claims only to the extent permissible under sections 507(a)(4) and (a)(5) of the Bankruptcy Code or prior order of the Bankruptcy Court.</p>													

	<p>Class 1A-1E Priority Claims are impaired under the Plan. Each holder of a Class 1A, 1B, 1C, 1E or 1E Priority Claim will be deemed to hold a Creditor Trust Interest on account of its Allowed Priority Claim and will receive distributions of the Claim Portion of the Net Litigation Recoveries in accordance with the Confirmation Documents, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all alleged Administrative Claims in full; (ii) make a distribution on account of Disputed Claims that are Priority Claims or Priority Tax Claims; and (iii) pay the Creditor Trustee's Expenses in full.</p> <p>The Committee estimates Allowed Priority Claims will not exceed \$100,127.36 as of the Confirmation Date, which are against each Debtor as follows:</p> <table border="1" data-bbox="456 741 1219 968"> <thead> <tr> <th>Debtor</th> <th>Priority Claims</th> </tr> </thead> <tbody> <tr> <td>1A: Gas-Mart</td> <td>\$99,925.47</td> </tr> <tr> <td>1B: Aving-Rice</td> <td>\$201.89</td> </tr> <tr> <td>1C: Fran Transport</td> <td>\$0.00</td> </tr> <tr> <td>1D: G&amp;G</td> <td>\$0.00</td> </tr> <tr> <td>1E: Fuel Service</td> <td>\$0.00</td> </tr> </tbody> </table> <p>The estimated percentage recovery of the Allowed Priority Claims is 0%.</p>	Debtor	Priority Claims	1A: Gas-Mart	\$99,925.47	1B: Aving-Rice	\$201.89	1C: Fran Transport	\$0.00	1D: G&G	\$0.00	1E: Fuel Service	\$0.00
Debtor	Priority Claims												
1A: Gas-Mart	\$99,925.47												
1B: Aving-Rice	\$201.89												
1C: Fran Transport	\$0.00												
1D: G&G	\$0.00												
1E: Fuel Service	\$0.00												
<p><b>UMB Claims</b></p>	<p>Classes 2.1A-2.1L consist of the UMB Claims.</p> <p>The UMB Pre-Petition Claims (Classes 2.1A-2.1E) are Impaired under the Plan. Upon the entry of the Confirmation Order, the UMB Pre-Petition Claims shall be deemed fully Allowed Secured Claims pursuant to 11 U.S.C. § 506(b) and will continue to accrue interest and other expenses as provided for in the UMB Documents. The UMB Pre-Petition Claims shall be paid in accordance with the UMB Documents as modified by the Confirmation Documents. After the collateral securing the UMB Pre-Petition claims has been fully exhausted and the proceeds from such collateral has been applied to the UMB Pre-Petition Claims, any deficiency remaining will be treated as a Class 3 General Unsecured Claim against the Gas-Mart Estate unless the Gas-Mart Estate is substantively consolidated with one or more of the other Estates in which case it will constitute a claim against the consolidated Estate. Moreover, UMB asserts an administrative claim pursuant to Section 507(b) of the Bankruptcy Code with respect to the UMB Pre-Petition Claims. Thus, if any deficiency remains after the non-Avoidance Action collateral has been liquidated, such claims under the UMB Stipulation may be paid with respect to other administrative claims out of the Estates' share of the Avoidance Action recoveries. The Committee has been negotiating with UMB and the Plan provides for waiver of such section 507(b) priority status. UMB has not yet agreed to</p>												

such a waiver. If such waiver is approved, however, it will potentially allow non-professional administrative claimants to receive more on their claims than they would receive in a Chapter 7 liquidation. It will also save the Estates' monies in litigating over the extent and nature of such 507(b) administrative claim.

The Committee estimates Allowed UMB Pre-Petition Claims will not exceed \$750,000.00 as of the Confirmation Date. All Debtors' assets, except for the Avoidance Actions, secure UMB Pre-Petition Claims. After the collateral securing the UMB Pre-Petition Claims has been fully exhausted and the proceeds from such collateral has been applied to the UMB Pre-Petition Claims, any deficiency remaining will be treated as a Class 3 General Unsecured Claim against the Gas-Mart Estate only unless the Gas-Mart Estate is substantively consolidated with one or more of the other Estates in which case it will constitute a claim against the consolidated estate. The estimated percentage recovery of the Allowed UMB Pre-Petition Claims is 100%.

The UMB Post-Petition Claims (Classes 2.1F-2.1L) are unimpaired under the Plan. Upon the entry of the Confirmation Order, the UMB Post-Petition Claims shall be deemed fully Allowed Administrative Claims and will continue to accrue interest and other expenses as provided for in the UMB Documents and will continue to be secured by the collateral as set forth in the UMB Documents. The UMB Post-Petition Claims shall be paid in accordance with the UMB Documents as modified by the Confirmation Documents. As provided for in the UMB Stipulation, after the collateral securing the UMB Post-Petition Claims has been fully exhausted and the proceeds applied to the UMB Post-Petition Claims, any deficiency remaining will be treated as a Class 3 General Unsecured Claim except as otherwise provided for in the UMB Stipulation.

The Committee estimates Allowed UMB Post-Petition Claims will not exceed \$2,080,000 (plus attorneys' fees accruing after May 31, 2016) as of the Confirmation Date. The Debtors are joint and severally obligated on the UMB Post-Petition Claims. The estimated percentage recovery of the Allowed UMB Post-Petition Claims is 56.4%.

Within seven (7) days after the Effective Date, the Distributing Party shall distribute to UMB the Other Cash Assets upon which UMB has a senior lien. Debtors' estimate this amount to be \$50,000.00.

The Creditor Trustee will liquidate the Other Assets, as applicable, and distribute the Other Asset Net Proceeds to UMB after payment of any Permitted Lien that is senior to UMB. Distributions related to the Other Asset Net Recoveries will be made by the Creditor Trustee in accordance with the Creditor Trust Agreement to UMB from time to time on dates



	<p>agreed to by the Creditor Trustee and UMB, following consultation with the Oversight Committee, within a reasonable time after the creation of appropriate reserves in an amount that would be sufficient to pay the Creditor Trustee's Expenses associated with the liquidation of such assets.</p>
<p><b>Secured Tax Claims and Other Secured Claims</b></p>	<p>Classes 2.2A-2.2E consist of Secured Tax Claims.</p> <p>The Secured Tax Claims are unimpaired under the Plan. The Distributing Party will pay Allowed Classes 2.2A, 2.2B, 2.2C, 2.2D and 2.2E Secured Tax Claims in full and in Cash, or by surrender or abandonment of collateral, on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Secured Tax Claims; and (iii) such other time as may be agreed in writing between the Distributing Party and the holders of the Allowed Classes 2.2A-2.2E Secured Tax Claims.</p> <p>The Committee estimates Allowed Secured Tax Claims will not exceed \$8,300.00 as of the Confirmation Date.</p> <p>The estimated percentage recovery of the Allowed Secured Tax Claims is 100%.</p> <p>Classes 2.3A-2.3E consist of all Allowed Other Secured Claims.</p> <p>The Other Secured Claims are unimpaired under the Plan. The Distributing Party will pay Allowed Classes 2.3A, 2.3B, 2.3C, 2.3D and 2.3E Other Secured Claims in full and in Cash, or by surrender or abandonment of collateral, on the later of: (i) as soon as practicable following the Effective Date; (ii) thirty (30) days after such Claims become Allowed Other Secured Claims; and (iii) such other time as may be agreed in writing between the Distributing Party and the holder of the Allowed Classes 2.3A-2.3E Other Secured Claim.</p> <p>The Committee estimates Allowed Other Secured Claims will not exceed \$0.00 as of the Confirmation Date.</p> <p>The estimated percentage recovery of the Allowed Other Secured Claims is N/A.</p>
<p><b>Unsecured Claims</b></p>	<p>Classes 3A-3E consist of General Unsecured Claims arising prior to the Petition Date.</p> <p>General Unsecured Claims are Impaired under the Plan. Each holder of an Allowed General Unsecured Claim will be deemed to hold a Creditor Trust Interest on account of its Allowed Class 3A, 3B, 3C, 3D or 3E Claim and will receive distributions of the Claim Portion of the Net Litigation</p>

	<p>Recoveries in accordance with the Confirmation Documents, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all alleged Administrative Claims in full; (ii) satisfy all alleged Priority Tax Claims and Priority Claims in full; (iii) make a Pro Rata distribution on account of Disputed Claims that are Class 3A-3E General Unsecured Claims; and (iv) pay the Creditor Trustee's Expenses in full.</p> <p>In addition, after distribution of the first \$35,000 of the GUC Portion to the Illinois DOR and the Iowa DOR, Pro Rata distributions of the GUC Portion of the Net Litigation Recoveries will be made by the Creditor Trustee in accordance with the Confirmation Documents to the holders of Allowed General Unsecured Claims in Classes 3A-3E (and the Illinois DOR and the Iowa DOR) within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) make a distribution on account of Disputed Claims that are Class 3A-3E General Unsecured Claims; and (ii) pay the Creditor Trustee's Expenses in full.</p> <p>At this time, the Committee is unable to determine the amounts that will be distributed to holders of General Unsecured Claims. General Unsecured Claims in the amount of approximately \$26,204,000.00<sup>1</sup> have been filed by Creditors or scheduled against the Debtors as follows:</p> <table border="1" data-bbox="456 1066 1219 1335"> <thead> <tr> <th data-bbox="456 1066 837 1146"><b>Debtor</b></th> <th data-bbox="837 1066 1219 1146"><b>Filed General Unsecured Claims</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="456 1146 837 1184">3A: Gas-Mart</td> <td data-bbox="837 1146 1219 1184">\$20,716,000</td> </tr> <tr> <td data-bbox="456 1184 837 1222">3B: Aving-Rice</td> <td data-bbox="837 1184 1219 1222">\$666,000</td> </tr> <tr> <td data-bbox="456 1222 837 1260">3C: Fran Transport</td> <td data-bbox="837 1222 1219 1260">\$86,000</td> </tr> <tr> <td data-bbox="456 1260 837 1297">3D: G&amp;G</td> <td data-bbox="837 1260 1219 1297">\$81,000</td> </tr> <tr> <td data-bbox="456 1297 837 1335">3E: Fuel Service</td> <td data-bbox="837 1297 1219 1335">\$4,655,000</td> </tr> </tbody> </table> <p>However, Allowed General Unsecured Claims may be less, based on resolution of Avoidance Actions and Claims reconciliation by the Creditor Trustee.</p> <p>The estimated percentage recovery of the Allowed General Unsecured Claims is 0.62%</p>	<b>Debtor</b>	<b>Filed General Unsecured Claims</b>	3A: Gas-Mart	\$20,716,000	3B: Aving-Rice	\$666,000	3C: Fran Transport	\$86,000	3D: G&G	\$81,000	3E: Fuel Service	\$4,655,000
<b>Debtor</b>	<b>Filed General Unsecured Claims</b>												
3A: Gas-Mart	\$20,716,000												
3B: Aving-Rice	\$666,000												
3C: Fran Transport	\$86,000												
3D: G&G	\$81,000												
3E: Fuel Service	\$4,655,000												
<b>Equity Securities</b>	<p>Classes 4A-4E consist of the Equity Securities. The holders of the Equity Securities will not receive a distribution under the Plan and all Equity Securities will be deemed cancelled and terminated.</p> <p>The estimated percentage recovery with respect to the Equity Securities is</p>												

<sup>1</sup> This estimate excludes duplicate claims, insider claims, and other clearly objectionable claims.

	0%.
<b><u>Implementation of Plan</u></b>	
<b>Vesting of Assets</b>	On the Effective Date, the Creditor Trust Assets of the Estates will be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan and the Confirmation Order.
<b>Effective Date</b>	The Effective Date will be a date after the occurrence of: (i) the Court entering the Confirmation Order, which will be in full force and effect and will not have been vacated, amended, modified or stayed, and if it is the subject of any appeal, reconsideration or other review, no stay of the Confirmation Order will be in effect and (ii) the Creditor Trust Agreement, in form and substance satisfactory to the Committee and UMB, being executed and delivered, and all conditions precedent to the effectiveness thereof being satisfied. The foregoing conditions may be waived by the Committee and UMB.
<b>Substantive Consolidation</b>	The Plan provides a mechanism for the Creditor Trustee to elect to substantively consolidate the Estates if the Creditor Trustee determines, following consultation with the Oversight Committee and UMB, that the Creditor Trust may be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full or for any other reason allowed under applicable law. If such an election occurs, the Estates will be substantively consolidated into the Estate of Gas-Mart as set forth in Section 7.20 of the Plan.

### **III. VOTING AND CONFIRMATION PROCEDURES**

Under the Bankruptcy Code, classes of claims that are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. Classes of claims and interests that are not entitled to receive any distribution on account of their claims or interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan.

Under the terms of the Plan, the holders of Allowed Claims in Classes 1A-1E, Classes 2.1A-2.1E and Classes 3A-3E are Impaired and are entitled to vote to accept or reject the Plan.

Votes on the Plan are not being solicited from holders of Claims in Classes 2.1F-2.1L, 2.2A-2.2E and 2.3A-2.3E, which are unimpaired and deemed to have accepted the Plan. Votes on the Plan are also not being solicited from holders of Equity Securities in Classes 4A-4E. Holders of Equity Securities in Classes 4A-4E will receive no distribution under the Plan and, therefore, are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

## A. Voting Procedures

If you are entitled to vote to accept or reject the Plan, a ballot is enclosed for the purpose of voting on the Plan. Please carefully follow the instructions set forth in the ballot and vote and return your ballot(s), by first class mail, hand or overnight courier, to:

If by regular mail:

BMC Group, Inc.  
Attn: Gas-Mart USA Inc. Balloting  
PO Box 90100  
Los Angeles, CA 90009

If by messenger or overnight delivery:

BMC Group, Inc.  
Attn: Gas-Mart USA, Inc. Balloting  
3732 West 120<sup>th</sup> Street  
Hawthorne, CA 90250

**TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 5:00 P.M. (CENTRAL TIME) ON AUGUST 29, 2016 (THE “VOTING DEADLINE”).**

**ANY BALLOT WHICH IS EXECUTED BUT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN, OR WHICH BOTH THE ACCEPTANCE AND REJECTION BOX IS CHECKED, WILL BE DEEMED TO BE AN ACCEPTANCE OF THE PLAN. ANY BALLOT THAT IS EITHER UNRETURNED BY THE VOTING DEADLINE OR IS RETURNED BUT NOT EXECUTED WILL BE CONSIDERED NULL AND VOID AND WILL NOT BE COUNTED.**

If you are a holder of a Claim entitled to vote on the Plan and did not receive a ballot, received a damaged ballot or lost your ballot, or if you have any questions concerning the Disclosure Statement, the Plan or the procedures for voting on the Plan, please call counsel for the Committee, Freeborn & Peters LLP, Attention: Devon J. Eggert, Esq., 312.360.6000.

## B. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing to determine whether the Plan meets the requirements for confirmation established by section 1129 of the Bankruptcy Code. Any party-in-interest may object to confirmation of the Plan. The Bankruptcy Court has scheduled the Confirmation Hearing for September 7, 2016, at 9:30 a.m. Notice of the Confirmation Hearing has, or will be, provided to all holders of Claims and interests and other parties-in-interest (the “*Confirmation Notice*”).

Objections, if any, to confirmation of the Plan must: (i) be in writing; (ii) state the name and address of the objecting party and the nature of the Claim or interest of such party; (iii) state with particularity the basis and nature of any objection; and (iv) in accordance with Bankruptcy Rule 3020(b)(1), be filed, together with proof of service, with the Bankruptcy Court and served on the following parties so that they are received no later than 5:00 p.m. (Central Time) on August 29, 2016 (the “*Objection Deadline*”), or such other date established by the Committee: (a) counsel to the Committee, FREEBORN & PETERS LLP, 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677 (Attn: Devon J. Eggert, Esq.); (b) counsel to the Debtors,

STINSON LEONARD STREET LLP, 1201 Walnut, Suite 2900, Kansas City, Missouri 64106 (Attn: Paul M. Hoffmann, Esq.); (c) OFFICE OF THE UNITED STATES TRUSTEE, 400 East 9th Street, Suite 3400, Kansas City, Missouri 64106 (Attn: Sherri L. Wattenbarger, Esq.); and (d) counsel to UMB, SPENCER FANE LLP, 1000 Walnut Street, Kansas City, Missouri 64106 (Attn: Eric L. Johnson, Esq.). **UNLESS AN OBJECTION TO PLAN CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

#### IV. GENERAL INFORMATION

##### A. Description and History of the Debtors' Business

###### 1. The Debtors

Gas-Mart is a Missouri corporation. Aving-Rice is an Illinois limited liability company. Fran Transport is a Kansas corporation. G&G is a Kansas limited liability company. And Fuel Service is an Illinois corporation.

Gas-Mart was founded in 1995 and completed construction on its first store in early 1996. By 2003, Gas-Mart completed construction from the ground up on seven gasoline station/convenience stores ("*C-Stores*") located in and around Kansas City. As a result of these "greenfield" locations as well as certain acquisitions, the business grew to 18 C-Stores and three additional vacant sites by the end of 2003.

In early 2004, Gas-Mart acquired 28 sites from ConocoPhillips ("*Phillips*") located in three states (Illinois, Wisconsin and Indiana). In 2005, a location was built in Kansas City from the group up on one of the vacant sites purchased in 2003. In 2006, Gas-Mart added seven additional stores, located in two new states (Iowa and Nebraska), as well as a new business line, the distribution of wholesale fuel. The stores acquired in 2004 and 2006, along with certain Gas-Mart stores in Kansas City, were refinanced with a \$42 million financing package provided by Sun Life Assurance Company of Canada ("*Sun Life*"), which closed on March 22, 2007. Other individual stores were financed through Sun Life subsequent to placement of the 2007 facility as well as the refinancing of the G&G office building for \$2.2 million, which occurred on October 5, 2007.

Gas-Mart continued its growth in 2012 with the acquisition of 41 locations in Southern Illinois for over \$13 million through a newly established entity, Aving-Rice, continuing the use of the trade name "Jumpin' Jimmy's." This transaction was financed through St. John's Bank ("*St. John's Bank*") and SNC JJ Holdings, LLC, an affiliate of Silver Point Capital ("*Silver Point*") for about \$7 million and \$6 million, respectively. Seven of the Jumpin' Jimmy's locations subsequently were sold.

Also in 2012, Gas-Mart added two Kansas Turnpike locations (the "*Turnpike Stores*"), pursuant to agreements with the Kansas Turnpike Authority (the "*KTA*"), and managed for Phillips an additional 36 stores located in Kansas and Missouri, bringing the Debtors' total store count to 108. The principal investments made by Gas-Mart with regard to the Turnpike Stores included the provision of the pumps, tanks and canopy, as well as all inventories, both inside

merchandise and fuel. The structure involved in the managing of the Phillips locations evolved over time but could generally be characterized as Gas-Mart managing the locations and providing the inside merchandise with Phillips supplying the fuel, paying the Debtors a management fee and both parties dividing the resulting positive cash flow. These locations were characterized by the Company as the “Fee Op Stores.” Acquisition inventory for the Fee Op Stores was a major investment and outlay of cash in late 2013 as the arrangement with the Fee Op Stores evolved.

The Debtors’ pace of growth and the associated debt would prove to be an issue for the Debtors going forward.

## **2. The Debtors’ Business Operations**

As of the Petition Date and with locations in Iowa, Illinois, Indiana, Nebraska and Wisconsin, Gas-Mart and Aving-Rice operated 22 and 20 stores, respectively. Gas-Mart also owned and operated a wholesale fuel business, distributing gasoline and diesel to other C-Stores as well as other third party commercial ventures.

As of the Petition Date, G&G owned and leased ATM’s to the 42 Gas-Mart and Aving-Rice locations as well as certain Phillips locations in the greater Kansas City Area.

Fran was a fuel hauling business located in and serving Kansas City. Historically, Fran transported fuel primarily for the Gas-Mart locations in Kansas City after the business was relocated from Omaha, Nebraska in June 2013. Since March 1, 2015, Fran hauled and delivered fuel for 36 Phillips C-Stores in Kansas City and, since the closing of the sale by Gas-Mart of its 19 Kansas City locations to TravelCenters of America (“TA”) on April 30, 2015, Fran provided hauling services to TA as well.

As of the Petition Date, the Debtors had over 300 employees. Gross revenues for the Debtors in 2014 were over \$338 million, but were substantially less in 2015.

The Debtors’ primary fuel supplier was Phillips, who provided fuel for 24 locations, with Citgo providing fuel for 13 locations. The remaining locations were not branded and obtained fuel from other suppliers. One location did not sell fuel – it was a liquor store.

### **B. Events Leading to the Debtors’ Filing for Chapter 11 Relief**

After the acquisitions in 2012, the Debtors were highly-leveraged and had great difficulty in servicing their debts. This led to a variety of challenges in paying all of the Debtors’ obligations in the ordinary course of business. The first major challenge was timely payment of fuel and sales taxes to the Illinois DOR starting in late 2012 of over \$2.5 million. This was a challenge that continued to the Petition Date.

A further challenge arose in January of 2014 when the Debtors overdrafted their accounts with UMB in the aggregate amount of about \$7.8 million. This led to the Debtors entering various loan documents with UMB granting liens on various assets. The same thing happened with Wells Fargo in July 2014, with overdrafts in the aggregate amount of about \$5 million.

This led to the Debtors entering various loan documents with Wells Fargo granting liens on various assets.

The overdraft position with Wells Fargo also resulted in entry into a forbearance agreement. The terms of the forbearance agreement were very draconian and provided for, among other things, the retention of a third party financial advisor “to assist Gas-Mart in the sale of its assets and/or the refinance of the company’s secured debt.” The financial advisor engaged under this forbearance agreement resigned after approximately one month and after having been paid over \$120,000. Upon the termination of the engagement of the prior financial advisor, the Debtors retained the Tittle Advisory Group, Inc. (“TAG”).

Upon TAG’s engagement in October 2014, the financial condition of the Debtors was very negative. Specifically:

- A number of the stores were underperforming;
- The acquisition of the Jumpin’ Jimmy’s stores had not gone well and, in fact, Aving-Rice was in litigation with Silver Point Capital (the “*Silver Point Litigation*”);
- Street work in certain locations had diminished ingress and egress into some of the stores and few efforts had been expended to combat the resulting decline in business;
- One of Gas-Mart’s dealers unilaterally de-branded a store with the result that the location became the subject of litigation with Gas-Mart being ordered to repurchase and rebrand the site at significant cost upon the conclusion of the case (the “*Re-Branded Store*”);
- North American Savings Bank, the lender involved with the Re-Branded Store, foreclosed on that property, took a deed-in-lieu, and Gas-Mart had to negotiate a lease to continue to operate the store;
- While assimilating the Jumpin’ Jimmy’s stores, the Debtors agreed to take on the Fee Op Stores and, as a result, collectively with the Jumpin’ Jimmy’s locations, the Debtors more than doubled the number of locations that they were managing with no real cash resources to support this activity;
- With limited to no cash resources, there was no additional infrastructure added to the Debtors other than the employment of one additional person in the main office;
- Inventory transactions involving these locations ended up costing the Debtors several millions of dollars in the fall of 2013; and
- Beset by these problems, the operations of the Debtors’ stores declined, further exacerbating the cash flow and liquidity problems of 2013 and 2014.

During August 2014, the Illinois DOR issued a levy on Gas-Mart that, when coupled with the above factors, created a “perfect storm,” which had devastating effect, including:

- CITGO, one of the Debtors’ major fuel supplier in Illinois, placed a credit hold on Gas-Mart’s account, which prevented the purchase of fuel for Gas-Mart’s Illinois locations for approximately three and one-half weeks. This triggered a domino effect with major grocery suppliers. Normal vendor terms were eliminated and discounts and allowances were not realized during this period. Moreover, Gas-Mart lost foot traffic in its Illinois stores that it did not regain by the Petition Date;
- The Illinois DOR levy placed on Gas-Mart’s bank account caused significant strain on the Debtors’ operations outside of Illinois, which affected the Debtors’ ability to bring current its other outstanding tax liabilities;
- The Illinois DOR levy also triggered discussions regarding the termination of contracts with Phillips and the KTA (the Debtors did in fact lose the two turnpike locations during February 2015);
- The Debtors were involved in negotiations with other major grocery wholesale companies, which stopped abruptly as a result of the Illinois DOR levy; and
- The Debtors were working to obtain a \$3 million loan to pay the Illinois DOR in full at the time of the levy, and when the levy was placed on the bank account, the bank considering the loan tabled and ultimately denied the loan.

TAG then oversaw the pre-Petition Date sale process. During the pre-petition sale process, the Debtors’ assets were exposed to numerous potential buyers, both financial and strategic. By the end of January 2015, the Debtors had entered into letters of intent, or purchase and sale agreements, involving the following:

- A sale of the Debtors’ 19 Kansas City locations to TA (the “*TA Sale*”);
- A sale of two locations in Council Bluffs, Iowa to Buck’s (the “*Buck’s Sale*”); and
- A sale/leaseback of 11 locations to Spirit Realty (the “*Spirit Sale/Leaseback*”).

The Spirit Sale/Leaseback, in the amount of \$13.7 million, would have allowed, among other things, the satisfaction in full of the Debtors’ projected indebtedness to the Illinois DOR. However, upon the exit of the Chief Operating Officer of Spirit Realty at the end of February 2015, Spirit Realty elected not to pursue the Spirit Sale/Leaseback in any respect as it had decided to move away from the gasoline station/convenience store industry. This withdrawal of Spirit Realty led to significant negotiations with the Debtors’ lenders as two lenders in particular, UMB and Wells Fargo, which had been expecting to be paid in full, were to receive partial payments through the consummation of the TA Sale and Buck’s Sale. Negotiations with the Debtors’ lenders, including Sun Life, which at the time was owed \$25 million, were successful and paved the way for the closing of the TA Sale for \$27 million, or approximately 97% of appraised value, on April 30, 2015.



All of the proceeds of the TA Sale were used to pay taxes and debt that was associated with the properties being sold. The Sun Life indebtedness was further reduced by approximately \$2 million on May 6, 2015 through the sale of the office building owned by G&G. During June 2015, UMB was paid \$5 million and Sun Life \$3.8 million as a result of the Buck's Sale. As with the TA Sale, the Buck's Sale and the G&G sale transaction (involving the Gas-Mart headquarters building) were at or near current appraised value.

The Debtors significantly de-leveraged their balance sheet through these pre-petition sales. As of the Petition Date, Gas-Mart owed approximately \$11.4 million to its lenders, including a \$1.25 million prepayment amount to Sun Life, about \$34 million less than prior to the start of the pre-petition sale process. Also as of the Petition Date, Aving-Rice owed St. John's approximately \$5.8 million, comprised of a term loan with a balance of about \$2.4 million and a principal amount of about \$3.4 million on a matured line of credit. The amount due Silver Point, which was in dispute, was carried on the books and records of Aving-Rice at \$5.8 million, with Silver Point alleging that the actual liability was \$8 million.

While the Debtors had de-leveraged their balance sheet, it became clear during the pre-petition sale period that the Debtors' operations, particularly the remaining stores after the sales, needed to be turned around. On April 9, 2015, John Tittle, Jr. of TAG was appointed the Chief Executive Officer of the Debtors. However, Mr. Tittle had to deal with the following challenges that impeded progress and jeopardized the viability of the Debtors:

- The loss of income (estimated at \$150,000 per month per store) relating to the Turnpike Stores due to the confiscation without required notice of these locations by the KTA in February 2015;
- The burden of attempting to make installment payments on the approximate \$7 million debt to the Illinois DOR, for sales and fuel taxes, while continuing to remain current with the Illinois DOR on a prospective basis. Gas-Mart disputed the \$7 million amount, but the Illinois DOR threatened legal action with the result that Gas-Mart and Aving-Rice could lose their ability to conduct business in the State of Illinois. This would have been disastrous to the Debtors who had over 70% of the C-Stores located in Illinois at the time;
- Certain expensive and time-consuming shareholder litigation involving the Gustin family, as alleged 50% owners of Gas-Mart; and
- The impending judicial foreclosure by Silver Point on the locations that they financed for Aving-Rice as a result of the Silver Point litigation.

As to the last point regarding the Silver Point litigation, Aving-Rice had been in litigation in Illinois for some time with regard to the debt on certain stores with Silver Point demanding payment on this debt and Aving-Rice asserting that Silver Point made serious misrepresentations in connection with the sale of those stores to Aving-Rice. Due to problems with the stores, including the necessity of pulling the gasoline tanks in certain locations resulting in the loss of the ability to sell fuel, and accounts receivable purchased by Aving-Rice in the transaction that proved to be worthless, Aving-Rice refused to make any further payments on the Silver Point

debt unless it received an adjustment to the purchase price. Silver Point dismissed the overtures of Aving-Rice and instituted litigation (the “*Silver Point Litigation*”) in state court in Effingham, Illinois (the “*Effingham Court*”) to collect the debt and foreclose on the stores. Earlier in 2015, the Effingham Court ruled that Silver Point could enforce its liens and begin to foreclose on the stores in question.

Aving-Rice filed a motion in the Effingham Court for the judge to reconsider his ruling. On June 24, 2015, an order was entered denying the motion to reconsider and appointing a selling officer. It was estimated that the foreclosure sale of those properties was to occur in mid-July 2015. Accordingly, the filing of the Cases on the Petition Date stayed the foreclosure sale of those stores.

## V. THE CHAPTER 11 CASES<sup>2</sup>

As a consequence of the Debtors’ commencement of the Cases, all actions and proceedings against the Debtors and all acts to obtain property from the Debtors were stayed under section 362 of the Bankruptcy Code.

### A. Relevant Chapter 11 Filings

**1. First-Day Motions.** In an effort to minimize the impact of the commencement of the Cases on the Debtors’ operations and to facilitate the administration of the Cases, the Debtors filed various motions and applications on the first day of these Cases. These “first-day motions” requested relief that is typical for complex chapter 11 cases, including, among other things: (i) joint administration of the Cases; (ii) authority to continue using the Debtors’ existing cash management system; (iii) authorization to pay certain pre-petition compensation and benefits owed to the Debtors’ employees; (iv) authorization to establish procedures to determine reclamation claims; (v) authorization to provide utilities with adequate assurance; (vi) authorization to pay pre-petition taxes; (vii) authorization to pay the pre-petition claims of Citgo; and (viii) establish procedures to employ ordinary course professionals. All of these first-day motions were approved by the Bankruptcy Court.

**2. Retention of Professionals.** The Debtors filed applications requesting approval by the Bankruptcy Court of the Debtors’ retention of various professional firms they have been utilizing throughout these Cases, including: (i) Stinson Leonard Street LLP, as bankruptcy counsel; (ii) Polsinelli PC, as special counsel; (iii) Brown & Ruprecht, PC, as conflicts counsel; and (iv) GlassRatner Advisory & Capital Group, LLC, as financial advisor, investment banker and for capital raising services. The Bankruptcy Court entered orders approving the retention of these professionals.

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<sup>2</sup> Section V of the Disclosure Statement is only a summary of the Debtors’ Cases. For a full list of motions and pleadings filed, the Committee refers parties-in-interest to the dockets of the Debtors’ Cases, which can be accessed through the Bankruptcy Court’s PACER system (account required) at [ecf.mowb.uscourts.gov](http://ecf.mowb.uscourts.gov) or through the website of the Debtors’ claims and balloting agent, BMC Group (no fee or account required) at <http://www.bmcgroup.com/restructuring/geninfo.aspx?ClientID=374>.

**3. Schedules and Statements.** Gas-Mart's, Aving-Rice's, Fran Transport's and G&G's Schedules of Assets and Liabilities and Statements of Financial Affairs were submitted and filed with the Bankruptcy Court on July 31, 2015, while Fuel Service's was filed on October 6, 2015 (as may have been amended, the "*Schedules and Statements*"). The meetings of creditors under section 341(a) of the Bankruptcy Code was held on August 11, 2015 and November 12, 2015, in Kansas City, Missouri, at which representatives of the Debtors were questioned by creditors, creditors' representatives and a representative from the Office of the United States Trustee. Creditors are expressly referred to the Debtors' Schedules and Statements, as amended from time to time as necessary, on file in these proceedings for the purpose of becoming fully informed as to the assets, liabilities and financial affairs of the Debtors as of the Petition Date.

**4. Final DIP Order and the UMB DIP Loan Agreement.**

On the Petition Date, the Debtors filed a motion seeking approval of debtor-in-possession financing from UMB and authority to use cash collateral (Docket No. 7). The Bankruptcy Court entered a final order authorizing the use of cash collateral and the debtor-in-possession financing on July 29, 2015 (Docket No. 181) (the "*Final DIP Order*"). Pursuant to the Final DIP Order, Sun Life agreed to permit UMB to have senior priming liens over the "Primed Collateral" of up to \$2,250,000 (UMB's post-petition liens on all other assets are subject to prior pre-petition liens). The Primed Collateral consisted of the real estate at the following locations:

- 11919 fort St., Omaha, Nebraska;
- 611 East Broadway, Council Bluffs, Iowa;
- 503 9th Avenue, Council Bluffs, Iowa; and
- 1200 Locust, Glenwood, Iowa.

Pursuant to a Business Loan Agreement dated July 6, 2015 (the "*UMB DIP Loan Agreement*"), UMB agreed to provide a post-petition secured credit facility to Gas-Mart, Aving-Rice, Fran Transport and G&G. Fuel Service was later added to the UMB DIP Loan Agreement. Pursuant to the UMB DIP Loan Agreement, UMB provided a \$1,550,000 loan to the Debtors.

In connection with the UMB DIP Loan Agreement, Gas-Mart, Aving-Rice, Fran Transport and G&G entered into Commercial Security Agreements dated July 6, 2015 (the "*UMB DIP Security Agreements*") in favor of UMB. Fuel Service was later added to the UMB DIP Security Agreements. Pursuant to the UMB DIP Security Agreements, each Debtor granted UMB a first priority security interest in all of their pre-petition and post-petition property, including without limitation, any and all cash and cash collateral and any investment of such cash and cash collateral, any goods, inventory or equipment, any accounts receivable, any other right to payment whether arising before or after the Petition Date, contracts, chattel paper, fixtures, properties, plants, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, or capital stock of subsidiaries, including all products, proceeds, etc. in the foregoing.

In connection with the UMB DIP Loan Agreement, Gas-Mart also executed mortgages in favor of UMB with respect to the Primed Collateral. The Final DIP Order, with the consent of UMB, has been modified on several occasions. *See* Docket Nos. 181, 724, 726 and 808.

## 5. Sales of the Debtors' Assets.

On December 7, 2015, the Debtors filed their *Motion To Approve (a) One or More Potential Sale(s) of All Assets Free and Clear of all Liens, Interests, Claims and Encumbrances, and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, and (b) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures Pursuant to 11 U.S.C. § 365, and (c) the Potential Abandonment of Certain Assets Pursuant to 11 U.S.C. § 554, and (d) Related Relief Pursuant to 11 U.S.C. § 105* (Docket No. 449) (the “Sale Motion”).<sup>3</sup>

On December 17, 2015, the Bankruptcy Court entered its *Order Approving Procedures for the Solicitation of Offers for (a) One or More Potential Sale(s) of All Assets Free and Clear of all Liens, Interests, Claims and Encumbrances, and Related Procedures and Bid Protection Pursuant to 11 U.S.C. § 363, and (b) the Potential Assumption and Assignment, or Rejection, of Certain Executory Contracts and Unexpired Leases, and Related Procedures Pursuant to 11 U.S.C. § 365, and (c) the Potential Abandonment of Certain Assets Pursuant to 11 U.S.C. § 554, and (d) Related Relief Pursuant to 11 U.S.C. § 105* (Docket No. 476) (the “Bid Procedures Order”). The Bid Procedures Order approved certain bid procedures and other relief requested in the Sale Motion.

On January 19, 2016, the auction of the Debtors' assets was held. Ten qualified bidders participated in the auction. Pursuant to the PPRE Sale Order entered on January 29, 2016, PPRE, LLC (“PPRE”) was approved as the successful bidder for the assets set forth in the asset purchase agreement attached to the PPRE Sale Order. The assets purchased by PPRE included the following locations:

- 331 Rice Lake Square, Wheaton, Illinois (Store #24)
- 2100 W. Army Trail, Addison, Illinois (Store #26)
- 2006 Center Avenue, Janesville, Wisconsin (Store #28)
- Route 34 and Griswold, Sandwich, Illinois (Store #35)
- 28 W. 244, Wrenville, Illinois (Store #38)
- 5149 W. 79th Street, Burbank, Illinois (Store #41)
- 14747 159th, Lockport, Illinois (Store #44)
- 15229 S. Cicero, Oak Forest, Illinois (Store #45)
- 18280 S. Pulaski Road, Country Club Hills, Illinois (Store #46)
- 323 Ridge Road, Munster, Indiana (Store #47)

Pursuant to the General Sale Order entered on February 8, 2016, GPM Investments, LLC (“GPM”), National Properties, LLC (“National Properties”), Sentinel Transportation, LLC (“Sentinel”), SNC JJ Holdings, LLC (“SNC”)<sup>4</sup> (by credit bid), and St. John's Bank (by credit bid) were approved as the successful bidders for the assets set forth in the various asset purchase

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<sup>3</sup> The Debtors also sold other miscellaneous assets during the Cases, pursuant to the *Order Granting Motion for Order Authorizing Debtors to Sell Miscellaneous Assets Free and Clear of All Liens, Claims, Encumbrances and Interests* (Docket No. 783).

<sup>4</sup> All credit bid purchases were assigned by SNC to GPM.

agreements attached to the General Sale Order. These assets included the following locations:

<b>Purchaser</b>	<b>Location</b>
GPM	8209 Burden Road, Machesney, Illinois (Store #29)
	11919 Fort Street, Omaha, Nebraska (Store #51)
	611 East Broadway, Council Bluffs, Iowa (Store #53)
	503 9th Avenue, Council Bluffs, Iowa (Store #54)
	1200 Locust Street, Glenwood, Iowa (Store #55)
	1104 W. Fayette, Effingham, Illinois (Store #64)
	491 Franklin Street, Carlyle, Illinois (Store #74)
	1706 W. Main, Salem, Illinois (Store #75)
	101 W. Cumberland, St. Elmo, Illinois (Store #78)
	1507 W. Fayette, Effingham, Illinois (Store #79) <sup>5</sup>
	101 E. Fayette, Effingham, Illinois (Store #92) <sup>6</sup>
	Hwy 37 North (1120 N. Vail), Salem, Illinois (Store #95)
	309 Springcreek Road, Montrose, Illinois (Store #97)
	601 Iowa Street, Edgewood, Illinois (Store #98)
429 Veterans Memorial Hwy., Council Bluffs, Iowa (Store #60) <sup>7</sup>	
National Properties	9171 E. 41st Ter, Kansas City, Missouri (vacant land)
	9151 E. 41st Ter, Kansas City, Missouri (vacant land)
Sentinel	Purchased vehicles (equipment) from Fran Transport
SNC	703 S. Maple, Mulberry Grove, Illinois (Store #65) <sup>8</sup>
	1302 S. West Street, Olney, Illinois (Store #71) <sup>9</sup>
	610 E. Main, Carmi, Illinois (Store #84)
	617 W. Broadway, Centralia, Illinois (Store #89)
	506 E. Elm, Gillespie, Illinois (Store #93)
	201 N. Park Street, Sessar, Illinois (Store #96) <sup>10</sup>
St. Johns Bank	2301 S. Banker, Suite B, Effingham, Illinois (Store #63/#68)
	1500 S. Route 127, Greenville, Illinois (Store #72)
	640 W. Main, Benton, Illinois (Store #88)
	3200 W. Broadway, Mt. Vernon, Illinois (Store #90)
	600 Park, Herrin, Illinois (Store #94)

<sup>5</sup> Inventory only; real estate sold by assignment to Wortman Properties.

<sup>6</sup> Inventory only; real estate sold to Alliance Petroleum LLC.

<sup>7</sup> Inventory only; real estate sold to Johneus LLC.

<sup>8</sup> Inventory only; real estate sold by assignment to Doug and Denise Blankenship.

<sup>9</sup> Sold by assignment to Lekhraj Ahura.

<sup>10</sup> Sold by assignment to Yongzin Enterprise, Inc.

On March 30, 2016, the Court entered an Agreed Supplemental Order Authorizing Distribution of Cash Sale Proceeds and the Allocated Amount under the Sale Orders (Docket No. 727) (“*Supplemental Sale Order*”) and the Stipulation and Order Approving Stipulation Between Debtors, UMB Bank, N.A. and Official Committee of Unsecured Creditors with Respect to Stipulation and Final Order (I) Authorizing Secured Post-Petition Financing on a Superpriority Basis Pursuant to 11 U.S.C. § 364, (II) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. §§ 363 and 364, (III) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 363 and 364 (Doc. 181) entered by the Bankruptcy Court on March 30, 2016 (Docket No. 724) (the “*Committee Stipulation*”), which provided for the distribution of the cash sale proceeds.

## **B. Committee Participation in the Cases**

Pursuant to section 1102(a) of the Bankruptcy Code, on July 10, 2015, the U.S. Trustee appointed the Committee, which is comprised of the following Creditors: (i) Farner-Bocken Company; (ii) Green Implementation Group, LLC; (iii) Dan John Properties, LLC and John Dan Properties, LLC; (iv) CG Batavia Holdings, LLC; (v) Klemm Tank Lines; (vi) Sunrise AG Service; and (vii) The Coca-Cola Company. The Committee retained Freeborn & Peters LLP as its counsel and Levy Craig Law Firm as its local counsel.

Since the appointment of the Committee, the Committee has taken an active role in the Debtors’ Cases. Consistent with its duties under section 1103 of the Bankruptcy Code, the Committee: (i) consulted with the Debtors on the administration of the Cases; (ii) investigated the acts, conduct, assets, liabilities and financial condition of the Debtors, the operation of their business and matters relevant to the Cases; and (iii) drafted and formulated the Plan and this Disclosure Statement.

## **VI. FINANCIAL INFORMATION**

### **A. Assets**

The Committee believes that the following assets, each of which will either be used to fund payments to be made under the Plan on the Effective Date or transferred to the Creditor Trust no later than seven (7) days after the Effective Date, will be available to fund distributions to Creditors in accordance with the Plan and the Creditor Trust Agreement:

**1. Cash Held by the Debtors.** The Debtors are currently holding Cash in the approximate amount of \$177,803.00 (“*Debtor Held Cash*”). Debtor Held Cash will be used by the Distributing Party to pay the UMB Claims and as otherwise set forth in Section 5.54 of Plan. The Committee Counsel is currently holding Cash in the approximate amount of \$85,000.00 in its trust account. (“*Committee Held Cash*”). Any Committee Held Cash in the Committee’s possession will be transferred to the Creditor Trust on the Effective Date.

**2. Causes of Action.** The Committee believes the Creditor Trustee may be able to pursue Causes of Action against several entities, including, without limitation, those set forth on **Exhibit B** hereto and the list of transfers disclosed in the Debtors’ Statements of Financial Affairs. The categories of potential Causes of Action include Avoidance Actions,

other Claims against Insiders, and other Claims. Each of these categories is discussed in more detail below.

**a. Avoidance Actions.** The Committee believes that the Creditor Trustee may be able to pursue Avoidance Actions against recipients of preferential transfers made in the ninety (90) days prior to the commencement of these Cases under section 547(b) of the Bankruptcy Code. The Committee believes the Debtors made approximately \$8 million in transfers to non-insiders in the ninety (90) days prior to the Petition Date, certain of which may be recoverable as preferential and/or fraudulent transfers. The Committee believes the Debtors also made transfers to insiders in the one (1) year prior to the Petition Date, certain of which may be recoverable as preferential and/or fraudulent transfers.

The Committee believes additional claims may exist for transfers made in the four (4) years prior to the Petition Date. Among other things, these transfers may be recoverable because they constitute fraudulent transfers.

While the Committee has not fully analyzed potential avoidance claims that may be brought by the Creditor Trustee, the proceeds of any recoveries with respect to claims would be earmarked for Creditor distributions under the Plan and the Creditor Trust Agreement and pursuant to the UMB Stipulation.

**b. Other Claims Against Insiders.** In addition to the transfers described above, the Committee believes additional claims may exist against insiders (including directors and officers) of the Debtors for pre-petition and post-petition conduct. Such claims may include, among other things, breach of fiduciary duty, negligence and authorizing unlawful distributions.

**c. Other Claims.** The Committee believes the Creditor Trustee may be able to assert other Causes of Action belonging to the Debtors and their Estates. Such Causes of action would include, without limitation, claims for breach of contract, tort, the Bankruptcy Code, or other federal or state law.

**3. Other Assets.** In addition to the assets described above, the Committee is advised by the Debtors that the Debtors also have other assets, including but not limited to rights under a Contract for Deed with a third party regarding certain real estate in Bunker Hill, Illinois; ownership of certain real estate in Altamont, Illinois; rights to payments on a promissory note secured by a mortgage on other property in Illinois; and rights to various refunds for deposits, insurance premiums, and property tax assessments.

## **B. Liabilities**

**1. UMB Pre-Petition Claims.** As of the Confirmation Date of the Plan, the Committee believes that the Allowed UMB Pre-Petition Claims will be approximately \$750,000.00.

**2. Non-UMB Secured Claims.** As of the Confirmation Date, the Committee believes that Allowed Secured Tax Claims will be approximately \$0.00 and that Allowed Other Secured Claims will be approximately \$0.00.

**3. Administrative Claims.**

**a. Debtors' Professionals.** As of the anticipated Confirmation Date, the Committee believes the Debtors' Professionals will be owed approximately \$475,000.00 with respect to accrued but unpaid Professional Fee Claims.

**b. Committee's Professionals.** As of the anticipated Confirmation Date, the Committee's Professionals estimate that they will be owed approximately \$260,000.00 with respect to accrued but unpaid Professional Fee Claims.

**c. Other Administrative Expense Claims.** The Committee believes that unpaid Other Administrative Expense Claims (not including the UMB Post-Petition Claims) will ultimately be Allowed in an amount not exceeding \$3,936,635.50.

**d. UMB Post-Petition Claim.** As of the Confirmation Date of the Plan, the Committee believes that the Allowed UMB Post-Petition Claims will be approximately \$2,080,000.00.

**4. Priority Claims.**

**a. Claims of Governmental Unit Taxing Bodies.** The Committee believes that Priority Tax Claims are in the approximate amount of \$8,504,190.74.

**b. Other Priority Claims.** The Committee believes that non-tax Priority Claims against the Debtors are in the approximate amount of \$100,127.36. This figure is based on Claims filed to date or scheduled by the Debtors and is subject to further reconciliation or other adjustment by the Committee or the Creditor Trustee.

**5. General Unsecured Claims.** General Unsecured Claims in Classes 3A-3E (not including the UMB Claims) total approximately \$26,204,000, based upon the Schedules and Statements and the proofs of claim filed so far. However, Allowed General Unsecured Claims may ultimately be less than this amount, based on resolution of Avoidance Actions and Claims reconciliation by the Creditor Trustee.

**6. Equity Securities.** This class of interests consists of the Debtors' Equity Securities.

**VII. PLAN OF LIQUIDATION**

**A. Objectives of the Plan**

The primary objectives of the Plan are to: (i) transfer the Unsecured Trust Assets to the Creditor Trust, which will be charged with liquidating them, reconciling Claims, prosecuting Avoidance Actions and other Causes of Action for the benefit of Creditors and making distributions to Creditors; and (ii) maximize value to all Creditor groups on a fair and equitable basis under the priorities established by the Bankruptcy Code and applicable law.



The Committee believes that the Plan provides holders of Allowed Claims with a substantially greater recovery than the recovery they would receive without approval of the Plan, or upon conversion of these Cases to a chapter 7 liquidation.

The statements contained in this Disclosure Statement include summaries of the provisions contained in the Plan and in documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and interests in the Debtors, and will be binding upon all holders of Claims against and interests in the Debtors upon the Confirmation Date. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan and such other operative documents, including, without limitation, the Creditor Trust Agreement, are controlling.

## **B. Overview of Chapter 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, the debtor is authorized to reorganize its business for the benefit of itself, its creditors and its interest holders. Another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor's assets.

In addition, chapter 11 may be used to effectuate an orderly liquidation of a debtor's business and assets. In contrast to a chapter 7 liquidation, in which a trustee is appointed to conduct the liquidation and wind down of the estate, in a chapter 11 liquidation, the debtor or its designee (such as the Creditor Trustee) remains in possession of the estate.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code contemplates that a debtor, through its pre-bankruptcy management, will continue to operate its business in the ordinary course and remain in possession of its property during the case and while it seeks to negotiate and implement a plan. Any activities that are not within the ordinary course of the debtor's business must be approved by the bankruptcy court before they are undertaken.

The consummation of a plan is the principal objective of a chapter 11 case. A plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by the bankruptcy court makes the plan binding upon the debtor, any person or entity acquiring property under the plan and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder: (i) is impaired under or has accepted the plan; or (ii) receives or retains any property under the plan. Subject to certain limited exceptions and other than as provided in the plan itself or the confirmation order, the confirmation order discharges the debtor from any debt that arose prior to the date of confirmation of the plan and

substitutes them for the obligations specified under the confirmed plan, and terminates all rights and interests of equity security holders.

### **C. Means of Implementation of the Plan**

**1. Vesting of Assets.** On the Effective Date, the Creditor Trust Assets of the Estates will be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan and Confirmation Order. All property held in the Creditor Trust for distribution pursuant to the Plan will be held solely in trust for the holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1A-1E Claims, Allowed Class 2.1A-2.1L and Allowed Class 3A-3E Claims and will not be deemed property of the Debtors. Upon entry of the Confirmation Order, the Debtors will be authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of the Creditor Trust Assets to the Creditor Trust, subject to oversight from the Creditor Trustee and the Oversight Committee, as applicable. The Creditor Trust Assets shall remain subject to UMB's security interests and liens as provided for in the UMB Documents. Such liens and security interests shall continue to be effective and perfected without the need for the execution or recordation of filings of deeds of trust, mortgages, security agreements, control agreements, pledge agreements, financing statements or similar documents, or the possession or control by UMB of, or over, any of the Creditor Trust Assets.

**2. Cancellation of Equity Securities.** On the Effective Date, all of the Equity Securities will be and be deemed to be cancelled and of no further force, whether surrendered or not.

**3. Creditor Trust Asset Administration.** The Creditor Trustee, with oversight from the Oversight Committee, and subject to UMB's consent rights, will administer the Creditor Trust Assets pursuant to the Confirmation Documents from and after the Effective Date. To the extent they conflict, the Plan and Confirmation Order will control over the Creditor Trust Agreement, and the Confirmation Order will control over the Plan.

**4. Conditions to Confirmation.** The Creditor Trust Agreement and the Confirmation Order must be reasonably acceptable in form and substance to the Committee and UMB.

**5. Conditions to Effective Date.** The following are conditions precedent to the occurrence of the Effective Date, unless waived in writing by the Committee and UMB: (i) the Confirmation Order will be a Final Order and no stay will be in effect with respect thereto; and (ii) the effectiveness of the Creditor Trust Agreement.

**6. Administrative Claims Bar Date.** Notwithstanding anything to the contrary or alternative provided by prior orders of the Bankruptcy Court regarding allowance or payment of Professional Fee Claims, all Persons requesting payment of Administrative Claims (Professional Fee Claims or Other Administrative Expense Claims) after March 31, 2016 will file applications for payment no later than thirty (30) days after the Effective Date. Objections to such applications for payment, if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within forty-five (45) days after such application is

filed. Any Administrative Claims for which applications are not timely filed in accordance herewith will be deemed discharged and barred from being asserted against the Debtors; provided, however, that previously approved or Allowed applications for Administrative Claims do not need to be re-filed including, without limitation, UMB's Post-Petition Claims; and provided further, however, that no 503(b)(9) Claims filed after the Bar Date will be Allowed.

**7. Termination of Committee.** The Committee will terminate automatically upon the Effective Date. Upon termination of the Committee, the Committee will be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Cases or the Plan and its implementation, and the retention or employment of the Committee's counsel will terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

**8. Case Administration.**

**a.** From and after the Effective Date and continuing through the date that a final decree closing the Cases is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee will possess the rights of the Debtors for all matters arising in, arising under or related to the Cases subject to the rights of UMB as set forth in the Plan. In addition to, and without limiting the generality of the foregoing, for all matters arising in, arising under or related to the Cases, the Creditor Trustee will: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtors (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing to commence Avoidance Actions and other Causes of Action subject to the rights of UMB as set forth in the Plan; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Cases; and (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in these Cases.

**b.** The Joint Administration Order shall remain in force and full effect after the Effective Date, and the Creditor Trustee may file all Causes of Action and objections to Claims in the Gas-Mart Case, and not in any other individual Debtor Case, notwithstanding the fact that the transferring Debtor (in an Avoidance Action) or the Debtor against whom the Claim was filed (in a Claim objection proceeding) may be a Debtor other than Gas-Mart.

**c.** UMB shall be considered a representative of the Debtors' Estates under section 1123(b)(3)(B) of the Bankruptcy Code for the limited purpose of pursuit and enforcement of the Causes of Action and shall have standing to commence and enforce Causes of Action subject to the provisions of the Plan and Confirmation Order; provided, however, that UMB may not enforce a Cause of Action unless the Creditor Trustee declines to enforce such Cause of Action, unreasonably delays in enforcing such a Cause of Action, or there is a Default under the Plan with respect to UMB. To the extent UMB enforces a Cause of Action, it will be entitled to compensation for its reasonable attorney's fees and expenses. Any recoveries from Causes of Action received by UMB will remain subject to the Plan provisions related to the

disposition of the same. Whether UMB exercises its rights to pursue a Cause of Action will be in its complete and absolute discretion. No failure or delay by UMB in exercising its rights with respect to a Cause of Action will subject UMB to liability or claims of a Creditor or any other party in interest or prejudice or waive UMB's rights under the UMB Documents including its right to pursue other collateral, the UMB Guarantors, or other remedies available to UMB under such documents and applicable law. For the avoidance of doubt, UMB shall have no obligation to pursue a Cause of Action and UMB's refusal or failure to pursue a Cause of Action shall not give rise to any claims, liability, or defenses with respect to UMB.

**9. Oversight Committee.** For purposes of implementation of the Plan, the Oversight Committee shall be created on the Confirmation Date and shall be comprised of three (3) members. The Committee shall have the sole right to choose one of the members. At least two of the three members must be acceptable to both the Committee and UMB. Members of the Committee are not prohibited from serving on the Oversight Committee subject to being otherwise acceptable as provided in the Plan. The Oversight Committee shall exercise such rights and duties as are set forth in the Creditor Trust Agreement. Each members of the Oversight Committee shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Creditor Trust Agreement; and (iii) the termination of the Creditor Trust. Oversight Committee members shall not be compensated, but are entitled to have their reasonable expenses reimbursed by the Creditor Trust.

**10. Filing of Additional Documents.** On or before the Plan Supplement Filing Date, the Committee will file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan including, without limitation, the Creditor Trust Agreement.

**11. Trust Professionals.** Upon the Effective Date, the Creditor Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deems necessary upon approval of the Oversight Committee and in accordance with the Creditor Trust Agreement without approval of employment or fees by the Bankruptcy Court. With respect to the Causes of Action, the Creditor Trustee must also obtain approval of UMB with respect to retention of Professionals and such consent will not be unreasonably withheld. If the Creditor Trustee believes UMB is unreasonably withholding its consent to the retention of a Professional, the Creditor Trustee may petition the Bankruptcy Court for approval of such professional. Additionally, the law firm of Freeborn & Peters LLP is deemed approved to the extent its employment by the Creditor Trustee is pursuant to the same terms as set forth in the *Supplemental Application of the Official Committee of Unsecured Creditors to Employ Freeborn & Peters LLP as Counsel* (Docket No. 747) and the Order approving the same (Docket No. 781). The Professionals retained by the Creditor Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in the Cases. The Creditor Trustee's retention of any such Professionals is deemed not to pose any conflict of interest, and no conflict will exist by virtue of the filing of applications by Professional Persons for allowance of Administrative Claims in accordance with Section 5.1 of the Plan.

**12. INJUNCTION.** EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE CONFIRMATION

DATE, EXCEPT AS OTHERWISE SET FORTH IN THE PLAN, ALL PERSONS AND ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD LIENS, CLAIMS OR INTERESTS IN OR AGAINST THE DEBTORS ARE, WITH RESPECT TO OR ON ACCOUNT OF ANY SUCH LIENS, CLAIMS OR INTERESTS, PERMANENTLY ENJOINED FROM: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING THE DEBTORS OR THE CREDITOR TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS; (II) ENFORCING AGAINST, LEVYING UPON OR ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT) THE DEBTORS OR THE CREDITOR TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS; (III) ENFORCING, LEVYING, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT), COLLECTING OR OTHERWISE RECOVERING BY ANY MANNER OR MEANS WHETHER DIRECTLY OR INDIRECTLY, OF ANY JUDGMENT, AWARD, DECREE, CLAIM OR ORDER AGAINST THE DEBTORS OR THE CREDITOR TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS; (IV) CREATING, PERFECTING OR OTHERWISE ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIENS, CLAIMS OR INTERESTS OF ANY KIND AGAINST OR IN THE DEBTORS OR THE CREDITOR TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS; (V) OTHER THAN AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE PLAN, ASSERTING ANY RIGHT OF SETOFF, SUBORDINATION OR RECOUPMENT OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST ANY OBLIGATION DUE THE DEBTORS OR THE CREDITOR TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS; AND (VI) TAKING ANY ACTIONS IN ANY PLACE AND IN ANY MANNER WHATSOEVER THAT DO NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THE PLAN; PROVIDED, HOWEVER, THERE SHALL BE NO SUCH INJUNCTION RELATING TO ANY CLAIMS THAT UMB MAY HAVE AGAINST THE UMB GUARANTORS, OR THEIR RESPECTIVE PROPERTY, OTHER THAN MAY EXIST BY REASON OF SUCH PARTIES OWN BANKRUPTCY FILINGS AND THERE SHALL BE NO SUCH INJUNCTION RELATING TO ANY CLAIMS THAT ANY PARTY HAS AGAINST A NON-DEBTOR GUARANTOR OR CO-OBLIGOR, OR THEIR RESPECTIVE PROPERTY, OTHER THAN MAY EXIST BY REASON OF SUCH PARTIES OWN BANKRUPTCY FILINGS.

**13. Discharge.** Upon the Effective Date, any Person that has or could have had a Claim that arose prior to the Confirmation Date shall be deemed to have forever waived, released and discharged the Debtors from any and all Claims, rights and liabilities. On the

Effective Date, all such Persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against the Debtors or the Creditor Trust.

**14. Term of Bankruptcy Injunction or Stays.** Except as otherwise provided in the Plan and Confirmation Order, all injunctions or stays provided for in the Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, will remain in full force and effect through the imposition of the injunction set forth in Section 7.15 of the Plan.

**15. Exculpation and Limitation of Liability.** Neither the Committee, the Debtors, the Creditor Trust, UMB, nor any of their respective members, officers, directors, shareholders, employees, advisors, attorneys or agents or representatives acting in such capacity, will have or incur any liability to, or be subject to any right of action by, any Person or entity, for any act or omission in connection with, relating to or arising out of, the Cases or the pursuit of confirmation of the Plan, except to the extent arising out of fraud, willful misconduct or gross negligence, and in all respects will be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan. For the avoidance of doubt, nothing contained in the Plan or Creditor Trust Agreement shall be deemed a release or waiver of any Claims or Causes of Action the Debtors or the Estates may hold against the Debtors' directors, officers, employees, insiders or affiliates.

**16. UMB Release.** As of the Effective Date and to the extent not previously released, the Committee and the Debtors, on their own and on behalf of the bankruptcy estates, and any successors in interest thereto, shall be deemed to have released UMB and its respective members, officers, directors, shareholders, employees, advisors, attorneys or agents or representatives acting in such capacity ("*UMB Parties*") from any and all manner of actions, Causes of Action, suits, proceedings, debts, dues, judgments, damages, claims, property damages, expenses, liabilities, right to payments, acts and/or omissions, demands, and all other claims of every kind, nature, and description, whatsoever, liquidated and unliquidated, fixed and/or contingent, matured and unmatured, priority or non-priority, disputed and/or undisputed, legal or equitable, secured and unsecured, accrued and unaccrued, known and unknown, choate and inchoate, whether based on statutory law, common law, federal law, state law, local law, or otherwise, that Debtors, the Committee, or the bankruptcy estates has or may have against the UMB Parties accruing or arising from the beginning of time to the day of the Effective Date.

**17. Quarterly Reports.** The Creditor Trustee will prepare and provide to the Oversight Committee and UMB and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in this section, "calendar quarter" will mean a three month period of time, and the first calendar quarter will commence on the first day of the first month immediately following the occurrence of the Effective Date.

**18. Substantive Consolidation.** If, after the Effective Date, the Creditor Trustee determines, following consultation with the Oversight Committee and UMB, that the

Creditor Trust may be unable to generate sufficient cash proceeds from the liquidation of Creditor Trust Assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full or for any other reason allowed under applicable law, it shall file a notice of election to substantively consolidate the Estates into the Estate of Gas-Mart.

Upon the Creditor Trustee taking this election: (i) all guaranties of any Debtor of the payment, performance or collection of another Debtor shall be deemed eliminated and cancelled; (ii) any obligation of any Debtor and all guaranties thereof executed by another Debtor or Debtors shall be treated as a single obligation and any obligation of two or more Debtors, and all multiple Claims against such entities on account of such joint obligations, shall be treated and allowed only as a single Claim against the consolidated Debtors; and (iii) each Claim filed or to be filed against any Debtor shall be deemed filed against the consolidated Debtors and shall be deemed a single claim against and a single obligation of the consolidated Debtors. On the Substantive Consolidation Notice Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guaranties of collection, payment or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. Substantive Consolidation, however, will have no effect on any liens or security interests granted by the Debtors.

Except as set forth in Section 7.20.1 of the Plan, such substantive consolidation shall not (other than for purposes related to the Plan) cause any Debtor to be liable under the Plan for any Claim for which it otherwise is not liable, and the liability for any such Claim shall not be affected by such substantive consolidation. On the Substantive Consolidation Notice Date, the Intercompany Claims of Debtors against other Debtors shall be extinguished and cancelled.

Unless the Bankruptcy Court has approved the substantive consolidation of the Estates by a prior order, the Plan shall serve as, and shall be deemed to be, a motion for entry of an order permitting the Creditor Trustee to elect to substantively consolidate the Debtors as provided in Section 7.20 of the Plan. If no objection to substantive consolidation is timely filed and served by any holder of an Impaired Claim affected by the Plan, or if any such objection is resolved by the parties or overruled by the Bankruptcy Court, the Confirmation Order (with respect to permitting the Creditor Trustee to elect to substantively consolidate the Estates) may be entered by the Bankruptcy Court. If any such objections are timely filed and served, a hearing with respect to the substantive consolidation of the Estates and any objections thereto may be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Joint Hearing.

Upon the substantive consolidation of each Estate into the Estate of Gas-Mart (upon the Creditor Trustee's election), the Cases of all Debtors other than Gas-Mart shall be closed. Upon such event, the Creditor Trustee may file all Causes of Action and objections to Claims in the Gas-Mart Case, and not in any other individual Debtor Case, notwithstanding the fact that the transferring Debtor (in an Avoidance Action) or the Debtor against whom the Claim was filed (in a Claim objection proceeding) may be a Debtor other than Gas-Mart.

**19. UMB Accounts.** Until such time as the UMB Reimbursement Amounts and the UMB Post-Petition Claims have been paid in full, the Creditor Trust shall centralize its banking accounts with UMB and all recoveries and Cash shall be deposited and maintained in

such accounts.

## VIII. STATUS AND EXISTENCE OF EXECUTORY CONTRACTS AND OTHER LITIGATION

### A. Executory Contracts

**1. Contracts Deemed Rejected.** All executory contracts or unexpired leases of the Debtors that: (i) are not identified as being assumed in the Plan Supplement; (ii) have not expired by their own terms; or (iii) have not otherwise been assumed prior to the Confirmation Date will be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

**2. Bar Date for Rejection Damages.** All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.2 of the Plan must, notwithstanding any other order of the Bankruptcy Court that may provide for a different date, be filed with the Bankruptcy Court no later than thirty (30) days after the Confirmation Date. The Claims of any Person arising from the rejection of executory contracts or unexpired leases pursuant to Section 6.1 of the Plan that fails to timely file a proof of claim will be discharged under Section 1141(d) of the Bankruptcy Code and forever barred from assertion against the Debtors, the Creditor Trust, or their respective assets or Estates.

### B. Litigation

**1. Potential Avoidance Action Litigation.** As previously set forth herein, the Committee believes that the Debtors made approximately \$8 million in transfers to non-insiders in the ninety (90) days prior to the Petition Date and also made transfers to insiders in the one (1) year prior to the Petition Date, certain of which may be recoverable (the "*Preferential Transfers*"). The Committee believes additional claims may exist for transfers made in the four (4) years prior to the Petition Date. Among other things, these transfers may be recoverable because they constitute fraudulent transfers.

As of the Effective Date, the Creditor Trustee will assume responsibility for any Causes of Action previously commenced by the Committee or any of the Debtors. The Creditor Trustee will also be authorized to analyze and, if appropriate, file adversary proceedings under, *inter alia*, sections 544, 547, 548, 549 and 550 of the Bankruptcy Code to avoid and recover transfers.

In addition to the transfers described above, the Committee believes additional claims may exist against insiders (including directors and officers) of the Debtors for pre-petition conduct. Such claims may include, among other things, breach of fiduciary duty, negligence and authorizing unlawful distributions.

These potential claims are not exhaustive, and the areas of potential litigation include those described in Section VIII.B. On behalf of the Debtors and Estates, rights to any Cause of Action that may be identified after the Effective Date shall be preserved for the Creditor Trustee.

**2. Possible Unknown Claims.** The Creditor Trustee may have additional Causes of Action against third parties that are unknown at this time. The Creditor Trustee will



be empowered to investigate the Debtors' relationship with such other third parties for the purpose of evaluating potential additional litigation claims. The proceeds of any litigation against third parties, or any other beneficial result from the settlement of such litigation, would also be earmarked for Creditor distribution under the Plan and the Creditor Trust Agreement.

The recoveries, if any, from any litigation brought by the Creditor Trustee will depend on many factors, which cannot be predicted at this time. The Creditor Trustee may, upon approval of the Oversight Committee, elect not to pursue certain Causes of Action (including Avoidance Actions) the pursuit of which the Creditor Trustee deems not to be in the best interest of the Estates or the Creditor Trust. To the extent the Creditor Trustee elects to not pursue any Cause of Action, UMB shall have standing to commence and enforce Causes of Action subject to the provisions of the Plan and Confirmation Order.

Except as specifically provided herein or in the Confirmation Order, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights, claims or Causes of Action (including Avoidance Actions) that the Creditor Trustee may choose to assert on behalf of the Estates or the Creditor Trust in accordance with any provision of the Bankruptcy Code or any non-bankruptcy law.

All Causes of Action shall survive confirmation, and the commencement of prosecution of Causes of Action shall not be barred or limited by *res judicata* or estoppel, whether judicial, equitable or otherwise, based upon confirmation of the Plan. The Creditor Trustee's right (or in certain cases, UMB's right) to commence and prosecute Causes of Action (including Avoidance Actions) shall not be abridged or materially altered in any manner by reason of confirmation of the Plan.

### **C. Objections to Claims**

The Committee believes that objections to certain Claims will be warranted, and from and after the Effective Date, the Creditor Trustee will have authority to file, settle, compromise, withdraw or litigate to judgment objections to Claims. The Creditor Trustee will have standing to file objections to such Claims even if such Claims were scheduled by the Debtors as undisputed, liquidated and non-contingent. The Creditor Trustee must file objections to such Claims by no later than 180 days after the Effective Date (unless extended by an order of the Bankruptcy Court); provided, however, that the Creditor Trustee may file objections to such Claims within ninety (90) days of the filing of an amended Claim.

If the Creditor Trustee objected to a Claim, payment will be withheld only with respect to the amount actually in dispute, and such objection will not affect payments or distributions under the Plan on the undisputed portion of the Claim.

The UMB Claims shall be deemed allowed and not subject to objection by the Debtors, the Creditor Trustee, or any other party in interest.

## **IX. CONFIRMATION AND CONSUMMATION PROCEDURE**

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the requirements of chapter 11, including, among other things, that: (i) the Plan has

properly classified Claims and interests; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) the Committee has complied with applicable provisions of the Bankruptcy Code; (iv) the Committee has proposed the Plan in good faith and not by any means forbidden by law; (v) the Plan has been accepted by the requisite votes of all Classes of Creditors (except to the extent that “cramdown” is available under section 1129(b) of the Bankruptcy Code); (vi) the Plan is in the “best interests” of all holders of Claims or interests in an Impaired Class; (vii) the Plan is “feasible” in that confirmation of the Plan is not likely to be followed by the liquidation or need for further restructuring of the Debtors, unless the Plan contemplates liquidation; and (viii) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Confirmation Date.

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

**A. Solicitation of Votes**

Under the Bankruptcy Code, only classes of claims and interests that are impaired under the plan are entitled to vote to accept or reject a plan. A class is impaired if the legal, equitable or contractual rights to which the holders of claims or interests are entitled are modified, other than by curing defaults and reinstating the debt. Under sections 1126(f) and (g) of the Bankruptcy Code, classes of claims and interests that are not impaired are conclusively presumed to have accepted the plan and are not entitled to vote on a plan, and classes of claims and interests whose holders will receive or retain no property under the plan are deemed to have rejected a plan and are not entitled to vote on a plan. Creditors who hold disputed or disallowed claims are not entitled to vote to accept or reject the plan.

Under the Plan, the holders of Allowed Claims in Classes 1A-1E, 2.1A-2.1E and 3A-3E are entitled to vote to accept or reject the Plan. All other Classes of Claims or interests are deemed under the Bankruptcy Code to have accepted or rejected the Plan. This Disclosure Statement and an appropriate ballot are being distributed to all holders of Claims who are entitled to vote on the Plan.

Under the Bankruptcy Code, a class of claims accepts a plan if holders of at least two-thirds in dollar amount and more than one-half in number of the claims properly voted in that class, voted to accept.

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

Any ballot that is properly completed, executed and timely returned to BMC Group but does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and a rejection of the Plan, will be deemed to be a vote to accept the Plan. Whenever a Creditor casts more than one ballot voting the same Claim before the Voting Deadline, the last ballot received before the Voting Deadline is deemed to reflect the voter’s intent and will therefore supersede any prior ballots. Creditors must vote all of their Claims within a particular Class under the Plan

either to accept or reject the Plan and may not split their vote, and thus a ballot that partially accepts and partially rejects the Plan will not be counted.

## **B. The Confirmation Hearing**

The Confirmation Hearing is scheduled for September 7, 2016 at 9:30 a.m. before the Bankruptcy Court at 400 E. 9th Street, Kansas City, Missouri 64106. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of section 1129 of the Bankruptcy Code. Prior to the Confirmation Hearing, the Committee will submit a report to the Bankruptcy Court reflecting the votes received with respect to the acceptance or rejection of the Plan by the parties entitled to vote thereon.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan. Any objection to confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on all required parties on or before the Objection Deadline, which is the confirmation objection deadline that has been set by the Bankruptcy Court. Unless an objection to confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

## **C. Confirmation**

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the plan: (i) has been accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the plan “does not discriminate unfairly” and is “fair and equitable” as to such class; (ii) is feasible; and (iii) is in the “best interests” of creditors and stockholders that are impaired under the plan and that vote, or are deemed, to reject the plan.

### **1. Unfair Discrimination and Fair and Equitable Tests**

To obtain confirmation of a plan over the objection of a class of claims or interests that rejects such plan, it must be demonstrated that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to each such non-accepting class. In order for a plan to be found to be “fair and equitable” and thus subject to confirmation by “cramdown” under section 1129(b) of the Bankruptcy Code, the Committee must demonstrate:

**a. For a Class of Unsecured Creditors:** That either: (i) each impaired unsecured creditor receives or retains, under the plan, property of a value equal to the amount of its allowed claim; or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

**b. For a Class of Interests:** That either: (i) each holder of an interest will receive or retain, under the plan, property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest; or (ii) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the plan.

As described above, holders of Equity Securities in Classes 4A-4E are presumed, under section 1126(g) of the Bankruptcy Code, to have rejected the Plan. The Committee requests confirmation of the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by Classes 4A-4E. The Committee believes that the Plan may be confirmed pursuant to the above-described “cramdown” provisions, over the dissent of Classes 4A-4E in view of the terms of the Plan. The Committee believes that the treatment under the Plan of the holders of Interests in Classes 4A-4E satisfies the “fair and equitable” test because there are no Classes junior to such non-accepting Classes that will receive or retain any property under the Plan and since Classes 3A-3E, whose Claims have priority over the Equity Securities classified in Classes 4A-4E to the extent Allowed, are not being paid in full under the terms of the Plan and further will share Pro Rata in the Net Trust Proceeds of the Creditor Trust Assets. In addition, the Committee does not believe that the Plan unfairly discriminates against Classes 4A-4E.

## **2. Best Interests Test**

With respect to each impaired class of claims and interests, confirmation of a plan requires that each holder of a claim or interest either: (i) accept the plan; or (ii) receive or retain under the plan property of a value, as of the effective date, that is not less than the value such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code. The Committee believes that Holders of Impaired Claims and interests in each Impaired Class under the Plan would receive significantly less under a chapter 7 liquidation than under the Plan.

To calculate the probable distribution to holders of each impaired class of claims and interests if a debtor was liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from such debtor’s assets in a chapter 7 case under the Bankruptcy Code. This “liquidation value” would consist primarily of the proceeds from a forced sale of the debtor’s assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced by, first, the claims of secured creditors to the extent of the value of their collateral and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of the bankruptcy case. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as that of counsel and other professionals retained by the trustee, asset disposition expenses and all unpaid expenses incurred until the liquidation is completed.

The Committee believes that the Plan meets the “best interests of creditors” test of section 1129(a)(7) of the Bankruptcy Code. The Committee believes that the members of each Impaired Class will receive significantly greater value under the Plan than they would in a chapter 7 liquidation proceeding due to: (i) the value the Creditor Trustee will bring to the Estates in reconciling overstated and invalid Claims and from Avoidance Actions and other Causes of Action; and (ii) avoiding the additional expenses associated with conversion to a chapter 7 case.

With respect to (i), although it is possible that a chapter 7 trustee will vigorously pursue objections to Claims and Avoidance Actions and other Causes of Action, the Committee submits this is highly speculative because the pursuit of such litigation is not a precondition to the appointment of a chapter 7 trustee, and the chapter 7 trustee may ultimately choose not to challenge Claims or to pursue Avoidance Actions and other Causes of Action. The Committee believes this is especially true given that UMB receives 50% of any Net Litigation Recoveries and that 10% of recoveries allocated to the Estates are set aside for Unsecured Creditors. Additionally, the UMB Stipulation provides a \$100,000 carveout for the Committee to use in pursuing Causes of Action or as otherwise agreed upon between UMB and the Committee. The Committee estimates that a portion of this \$100,000 carveout will remain on the Effective Date, and UMB is willing to allow the carveout to be used by the Creditor Trustee in accordance with the UMB Stipulation. UMB would not allow a chapter 7 trustee to utilize the balance of the carveout, however.

Moreover, UMB asserts an administrative claim pursuant to Section 507(b) of the Bankruptcy Code with respect to the UMB Pre-Petition Claims. Thus, if any deficiency remains after the non-Avoidance Action collateral has been liquidated, such claims under the UMB Stipulation may be paid with respect to other administrative claims out of the Estates' share of the Avoidance Action recoveries. The Committee has been negotiating with UMB and the Plan provides for waiver of such section 507(b) priority status. UMB has not yet agreed to such a waiver. If such waiver is approved, however, it will potentially allow non-professional administrative claimants to receive more on their claims than they would receive in a Chapter 7 liquidation. It will also save the Estates' monies in litigating over the extent and nature of such 507(b) administrative claim.

With respect to (ii), the Committee submits that a significant distinction between the Plan and converting the Cases to chapter 7 is the substantial chapter 7 administrative costs that will result from such conversion. Pursuant to section 326 of the Bankruptcy Code, the statutory chapter 7 trustee fee (the "*Chapter 7 Trustee Fee*") can be as high as 25% of the first \$5,000 disbursed, 10% on any amount disbursed in excess of \$5,000 but not in excess of \$50,000, 5% on any amount disbursed in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% on any amounts in excess of \$1,000,000. Any such Chapter 7 Trustee Fee will directly reduce any recovery for Creditors.

A chapter 7 trustee will likely also retain Professionals for purposes similar to those retained by the Creditor Trustee. The chapter 7 trustee and his or her Professionals, however, may be unfamiliar with the Debtors' operations and these Cases. Accordingly, the chapter 7 trustee and his or her Professionals may be required to devote considerable time reviewing the Debtors' books and records and the events of these Cases occurring prior to the conversion to chapter 7. Given this reality, the Committee estimates that the fees of a chapter 7 trustee's Professionals will exceed the fees of the Creditor Trustee's Professionals.

The rates of those Professionals retained by the chapter 7 trustee, on the one hand, and the Creditor Trustee, on the other hand, may vary. For instance, one group of Professionals may have higher rates than a group of other Professionals. Assuming that both groups of

Professionals are equally efficient in their approach and effectiveness in the results obtained, this factor may increase the cost of administration.<sup>11</sup>

The Committee submits that the Plan will provide a recovery that is greater than the amount each Creditor would receive under a chapter 7 liquidation. The Creditor Trustee will retain Professionals, but given the added expense of the chapter 7 trustee's Professionals to become generally familiar with the Debtors' Estates, the Committee submits that the fees of any Professionals of the Creditor Trustee should be less than the professional fees of a chapter 7 trustee. Accordingly, the Plan meets the "best interests" test.

### **3. Conclusion**

For the foregoing reasons, the Committee submits that the Plan, as proposed, meets each of the requirements for confirmation under section 1129 of the Bankruptcy Code.

## **X. TAX CONSEQUENCES**

The Committee is not qualified to advise creditors of the specific respective tax impact on each of them as a result of treatment provided in the Plan and therefore make no representation as to that. The Debtors are not expected to suffer adverse tax consequences as a result of the Plan.

In accordance with the Plan, holders of general unsecured claims will receive a distribution on such claims. Any holder of a general unsecured claim will realize a loss in an amount equal to such claim, minus any recovery, on an adjusted tax basis.

The tax consequences to holders of general unsecured claims will differ and will depend on factors specific to such holder, including but not limited to: (i) whether the claim, or a portion thereof, constitutes a claim for interest or principal; (ii) the origin of the claim; (iii) the type of consideration received in exchange for the claim; (iv) whether the holder is a United States person or a foreign person for tax purposes; (v) whether the holder reports income on the accrual or cash basis method; and (vi) whether the holder has taken a bad debt deduction or otherwise recognized a loss with respect to the claim.

**THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCE TO EACH HOLDER OF A GENERAL UNSECURED CLAIM. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. THEREFORE, IT IS IMPORTANT THAT EACH HOLDER OF A GENERAL UNSECURED CLAIM OBTAIN HIS, HER OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH HOLDER OF A GENERAL UNSECURED CLAIM AS A RESULT OF THE PLAN.**

## **XI. RISK FACTORS**

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<sup>11</sup> Given that the Professional groups have not been – and, in fact, cannot be – identified at this time, it remains impossible to fully evaluate this issue for purposes of voting on the Plan.

Holders of Claims and interests against the Debtors should read and consider carefully the information set forth below, as well as other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. This information, however, should not be regarded as necessarily setting forth the only potential risks involved in connection with the Plan and its implementation.

**A. Failure To Satisfy Vote Requirement**

In the event that sufficient votes accepting the Plan are not received and, as a result, the Committee is unable to confirm the Plan as proposed, the Committee will assess the alternatives available to it, including: (i) amending the Plan; or (ii) converting these Cases to chapter 7 liquidation proceedings. There is substantial risk that either of these alternatives will result in less favorable treatment of Claims and interests than that provided in the Plan.

**B. Non-Consensual Confirmation**

In the event any Impaired Class of Claims does not accept the Plan, the Bankruptcy Court may nevertheless confirm such Plan at the Committee's request if at least one Impaired Class of Claims has accepted the Plan (with such acceptances being determined without including the vote of any "insider" in such Class), and, as to each Impaired Class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such dissenting Impaired Class(es). Because the Plan deems Classes 4A-4E to have rejected the Plan, these requirements must be satisfied with respect to such Classes. The Committee believes that the Plan satisfies these requirements, although there can be no assurances that the Bankruptcy Court will make the findings necessary to reach this result.

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

Although the Committee believes that if the Plan is confirmed, the Effective Date will occur soon after the Confirmation Date of the Plan, there can be no assurance that all conditions to the occurrence of the Effective Date will occur. In the event the Effective Date does not occur, the Committee will assess the alternatives available to them at that time.

**D. Classification and Treatment of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against, and interests in, the Debtors. The Bankruptcy Code also provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim or interest in a particular Class only if such Claim or interest is substantially similar to the other Claims or interests of such Class. The Committee believes that all Claims and interests have been appropriately classified in the Plan.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or interest of a particular Class unless the holder of a particular Claim or interest agrees to

a less favorable treatment of its Claim or interest. The Committee believes that the Plan treats each Claim or interest in a given Class equally, thus satisfying this requirement.

To the extent that the Bankruptcy Court finds that the Plan does not satisfy these requirements, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

#### **E. Amount of Allowed Claims**

The total amount of all Claims filed in the Cases may materially exceed the estimated amounts of Allowed Claims assumed in the development of the Plan, in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions that will ultimately be received by any particular holder of an Allowed Claim in any Class may be materially and adversely affected if the estimates are exceeded as to any Class.

In addition, the Creditor Trust may not have sufficient assets to pay Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Claims in full in certain Debtor's Cases, including the costs and expenses of pursuing any and all Causes of Action. If the Creditor Trustee (following consultation with the Oversight Committee and UMB) determines that this is the case, it may elect to substantively consolidate the Estates as set forth in Section 7.20 of the Plan.

### **XII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Committee believes that the Plan affords holders of Claims the potential for the greatest recovery and, therefore, is in the best interests of such holders.

If, however, the requisite acceptances are not received, or the Plan is not confirmed and/or consummated, the theoretical alternatives include: (i) formulation of an alternative plan of liquidation; or (ii) liquidation of the Debtors and their Estates under chapter 7 of the Bankruptcy Code.

#### **A. Alternative Plan(s) of Liquidation**

If the Plan is not confirmed, the Committee or any other party may attempt to formulate and propose a different plan or plans of liquidation. The Debtors could suffer from liquidity issues during an extended chapter 11 process, while a consensual plan of liquidation was formulated and confirmed.

The Committee believes that the Plan, as described herein, enables Creditors to realize the greatest possible value under the circumstances and, compared to any other or later alternative plan of liquidation, has the greatest likelihood of being confirmed and consummated.

#### **B. Chapter 7 Liquidation of the Debtors**



If no plan is confirmed, the Debtors may be forced to liquidate under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the Debtors' assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or interests in the Debtors.

The Committee believes that in a liquidation under chapter 7, before Creditors received any distribution, additional administrative expenses related to the appointment of a trustee and the trustee's attorneys, accountants and other professionals would cause a substantial diminution in the value of the Debtors' Estates. The assets available for distribution to Creditors would be reduced by such additional expenses and by claims, some of which would be entitled to priority. The Liquidation Analysis, discussed in Section IX.C.2 (the "best interests test"), suggests that unsecured Creditors would receive *de minimis* distributions on their Claims in a liquidation.

### **XIII. CONCLUSION**

The Committee submits that, under the Plan, holders of Unsecured Claims stand to receive a meaningful recovery on their Claims, while at the same time avoiding the additional fees and expenses that would be incurred upon conversion to chapter 7. Therefore, the Committee believes that the distributions provided for in the Plan are fair and equitable, and the Committee strongly recommends acceptance of the Plan.

If you are eligible to vote on the Plan, please do so now by completing and returning the enclosed ballot.

Dated this 21<sup>st</sup> day of July, 2016.

#### **OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

/s/ Devon J. Eggert

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**LIST OF EXHIBITS**

- Exhibit A..... Amended Plan of Liquidation Dated July 21, 2016
- Exhibit B.....List of Claims